

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-10-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23536 of 2014

And

M.P. No.1 of 2014

Ramachandran

Petitioner

-vs-

1.The State of Tamil Nadu,
Represented by the
Director General of Police,
Mylapore,
Chennai-600 004.

2.The Chairman,
The Tamil Nadu Uniform Service
Recruitment Board,
Chennai.

3.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records made in Na.Ka.No.13100/2012/A3 dated 7.1.2013 on the file of District Superintendent of Police, Dharmapuri, the third respondent herein and quash the same as illegal and direct the respondents to appoint the petitioner as Grade-II Constable in the second respondent-Department.

For Petitioner - Mr.R.Sankarasubbu

For Respondents - Mrs.K.Bhuvaneswari,
Additional Government Pleader.

ORDER

The order of rejection, dated 7.1.2013, issued by the third respondent-District Superintendent of Police, Dharmapuri, is sought to be quashed in this writ petition and a consequential direction is also prayed for to appoint the writ petitioner as Grade-II Constable in the Police Department.

2. The learned counsel, appearing for the writ petitioner made a submission that the writ petitioner, pursuant to the Recruitment Notification, submitted his application for selection to the post of Grade-II Constable in the Tamil Nadu Police Service. The writ petitioner participated in the process of selection and got selected. However, no appointment order has been issued in view of the fact that a criminal case was registered against the writ petitioner in Crime No.251 of 2009 in Thoppur Police Station under Sections 147, 294(b), 323, 324, 506(ii) of IPC and Section 3(1)(x) of SC&ST Act.

3. The learned counsel for the writ petitioner further states that the said criminal case was subsequently closed as mistake of fact on 16.5.2009 and therefore, the writ petitioner is completely qualified in all respects for appointment to the post of Grade-II Constable. Further, the writ petitioner was selected by undergoing the process of selection and therefore, his case ought to have been considered for issuing the order of appointment by the respondents.

4. Contrarily, the respondents rejected the claim of the writ petitioner on the ground that he has suppressed the fact in the original application in respect of the claim mentioned therein. It is stated that in the column with regard to the pendency of the criminal case registered, the writ petitioner has stated 'No'. Thus, the respondents rejected the claim by stating that the writ petitioner has suppressed the fact in respect of pendency of the criminal case, in his application submitted for selection to the post of Grade-II Constable.

5. The learned counsel, appearing for the writ petitioner, states that the writ petitioner was not aware of the fact regarding the pendency of the criminal case at the time of submitting his application before the respondents and he had not wantonly suppressed the material facts. His ignorance in this regard should not be held against him in view of the fact that he had undergone the process of selection and got selected. Thus, the learned counsel for the writ petitioner is of the opinion that the fact regarding the suppression, as stated in the impugned order, to be neglected and the fact regarding the discharge of the writ petitioner from the criminal case, as the same was closed as mistake of facts, to be considered.

6. This Court is of the opinion that the fact remains that the writ petitioner submitted his application for selection to the post of Grade-II Constable in the Police Department. Further, the counter, filed by the third respondent, states that the writ petitioner was assigned Registration No.0800588 and he was called to attend physical measurement test, physical efficiency test and written test. He was qualified in the written test and the physical measurement and physical efficiency tests. Thereafter, verification of his character and antecedents were made.

7. During the verification, it was found that the writ petitioner was involved in a criminal case in Thoppur Police Station in Crime No.251 of 2009 under Sections 147, 294(b), 323, 324, 506(ii) of IPC. However, while filing the application, the writ petitioner for question No.29, whether any criminal case is pending against him, had mentioned 'No' therein.

8. Further, in the verification of Roll, for question No.15, he was asked whether he had ever been concerned in the criminal case as defendant, he said 'No' for that question too. Thus, it is evident that the writ petitioner had suppressed the material fact on his involvement in criminal case at the time of applying for the post of Grade-II Police Constable. Therefore, the name of the writ petitioner was not considered for appointment to the post of Grade-II Police Constable in accordance with Rule 14(b) of TNPSS Rules, which reads as under:-

"(i) No persons shall be eligible for appointment to the service by direct recruitment unless satisfy the appointing authority;

(ii) That the character and antecedents are such as to qualify him for such service;

(iii) That he has not involved in any criminal case before Police Verification.

