

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2017

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

W.P. No.26992 of 2013

and

M.P.No.1 of 2013

V.Ponmanaselvan

...Petitioner

Vs

1. The Director General of Police
Chennai-4.

2. The Superintendent of Police
Villupuram District.

...Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records relating to the impugned communication in Na.Ka.No.A2/13000/2012 dated 22.12.2012 of the second respondent and quash the order passed therein and consequently direct the respondents to appoint the applicant as Gr.II Police Constable / Gr.II Jail Warder/Firemen - 2012 by placing the petitioner in the appropriate place of seniority by the issue of a writ of Certiorarified Mandamus or any other appropriate writ, order or Direction directing the respondents to propose the petitioner name for appointment.

For Petitioner : Mr. Yogesh Kanna Dasan

For Respondents: Mr.M.Perumal
Government Advocate

O R D E R

The order of rejection dated 22.12.2012, in respect of the recruitment to the post of Grade-II Police Constable for the writ petitioner is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the order of rejection is perverse on the ground that the criminal case against the writ petitioner was not so serious and he was already acquitted from the charges leveled against him and he was discharged from the allegations.

3. The learned counsel states that the entire criminal case was dropped against the petitioner and therefore the same cannot be held against him. At the outset, the learned counsel for the petitioner emphasized that the criminal case registered against the writ petitioner was dropped and therefore his selection to be proceeded with the order of appointment to the post of Grade-II Head Constable.

4. The learned Government Advocate appearing on behalf of the respondents states that it is not only the case where the writ petitioner has suppressed the fact regarding the pendency of the criminal case, but it is a case where he suppressed the said fact in the application filed at the time of participating in the process of selection. In the declaration form Nos.15, 16 and 18, the writ petitioner has mentioned that no criminal case is pending or registered against the writ petitioner. Thus, the respondents have considered these factors and came to the conclusion that the writ petitioner is not a fit person for recruitment to the post of Police Constable Grade-II.

5. In view of the fact that suppressing the fact with regard to the registration / pendency of the criminal case against him, this Court is of the opinion that the Police Service, being an uniformed service, it requires utmost integrity. Suppression of material facts are vital and rejection in this regard cannot be said to be unlawful or illegal.

6. In view of the fact that there is suppression which is not disputed by the writ petitioner, in respect of registration / pendency against the writ petitioner, this Court is not inclined to consider the case of the writ petitioner for appointment to the post of Police Constable Grade-II in Tamil Nadu Police Services.

7. 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."

8. 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.

9. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(co)

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Sub Assistant Registrar

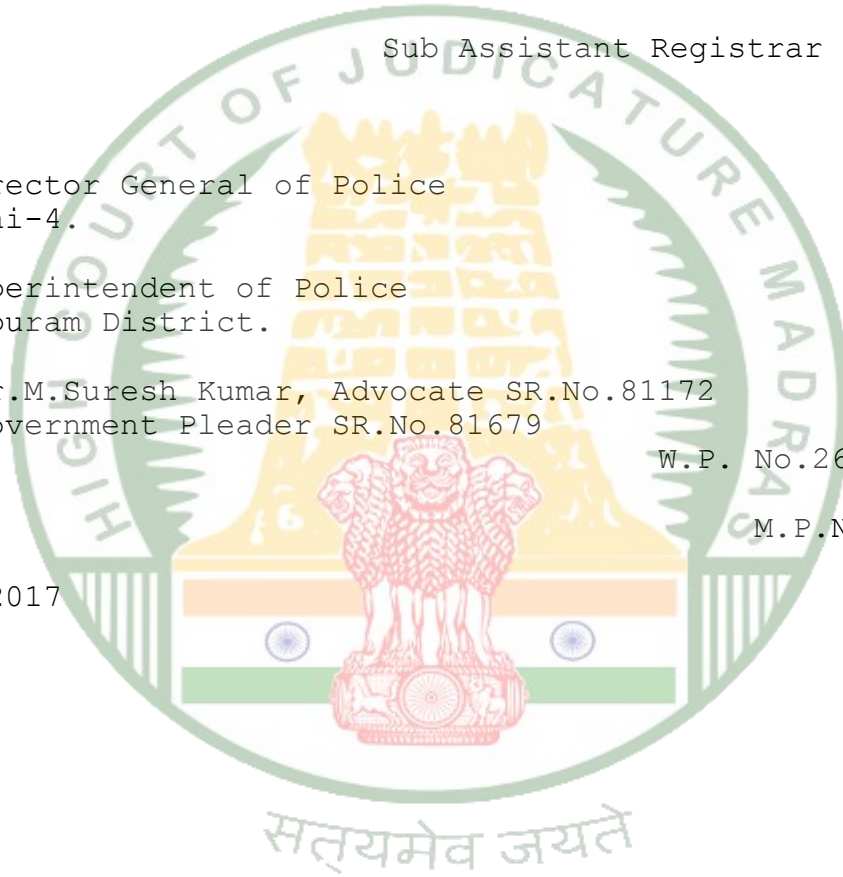
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To

1. The Director General of Police
Chennai-4.
2. The Superintendent of Police
Villupuram District.

+1cc to Mr.M.Suresh Kumar, Advocate SR.No.81172
+1cc to Government Pleader SR.No.81679

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M.P.No.1 of 2013

LRS (CO)
sm:19.12.2017



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