

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.16453 and 16454 of 2017

G.Dharmaraj .. Petitioner in W.P.16453 of 2017

A.S.Jallaluden .. Petitioner in W.P.16454 of 2017

Vs

1.Union of India
Rep. by Govt. of Puducherry by its
Chief Secretary to Government
No.1, Gobert Avenue
Puducherry 605 011.

2.The Inspector General of Police
Police Head Quarters
No.4, Dumas Street
Puducherry 605 001.

3.The Superintendent of Police (HQ)
Police Head Quarters
No.4, Dumas Street
Puducherry 605 001.

4.Central Administrative Tribunal
By its Registrar
High Court Campus
Chennai 104.

..Respondents in W.P.16453/2017

1.The Union Territory of Puducherry
Rep.by the Chief Secretary to Government
Puducherry 1.

2.The Superintendent of Police
Head Quarters
Government of Puducherry
Puducherry 1.

3.Central Administrative Tribunal
By its Registrar
High Court Campus
Chennai 104.

..Respondents in W.P.16454/2017

Writ Petitions filed under Article 226 of the Constitution
of India, praying for a writ of certiorari calling for the

records in O.A.Nos.912 and 880 of 2013 dated 25.09.2014 on the file of the fourth respondent Tribunal and to ..the same insofar as it holds that the petitioners have not volunteered to disclose their involvement in the criminal case and its refusal to grant relief by relying upon AIR 1980 Karnataka 92 and consequently direct the 2nd and 3rd respondents to consider the case of the petitioners for appointment to the post of Police Constable.

For Petitioners : Mr.J.Srinivasa Mohan

For Respondents : Mr.Syed Mustafa,
Special Government Pleader
Puducherry [for R1 to R3]

COMMON ORDER

K.K.SASIDHARAN, J.

These two writ petitions are directed against the common order dated 25 September 2014 in O.A.Nos.912 and 880 of 2013, whereby and whereunder, the Central Administrative Tribunal dismissed the Original Applications on the ground that the petitioner in respective writ petitions failed to disclose the factum of involvement in a criminal case while making application for appointment of Police Constable.

2. By consent and taking into account the earlier order passed by this Court dated 24 February 2017 in W.P.No.1241 of 2015 etc. batch, the writ petitions are taken up for final disposal during the time of admission.

3. We have heard the learned counsel for petitioners and the learned Special Government Pleader (service), Puducherry on behalf of the respondents 1 to 3.

4. The petitioner in the respective writ petitions [hereinafter referred to as "the petitioners"] submitted application for appointment to the post of Police Constable in the Puducherry Police Service. The petitioners were selected by the Selection Committee. The petitioners were provisionally selected. However, appointment orders were not given by the Superintendent of Police, Government of Puducherry, on account of their involvement in the criminal case. The petitioners, therefore, approached the Central Administrative Tribunal for a direction to the Superintendent of Police, to give them appointment orders. The Original Applications were dismissed by the Tribunal on account of the non-disclosure of the involvement in a criminal case.

5. The common order passed by the Tribunal in respect of the other applications came up before this Court in W.P.No.1241 of 2015.

6. Subsequent to the dismissal of the Original Applications, the issue regarding the suppression of material particulars in the application for appointment in Government service came up for consideration before the Hon'ble Supreme Court in *Avtar Singh v. Union of India and others* [(2016) 8 SCC 471].

7. The Supreme Court scanned the earlier decisions on the point and summarised the legal position in the following words:-

"38.1. 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.

38.2. 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.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. 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: सत्यमेव जयते

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. 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.

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

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

8. In view of the subsequent judgment in Avtar Singh case [cited supra], we have remitted the case of the petitioners in W.P.No.1241 of 2015 to the Government of Puducherry for fresh consideration. The petitioners are also similarly situated. We are, therefore, of the view that the case of the petitioners also should be considered by the Government.

9. The Government of Puducherry vide order in G.O.Ms.No.6 Home Department, dated 4 February 2013 constituted a Screening Committee for examining the cases of candidates selected for the post of Police Constables. We direct the first respondent to place the matter before the very same Committee with appropriate changes, if any. The Chief Secretary is directed to place the case of the petitioners herein before the said Committee. The Screening Committee shall examine the case of each of the petitioners individually in the light of the law laid down by the Hon'ble Supreme Court in Avtar Singh case (cited supra) and take a decision one way or the other. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

10. The writ petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gms
To

1.Union of India
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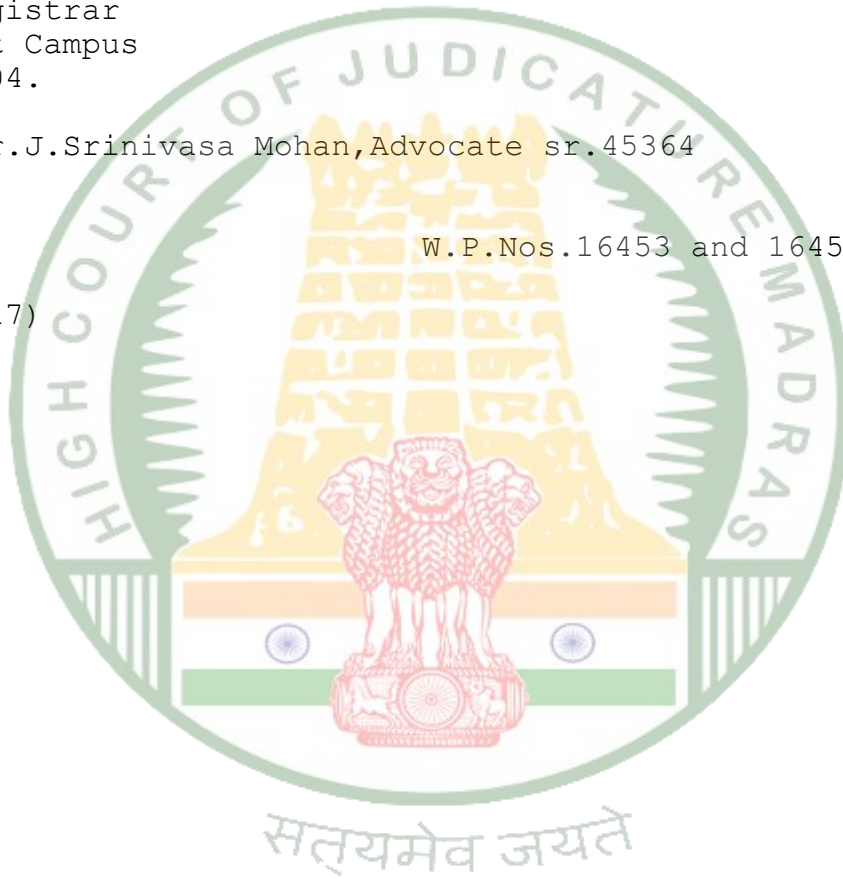
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+2cc to Mr.J.Srinivasa Mohan,Advocate sr.45364

W.P.Nos.16453 and 16454 of 2017

ss(8/8/2017)



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