

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.11.2017
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26209 of 2013
and
M.P.Nos.1 & 2 of 2013

M.Murugan

... Petitioner

-vs-

1.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, P.T.Lee Chengalvaraya Naicker Maligai,
Anna Salai, Chennai - 600 002.

2.The Director General of Police,
O/o.The Director General of Police
Head Quarters,
Mylapore, Chennai - 600 004.

3.The Superintendent of Police,
Cuddalore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent passed in her proceedings Na.Ka.No.A4/35540/2012 dated 24.12.2012 and quash the same ie. the said order dated 24.12.2012 and consequently direct the respondents to appoint the petitioner as Grade II Police Constable who was selected in the Grade II Constable selection for the year 2012 in the Tamil Nadu Uniformed Services Recruitment Board, in his order of seniority.

For Petitioner :: Mrs.M.Meenakshi for
Mr.P.Anbarasan

For Respondents :: Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

The relief sought for in this writ petition is to quash the order of rejection passed by the respondent in proceedings dated 24.12.2012 and to direct the respondents to appoint the petitioner as Grade II Police Constable who was selected in the Grade II Constable selection for the year 2012 in the Tamil Nadu Uniformed Services Recruitment Board.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner has passed tenth

standard and submitted his application for recruitment to the post of Grade II Police Constable for the year 2012. The petitioner had passed the written examination and subsequently called for interview and certificate verification, which was held on 24.08.2012, and he was succeeded in all the tests including physical verification test, physical endurance test and physical efficiency test and finally included in the selection list. However, the respondents issued an order of rejection in proceedings dated 24.12.2012, stating that the petitioner has involved in a criminal case in Cr.No.316 of 2002 under section 380 of the Indian Penal Code. The petitioner is arrayed as first accused in the said criminal case registered by the Sub Inspector of Police, Mudhu Nagar Police Station, Cuddalore.

3.The learned counsel appearing for the petitioner further states that though the criminal case was registered against the writ petitioner and the offences alleged to have been committed are minor in nature and further, the writ petitioner was acquitted in the criminal case. In view of the acquittal, the case of the writ petitioner ought to have been considered by the respondents for appointment to the post of Grade II Police Constable, since the petitioner had been selected in all the tests.

4.The learned Government Advocate appearing on behalf of the respondents relaying on the counter statement submitted that the criminal case registered against the writ petitioner in Cr.No.316 of 2002 under Section 380 of the Indian Penal Code is certainly serious in nature, the alleged offence relating to theft. A mere acquittal in criminal case will not constitute a ground for seeking appointment by the writ petitioner. In view of the fact that it is an uniformed service and the persons having criminal case history cannot be considered for appointment to the post of Grade II Police Constable. This apart, the learned Government Advocate informed this Court that the writ petitioner has suppressed the fact in relation to the registration of a criminal case against him in Cr.No.316 of 2002. At the time of submitting the application for recruitment to the post of Grade II Police Constable, the writ petitioner has suppressed the material fact in respect of his involvement in a criminal case. Thus, the case of the writ petitioner was rejected both on the ground of suppression of material fact at the time of submitting his application and further on the ground that he is having a criminal case history. For selection to the uniformed service, a person having criminal case history cannot be considered.

5.Considering the arguments of both the learned counsel appearing on behalf of the petitioner as well as the respondents, this Court is of the opinion that it is an admitted fact that the writ petitioner suppressed the fact regarding the registration of a criminal case against him and he has not

enclosed even the order of acquittal along with the application. Thus, the suppression of material fact itself is a demerit and this Court cannot consider the appointment in favour of the petitioner. Secondly, in respect of the involvement in the criminal case, though the writ petitioner was acquitted, this Court is not inclined to consider the case of the writ petitioner on the perspective that the recruitment to the post of Grade II Police Constable which is an uniformed service. A person of doubtful integrity can at no point of time be appointed in uniformed service. A mere scrutiny of applications are insufficient to understand the uprightness of the candidates, while recruiting candidates to the uniformed services, the recruiting agencies have to see the attitude, mindset and the way in which the candidates carries himself are to be ascertained.

6. Thus, this Court is of an undoubted opinion that the writ petitioner has suppressed the fact and created inconsistency in his declaration form and therefore, the rejection of his candidature is correct and there is no infirmity in the decision taken by the recruiting authority. This Court has considered the legal principles with reference to the Judgment delivered by the Hon'ble Supreme Court of India and the following paragraphs of the Judgment in a Writ Petition in W.P.No.7606 of 2017 in the case of S.Sasikumar Vs. Tamil Nadu Public Service Commission and another are reproduced to re-emphasize the views expressed by this Court:

"23. The submission of Mr. Lakshmi Narayanan, the learned counsel for the petitioner, that this Bench has earlier considered the case of similar facts on 08th March, 2017, we are of the opinion that all the aspects in this regard were meticulously considered with reference to the principles laid down by the Honourable Apex Court of India. We 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 adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on

due consideration of all relevant aspects."

24. We have considered the legal aspects dealt with 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 has 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."

25.In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our 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."

7. In view of the matter, this Court has not inclined to consider the case of the writ petitioner on merits. It is to be re-emphasized that a candidate who had suppressed the material fact at the initial stage of submitting the application for recruitment to the post of Grade II Police Constable is not entitled to get any relief from this Court. This apart, recruitment to the post of Grade II Police Constable in the uniformed service and any leniency or displaced sympathy in this regard by the Courts or by the authorities will jeopardise the administrative system, more specifically, the uniformed service. For all these reasons, the writ petition deserves no merits and consideration.

8. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee Chengalvaraya Naicker Maligai,
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2. The Director General of Police,
O/o. The Director General of Police
Head Quarters, Mylapore, Chennai - 600 004.

3. The Superintendent of Police,
Cuddalore District.

+1cc to Mr.P.Anbarasan, Advocate SR.No.84158

sm:18.12.2017

W.P.No.26209 of 2013
1/2