

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.27518 of 2017

and W.M.P.No.29415 of 2017

M.Sudhan

... Petitioner

Vs

1.Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police office campus,
Pantheon Road,
Egmore, Chennai-8.

2.The Superintendent of Police,
Cuddalore District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for records in Na.Ka.No.A4/333/AR/2017-9 dated 09.10.2017 on the file of the 2nd respondent and quash the same as unsustainable and unconstitutional and consequently direct the 1st respondent to issue order of appointment to the petitioner for the post of Gr.II Police Constable, Gr.II-Jail Warden and Fireman.

For Petitioner : Mr.N.Ramesh

For Respondents : Mr.K.Venkataramani,

Addl. Advocate General assisted by
Mr.V.Jayaprakash Narayanan, Spl.GP

WEB COPY
O R D E R

This Writ Petition is directed against the impugned order dated 09.10.2017 issued by the second respondent to the petitioner stating that the petitioner has involved in a criminal case, i.e., Crime No.647/2016 for the offences under Sections 294[b], 323, 326, 325 and 506[ii] of IPC.

2.Heard the learned counsel appearing for both sides and perused the materials available on record.

3.The petitioner faced registration of FIR on 29.10.2016 in Crime No.647/2016 for the offences under Sections 294[b], 323, 326, 325 and 506[ii] of IPC on the file of Nellikuppam Police Station, Cuddalore District.

4.Learned counsel appearing for the petitioner submitted that due to wordy quarrel between this petitioner along with other three persons and the de facto complainant, FIR was registered against this petitioner and other three persons in Crime No.647/2016 for the offences under Sections 294[b], 323, 326, 325 and 506[iii] of IPC and after filing charge sheet by the Nellikuppam Police, the case was taken on file in C.C.No.33/2017 by the learned Judicial Magistrate-I, Cuddalore and after trial, the learned Magistrate passed an order dated 28.09.2017, acquitting all the accused, wherein, this petitioner was arrayed as A-2.

5.In the counter filed by the Superintendent of Police, Cuddalore District/second respondent herein, wherein, in paragraph No.3, it is fairly admitted that this petitioner has furnished information about his involvement in Crime No.647/2016 and therefore, this Court feels it is relevant to extract paragraph No.3 of the counter, admitting the case of the petitioner that he has disclosed all the information.

"3. ... Against this column 16, the petitioner has given information stating that Nellikuppam Police Station, Cr.No.647/2016 is pending in the Court. ... "

6.In view of the above, the petitioner's case has to be brought within paragraph No.10 of Avtar Singh's case [Avtar Singh Vs Union of India and Others] reported in [2016] 8 SCC 471 which is given as follows :

"10. Another decision of this Court which has been noted in the order is Commr. of Police v. Dhaval Singh [(1999) 1 SCC 246 : 1998 SCC (L&S) 1740]. It was a case pertaining to the verification or antecedents form in August 1995 in which pendency of criminal case was not mentioned but it was disclosed on 15-11-1995. An application was submitted mentioning that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case and the latter may be treated as an information despite such disclosure before passing an order of cancellation of candidature, was not taken into consideration by the employer concerned. This Court has held that cancellation of the candidature of Dhaval Singh was not appropriate. It was without proper application of mind and without taking into consideration all relevant material. The Tribunal has, therefore, rightly set it aside. This Court has laid down thus: (SCC p. 248, para 5)

"5. That there was an omission on the part of the respondent to give information against the relevant column in the application form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court—it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

A perusal of the same goes to show that it is a fit case for allowing the Writ Petition.

7. Accordingly, this Writ Petition stands allowed and the impugned order dated 09.10.2017 issued by the second respondent is set aside and the second respondent is directed to issue the appointment order to the petitioner within a period of four weeks from the date of receipt of a copy of this order and consequently, the petitioner should be sent for training.

8.Mr.K.Venkataramani, learned Additional Advocate General submitted that selected candidates were already sent for training and therefore, this petitioner will be sent for training in the next batch. The said submission is recorded.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gya

To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police office campus,
Pantheon Road,
Egmore, Chennai-8.

2.The Superintendent of Police,
Cuddalore District.

+1cc to Mr.N.Ramesh, Advocate, S.R.No. 90453.

W.P.No.27518 of 2017
and
W.M.P.No.29415 of 2017

BM 17/07/2018.

सत्यमेव जयते

WEB COPY