

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.26484 of 2013

L.Radhakrishnan
S/o.R.Lakkaiyan

... Petitioner

Vs

1. The Secretary
Department of Home
Government of Tamil Nadu
Fort St.George, Madras-600 009.
2. The Director General of Police
Government of Tamil Nadu
Mylapore, Madras - 600 004.
3. The Superintendent of Police
Tiruchirappalli.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein in his proceedings Na.KaNo.A2/27002/2012 dated 21.12.2012 and quash the same and further direct the respondents herein to appoint the petitioner with Registration No.1607128 to the post of Second Grade Police where already the petitioner got through both written and oral tests including physical fitness as stated by the 3rd respondent himself.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.R.Vijayakumar

Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to quash the order of rejection in respect of the selection of the petitioner for appointment to the post of Second Grade Police Constable in the Tamil Nadu Police Service.

2. The learned counsel appearing on behalf of the writ petition made a submission that pursuant to the Notification, the petitioner applied for recruitment to the post of Grade II Police Constable in the Tamil Nadu Police Services. He got selected in the written examination as well as physical, oral and other tests. Though the petitioner was selected for

appointment to the post of Grade-II Police Constable, no appointment order was issued in this regard. The petitioner made a representation and an order of rejection was passed by the third respondent in proceedings dated 21.22.2012, stating that the petitioner has suppressed the fact in the application in respect of the pendency of a criminal case against him in Crime No. 406 of 2009 for the offences alleged under Sections 294(b) & 324 of IPC. The third respondent rejected the claim of the petitioner for appointment on the ground that the suppression of fact in the application was willingly made by the petitioner and therefore, he cannot be appointed.

3. The learned counsel for the petitioner made a submission that the allegations in the criminal case are not so serious and that apart, the petitioner was acquitted from the said criminal charges. This Court is of the view that mere acquittal in the criminal case cannot be a ground to consider the case of the petitioner for appointing him to the post of Grade II Police Constable, in view of the fact that the recruitment is to the post of a police constable, which is an uniformed and disciplined services

4. The learned Additional Advocate General appearing for the respondents made a submission that the petitioner has made an endorsement by way of a declaration form dated 31.10.2012 in Column No.15, 16 and 18, that he had not involved in any criminal case pending against him, in spite of the fact that he had involved in a criminal case and acquitted of the same on 11.05.2012. Thus the petitioner has suppressed the material fact in respect of the criminal case and therefore, the petitioner cannot be considered for appointment to the post of Grade II Police Constable. The fact regarding the suppression of fact is not disputed by the petitioner. Even Para 8 of the Counter Affidavit filed by the respondents 1 & 2 states that the petitioner had failed to declare about his involvement in criminal case in Lalgudi Police Station in Crime No.406 of 2009 U/S 294(b), 324 IPC in Column No.15, 16 & 18 of the verification roll and thereby suppressed the material fact and violated Rule 2 Rule 14(b) of Tamil Nadu Special Police Subordinates Service Rules and G.O.Ms.No.101 Home (Pol.9) Dept. Dated 30.01.2003. As the character and antecedents of the petitioner is not satisfactory, he is not appointed as Gr.II PC and the fact was already intimated to the petitioner by the third respondent.

5. A similar 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."

6. This Court has to consider the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21, which 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 disentitle 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. 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 Grade-II Police Constable.

8. In view of the emphatic pronouncement spelled out by the Hon'ble Apex Court of India, again and again re-iterating that a candidate having a Criminal case history, though acquitted, has to be screened carefully in respect of the antecedents and involvement in the criminal case. Further, the mind set and intention of a person is also to be looked into through the manner in which he has stated the facts in various formats. Accordingly, no further consideration in respect of the grounds raised in this writ petition deserves to be considered. Even in the case of the acquittal, the Selecting Authority has got every right to reject the candidature on ascertaining over all facts and the circumstances in each case. Hence, the argument advanced by the learned counsel for the petitioner deserves to be rejected. Thus, this Court, is not inclined to consider the case of the petitioner for the post of Grade-II Police constable, in view of the fact, that he has suppressed the material facts in his original application and the post of Grade-II police constable is an uniformed service and a person of such character cannot be appointed. In this regard, the proceedings made by the third respondent is justified and there is no infirmity in the order impugned in this writ petition.

9. Accordingly, this writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
Department of Home
Government of Tamil Nadu
Fort St.George, Madras-600 009.

2. The Director General of Police
Government of Tamil Nadu
Mylapore, Madras - 600 004.

3. The Superintendent of Police
Tiruchirappalli.

+1cc to Mr.S.Kasirajan, Advocate SR.No.81008

+3cc to Government Pleader SR.No.81446,81706,82003

sm:29.11.2017

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