

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.05.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.8791 of 2013

and

MP.No.1 of 2013

K.Arul

...Petitioner

Versus

1. The State rep.by its
The Director General of Police,
Mylapore,
Chennai-600 004.
2. The Superintendent of Police,
Villupuram District
Villupuram.
3. The Chairman,
Uniform Service Recuritment Board,
Chennai-600 002. ...Respondents

Prayer: Petition filed under Article 226 of The Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records in Na.Ka.No.A2/1300/2012 dated 22.12.2012 on the file of second respondent herein and quash the same as illegal and consequently direct the respondent to recruit the petitioner as Grade-II constable, Tamil Nadu special police to secure the ends of justice.

For Petitioner : Mrs.S.Sridevi

For Respondents : Mr.K.Dhanajeyam

Spl. Public Prosecutor

O R D E R

The challenge in this writ petition is an order of cancellation of selection issued by the second respondent in proceedings dated 22th December, 2012.

2. The Core contention in this writ petition is that the writ petitioner has suppressed the fact regarding the criminal case registered against him in Anandhapuram Police Station in Crime No.306 of 2011 under sections 147, 148, 294 (b) 452, 324 and 506 (ii) of IPC and the writ petitioner was arrayed as accused No.2.

3. The writ petitioner passed SSLC in the year 2004 and he aspired to join in the Tamilnadu Police Force and accordingly made an application. The writ petitioner was called for an interview and subsequently he was selected. On verification, the respondents found that the writ petitioner was having a criminal case background and thereafter identified the details of the case. Consequently the selection was cancelled by proceedings dated 22.12.2012.

4. In the Application Form submitted for Recruitment to the post of Grade-II Constable, the Writ petitioner has not stated the facts regarding the registration and the pendency of the Criminal case registered against him. Admittedly, the column was filled by the Writ petitioner as "No". It is not the case of the Writ petitioner that he was not aware of the registration of the Criminal case or the pendency of the same. Such being the case, the presumption is that the Writ petitioner has intentionally suppressed the fact regarding the Criminal case.

5. The learned Counsel appearing for the Writ petitioner contended that the Writ petitioner had mistakenly not stated the fact regarding the pendency of the Criminal case and therefore he should be pardoned and, as a candidate from a poor family, his case has to be considered for the selection to the post of Grade-II Constable. The learned Counsel appearing for the Writ petitioner further stated that in similar circumstances where the criminal cases were pending, those cases were considered by the respondents and those candidates were already appointed and serving in the Police Department.

6. Such a contention cannot be accepted, in view of the fact that the Writ petitioner is seeking Appointment to the post of Police Constable, which is an Uniformed Service, where integrity and uprightness is required for any public servant, more specifically, in the Uniformed Service, people are dealing with arms of ammunitions and they have to be a person of clean

conduct and behavior.

7. The Writ petitioner is unable to establish that the fact regarding the suppression as stated in the impugned order, is erroneous. Such being the factum of this case, for all purposes, this Court is of the firm opinion that the Writ petitioner has suppressed the fact regarding the Criminal case in his Application submitted for recruitment to the post of Grade-II Constable and therefore the respondent-Superintendent of Police, has rightly rejected his candidature and there is no infirmity.

8. The Hon'ble Division Bench of this Court considered these aspects elaborately based on the legal principles laid down both by the Hon'ble Supreme Court of India and by this Court. This Court would like to quote certain paragraphs of the said Judgment to re-emphasize the views expressed by us in earlier Judgment.

"9. Thus, the matter came to be considered by a Bench of Three Judges in Avatar Singh Vs. Union of India [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [reported in 2010 (14) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in Paragraph 34 of the Judgment in Avatar 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 adjudicate antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects."

9. This Court has also considered the legal aspects dealt by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 are extracted below:

"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 honourably 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

reiterated approvingly these very principles.

"21.If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi Versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straight forward. Be that as it may."

10. In paragraph 26 of the Judgment, this Court unambiguously and in clear terms expressed its firm opinion as under:

"26.we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service."

11. Therefore, this Court is of the undoubted opinion, that the candidate who has a criminal case background cannot be considered, more specifically, for appointment to the post of Police Constable-Grade-II. All we suggested in the earlier Judgment was to reconsider certain cases, in view of certain peculiar facts and circumstances and no where this Court approved the appointment of a candidate having criminal case history, to the post of Grade-II Police Constable.

12. In view of this established legal principles, the case of the Writ petitioner deserves no consideration and the writ petition stands dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT/LOK

To

1. The Director General of Police,
Mylapore,
Chennai-600 004.
2. The Superintendent of Police,
Villupuram District
Villupuram.
3. The Chairman,
Uniform Service Recuritment Board,
Chennai-600 002.

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SKV (CO)
RS (26/05/2017)

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