

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.05.2017

C O R A M

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.19141 of 2013

A.Dinesh Kumar

... Petitioner

/vs/

1 . The Director General of Police,
Office of the Director General,
Mylapore,
Chennai 600 004.

2 . The District Superintendent of Police,
Villuppuram,
Villuppuram District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the Na.Ka.No.A2/13000/2012 dated 22.12.2012 passed by the 1st respondent with knowledge of the 2nd respondent herein and to quash the same.

For Petitioner

...

Mr.Dalit Tiger C.Ponnusamy

For Respondents

...

Mr.A.Zakkir Hussain,
Government Advocate

ORDER

The Writ Petitioner had undergone a recruitment process for selection to the post of Constable, Grade II in the Tamil Nadu Police Service. The only point to be considered in this Writ Petition is as to whether the Writ Petitioner has suppressed the fact regarding the registration of a Criminal Case against him. The impugned order passed by the second respondent in proceedings dated 22.12.2012 stipulates that the petitioner had involved in a criminal case registered in Kallakurichi Police Station in Crime No.312 of 2009 under Section 147, 148, 323, 324, 506 (ii) I.P.C. But, the writ petitioner, by inadvertently, has not stated the fact regarding the criminal case in his application submitted for recruitment to the post of constable Grade-II.

2. The learned counsel appearing for the writ petitioner Mr. Dalit Tiger C. Ponnusamy represented that the writ petitioner belongs to a socially weaker community and has no other source of livelihood. Further, he represented that the Writ Petitioner has wrongly omitted the fact regarding the criminal case.

3. This Court is not inclined to consider the intention behind in filling up of the application of the writ petitioner and this Court is more inclined to consider the legal principles laid down by this Court as well as the Hon'ble Supreme Court of India in this regard. Further, this Court would like to quote certain paragraphs of the Judgment of the Supreme Court to re-emphasise the views expressed by this Court in the 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."

4. The Division Bench has 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 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."

5. In paragraph 26 of the Judgment, the Division Bench had 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."

6. In view of the above legal principle, this Court is of the affirm view that the writ petitioner has suppressed the fact regarding the pendency of the criminal case at the time of his selection as Constable Grade II in the Tamil Nadu Police Service. Suppression of fact in the application is vital and the same cannot be condoned or dispensed with by the Courts. The intention behind the candidate need not be looked into. Furthermore, it is a recruitment for the post of Constable-

Grade-II, which requires integrity and uprightness. The police services require dealing of arms and ammunition. Therefore, a person of untruthfulness character cannot be considered for selection. In this view of the matter, this Court is not inclined to consider the case of the writ petitioner. Further, the learned counsel represented that the writ petitioner was acquitted in the criminal case. Mere acquittal in the criminal case is insufficient to consider the case of the writ petitioner, since it is a case of suppression of the said fact in the very application submitted at the time of recruitment. Therefore, this Court is not inclined to consider such a submission made by the learned counsel for the writ petitioner. Hence, the Writ Petition deserves no merit consideration and the same stands dismissed. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srn/mst

To

- 1 . The Director General of Police,
Officer of the Director General,
Mylapore,
Chennai 600 004.
- 2 . The District Superintendent of Police,
Villuppuram,
Villuppuram District.

+1cc to m/s Dalit Tiger C.Ponnusamy Advocate Sr.No.37056
+1cc to Government Pleader sr.no.37020

W.P.No.19141 of 2013

sr(co)
nr(18/05/2017)

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