

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.28031 of 2017
and W.M.P.Nos.30098 of 2017

R.Vijay

... Petitioner

Vs

1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.

2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old O/o.The Commissioner of Police,
Pantheon Road,
Egmore, Chennai-5.

3.The Superintendent of Police,
District Police Office,
Salem District.

.... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the proceedings of the third respondent issued in Na.Ka.No.A3/109/12641/2017 dated 23.10.2017 and quash the same with the consequential direction, directing the respondents to select and appoint the petitioner as Grade II Police Constable [A.R.] on par with his batch mates.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.K.Venkataramani,
Addl.Advocate General assisted by
Mr.V.Jayaprakash Narayanan,Spl.GP

O R D E R

This Writ Petition is directed against the impugned order dated 23.10.2017 issued by the third respondent to the petitioner stating that the petitioner has involved in a criminal case, i.e., Crime No.276 of 2014 for the offences under Sections 147, 148, 294[b], 448, 323, 354 and 506[ii] of IPC.

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

3.Learned counsel appearing for the petitioner submitted that the occurrence took place on 01.06.2014 and the matter was compromised immediately after registration of the said FIR and was also closed as mistake of fact on 01.06.2014 itself and prays to set aside the impugned order passed by the third respondent.

4.Mr.K.Venkataramani, learned Additional Advocate General assisted by Mr.V.Jayaprakash Narayanan, learned Special Govt. Pleader, appearing for the respondents also fairly conceded in paragraph No.8 of their counter, which reads as follows:

"8.It is submitted that the averments of the petitioner that he was totally not aware of the complaint given by Tmt.Anitha Sri, the neighbour in connection with purchase of the landed property are not correct. In fact the petitioner was duly enquired in the police station, he has signed in the police station records and both the petitioner and the complainant have compromised themselves and then only the investigation report was finalised as mistake of fact and report sent to the Court."

5.The only stand taken on the side of the respondents for disqualifying the petitioner at the final stage, when he was found selected after passing physical education test, medical test, is that the Court has not issued any order on the basis of the investigation report showing mistake of fact.

6.The above stand taken by the respondent is wholly untenable and unjustified, when there was no criminal case pending even on 01.06.2014 i.e., on the very same date of the registration of FIR, the matter was compromised and the file was closed by conducting investigation as mistake of fact and a copy of the same was also submitted before the jurisdictional Court.

7.Learned Additional Advocate General further submitted that after registration of FIR on 01.06.2014 for various offences under Sections 147, 148, 294[b], 448, 323, 354 and 506 [ii] of IPC, the petitioner and the complainant compromised the matter. Consequently, the report was filed as mistake of fact before the learned Judicial Magistrate, Salem on 23.10.2017.

8. On a perusal of the closure report, it clearly shows that the Investigating Officer, after thorough enquiry, referred the case in Crime No.276 of 2014 as mistake of fact on the very same day of registration of FIR i.e., on 01.06.2014.

9. In view of the above, even on 01.06.2014 or on the date of submission of application by the petitioner, namely, 01.09.2017, no case was pending against the petitioner. From the dictum laid down by the Apex Court in Avtar Singh Vs Union of India and Others reported in [2016] 8 SCC 471, it is clear that a person convicted for a petty offence, can also be considered for appointment. Relevant portion of the said judgment is extracted below:

"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."

10. In fine, for the reasons stated above, this Writ Petition stands allowed and the impugned order dated 23.10.2017 issued by the third respondent is set aside and the third 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.

11. 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

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To

1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.

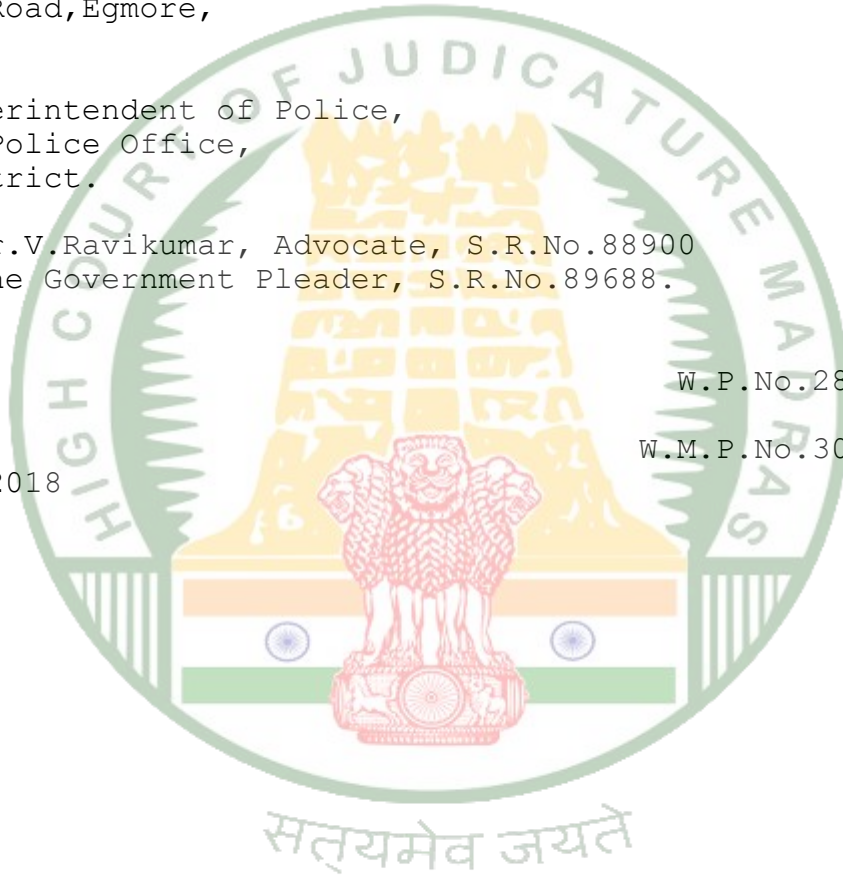
2.The Chairman,
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Chennai-5.

3.The Superintendent of Police,
District Police Office,
Salem District.

+1cc to Mr.V.Ravikumar, Advocate, S.R.No.88900
+1cc to the Government Pleader, S.R.No.89688.

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BM 17/07/2018



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