Explanation 1:

A person who is acquitted or discharged on benefit of doubt or due to the fact that complainant turned hostile shall be treated as person involved in a criminal case.

Explanation 2:

A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as non-involvement in a criminal case and he can claim right for appointment only by participating in the next recruitment."

9. By virtue of the Rule, cited supra, the claim of the writ

petitioner was rejected in the impugned proceedings dated 7.1.2013. As per Rule 14(b) of the TNPSS Rules, a candidate should have good character and antecedents and he should not be involved in any criminal case before police verification. However, the writ petitioner had involved in a criminal case in Thoppur Police Station in Crime No.251 of 2009 under Sections 147, 294(b), 323, 324, 506(ii) IPC and due to his criminal background, the writ petitioner was not issued with an appointment order in the year 2012.

10. However, the learned counsel, appearing for the writ petitioner, made a submission that the said criminal case was closed as early as in the year 2009 and further, the impugned order says that the criminal case was pending at the time of passing the impugned order. Thus, the respondents have not considered the fact that the said criminal case was closed as mistake of fact as early as 2009. The learned counsel for the writ petitioner is of the opinion that the respondents have not verified the status of the criminal case and erroneously stated as the criminal case was pending as on 7.1.2013. However, the said criminal case was closed as mistake of fact in the year 2009 itself.

11. This Court has to consider the fact that the writ petitioner has not stated with regard to the registration of a criminal case and closure of the same before the authorities at the time of submitting his application. In this regard, the learned counsel for the writ petitioner states that since the said criminal case was closed as mistake of fact, the writ petitioner had not submitted those particulars. As on the date of submission of the application, there was no pending criminal case against the writ petitioner. Thus, there is no error on the part of the writ petitioner in not mentioning the same in the application.

12. In respect of the involvement in the criminal case, though the writ petitioner was discharged on the ground that the registration of a criminal case itself was on mistaken facts, this Court cannot brush aside the very fact that the said criminal case was registered against the writ petitioner. Further, the conduct of the candidate, while filling up the application for recruitment to the post of Grade-II Police Constable, is also certainly material. The genuinity of the candidate also can be ascertained on the ground in relation to the particulars produced by the candidate at the time of submission of the application. The factual circumstances are to be correctly explained in the application and any omission or commission, in this regard, shall be treated as suppression of fact.

13. Whether the writ petitioner is having the knowledge or

not is also doubtful in view of the fact that the criminal case was closed as early as 2009 and the writ petitioner was discharged from the criminal case on the ground that it was registered on mistaken facts. Thus, this Court is not in a position to make any finding in this regard in respect of the knowledge about the registration of the criminal case and discharging the writ petitioner from the criminal case. However, it is for the competent authorities to verify the same and take a decision in respect of the knowledge of the writ petitioner with regard to the order passed by the Criminal Court, discharging him from the criminal case.

14. The question that is raised before this Court, is the same, which has fallen for consideration time and time again in one form or the other, namely, whether involvement in a criminal case is an automatic fact or for disqualification of the candidature itself. This very question has fallen for consideration on several occasions before this Court as well as before various other Courts as well as before the Supreme Court. Various views have been expressed by various Courts for a long period of time and the spectrum ranges from (i) involvement in a criminal case is itself a disqualification; (ii) it all depends upon the nature of selection; (iii) it all depends upon the nature of exoneration secured in the criminal case; and (iv) it depends upon the status of employment.

15. In fact, the Supreme Court had also occasion to deal with various related questions for over a long period of time. As a result, when Civil Appeal No.5671 of 2012 between Jainendra Singh vs. State of U.P. [2012 (8) SCC 748] has come up for consideration, the Supreme Court, after noticing the range of views expressed by various Benches of the Supreme Court till then, had noticed the divergence of opinion to a certain extent. Hence, the Supreme Court felt it appropriate to refer the said Civil Appeal to be considered by a Larger Bench, so as to express one uniform opinion on the subject.

16. Thus, the matter came to be considered by a Bench of Three Judges in Avtar Singh Vs. Union of India [2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [2010 (14) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [2011 (10) SCC 184], the following principles have been settled by the Larger Bench in paragraph 34 of the judgment in Avtar Singh :

"No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all

relevant aspects."

17. The Supreme Court has pointed out that verification of character and antecedents is one of the important criteria to assess the very suitability of the candidate for employment and hence, it is open to the employer to adjudge the antecedents of the incumbent based upon objective criteria. It is also held that though a person is guilty of suppression of material information and consequently has no claim of unfettered right of appointment or continuity in service, however, he has a right not be dealt with arbitrarily. It is further held that the ultimate decision, which is the result of exercise of necessary power by the employer, shall be carried out in a reasonable manner with objectivity having due regard to the facts of the case.

18. In paragraph 38 of the said judgment, the following principles have been settled :

"We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:-

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an

incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has

to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

19. However, in the case on hand, the learned counsel for the writ petitioner pleads that the writ petitioner had no knowledge about the pendency of the criminal case at the time of filling up of the application for selection to the post of Grade-II Police Constable. There can be any number of instances where a particular person may be suspected to have played a role in the commission of an offence, particularly so when the complainant himself is not an eyewitness to the occurrence of the crime. But, when the investigation is carried on, it is more likely that the actual players in the event would get identified. Therefore, till such time the investigation is carried on, some times on a mere suspicion, a person may have been arrayed as an accused person. It is only when the investigation zeroes upon the actual involvement of such a person, the necessary follow up action would be taken up by the police by filing final report under Section 173 of the Criminal Procedure Code. Until then, some times, the person concerned may not be in the know of the FIR or its contents as well.

20. Therefore, before a person can be condemned to have been guilty of suppression of information, which is undoubtedly material and relevant for his ultimate selection, with regard to his involvement in a criminal case, certain amount of knowledge is liable to be attributed to him. More importantly, as to whether such a person is aware of the pendency or booking of the criminal case against him, would depend upon the response he would be furnishing. If only his attention is drawn to such adverse information, particularly by issuing a notice to him, as the Senior Counsel has pointed out that antecedents' verification plays a very important role in making an assessment about the suitability of the individual for the employment concerned, as any vital aspect relating to his character would be a decisive factor in holding one way or the other about his suitability.

21. In *Daya Shankar Yadav Vs. Union of India* [2010 (14) SCC

103], the following proposition has been spelt out in paragraph 15 :

"When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police

verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

22. The writ petitioner herein had never been put on notice before issuing the impugned order. If only an opportunity has been provided to him by the competent authority, then the same would have laid threadbare as to how he was not in the know of the criminal case/FIR against him and as to how he was not guilty of suppression of material information. It is hardly in doubt that if the writ petitioner is guilty of suppression of any material fact, he does not deserve any further consideration for the post of Grade-II Police Constable, which requires persons with certain approved conduct and character alone to be appointed.

23. The Police Department, as an institution, receives utmost respect in the larger society because of the sense of fairness of approach, in-depth knowledge, objectivity and above all, an assuredly good conduct and behaviour exhibited and impeccable character possessed by those, who are manning the institutions, in and outside the Office and the Society. The confidence of the general public is the basic foundation, upon which, such institutions are built up. If the confidence of the public were to be undermined or allowed to be eroded, the very credibility of the institutions would suffer an irreversible dent, leading to stress and strain to the institution itself.

24. In this context, this Court will be extremely profited to subscribe to the view rendered by the Supreme Court in the case of Commissioner of Police Vs. Mehar Singh [2013 (7) SCC 685] wherein in paragraph 35, it has been held thus :

"The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because

even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

25. Finally, this Court is of the opinion that it is a case where the writ petitioner pleads ignorance about the registration of the criminal case and further, if at all, the notice was issued to the writ petitioner, then there shall be possibility of the assessment by the competent authorities in respect of suppression of facts, as stated in the impugned order as well as in the counter-affidavit filed in this writ petition.

26. This being the factum of the case, in this regard, the writ petitioner is permitted to submit a further representation to the respondents in respect of the suppression of fact, as stated in the impugned order, with all relevant materials, within one week. On receipt of such representation from the writ petitioner within one week, the respondents are at liberty to consider all materials along with the representation so received by them and pass orders on merits and in accordance with law, within a period of 12 weeks thereafter.

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27. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Director General of Police,
State of Tamil Nadu,
Mylapore,
Chennai-600 004.
- 2.The Chairman,
The Tamil Nadu Uniform Service
Recruitment Board,
Chennai.
- 3.The Superintendent of Police,
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+1 cc to the Govt Pleader sr77354

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