



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.12.2017

PRONOUNCED ON : 22.12.2017

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.5249 of 2014

and

M.P(MD)No.1 of 2014

M.Jayakumar

... Petitioner

vs.

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

2.The Director,
The Tamil Nadu Uniformed Services
Recruitment Board,
Chennai - 600 002.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.

... Respondents

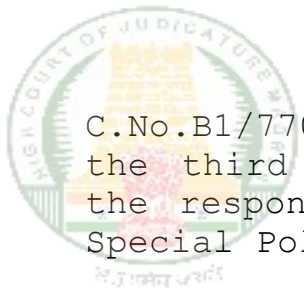
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in C.No.B1/7706/TNSPYB/Police - VR/2014, dated 17.02.2014 passed by the third respondent and for consequential direction, directing the respondents 1 to 3 to appoint the petitioner as Tamil Nadu Special Police Youth Brigade - 2013.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.V.Muruganantham,
Additional Government Pleader.

ORDER

<https://hcservices.courts.gov.in/civildocket> This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in

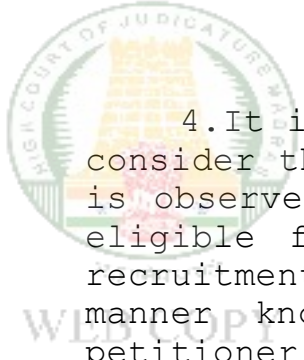


C.No.B1/7706/TNSPYB/Police - VR/2014, dated 17.02.2014 passed by the third respondent and for consequential direction, directing the respondents 1 to 3 to appoint the petitioner as Tamil Nadu Special Police Youth Brigade - 2013.

2.It is stated by the petitioner that the respondents have called for applications for Recruitment to the post of Tamil Nadu Special Police Youth Brigade in the Tamil Nadu Police Department for the year 2013 and the petitioner has submitted an application to the said post. He was successful in the Physical eligibility examination and written examination. Thereafter, the third respondent called for medical examination and he has also qualified in the medical test. However, the third respondent in the impugned order, dated 17.02.2014, had stated that the petitioner was not eligible to be appointed for the said post, since he was involved in the criminal case in Crime No.479 of 2010 under Section 6(b) of the Essential Commodities Act, 1955 on the file of the CSCID, Madurai, and also stated that even though he got discharged in the case by proceeding of the District Revenue Officer through his proceeding, dated 22.06.2011 in No.95983/2010/CSCID/07. Though the petitioner has disclosed the same, his prior antecedent and character is not satisfactory and therefore, the third respondent has stated that the petitioner is not entitled for appointment as per Rule 3(b) of the Tamil Nadu Special Police Youth Brigade Service Rules.

3.It is further submitted that earlier the petitioner had appeared for selection to the post of Grade-II Police Constable for the year 2009-2010 and he was found eligible, but not selected, since he was involved in the criminal case in Crime No.479 of 2010 under Section 6(b) of the Essential Commodities Act, 1955, and thereafter, the second respondent passed the order in Na.Ka.No.484/108266/Niyamanam 1(2) 2011, dated 26.04.2011 and even though, he was discharged by the District Revenue Officer, the same has not been accepted. Hence, the petitioner has filed a Writ Petition in W.P.No.7402 of 2011 before this Court and the same was dismissed on 18.07.2011. Thereafter, the petitioner filed a Writ Appeal in W.A.No.698 of 2011 before this Court and the same was also dismissed by this Court on 29.07.2011 by holding that:-

"5.In the light of the specific finding by the Full Bench in the abovesaid Judgment, we do not find any reason to interfere with the order of the learned Single Judge. Therefore, the order, dated 18.07.2011 made in W.P (MD)No.7402 of 2011 is confirmed and the Writ Appeal stands dismissed. It is needless to say that if the appellant is eligible for making fresh application in the recruitment process, it is for him to work out his remedy in the manner known to law."



4. It is further stated that the third respondent had failed to consider the order of the Division Bench of this Court, wherein it is observed that "it is needless to say that if the appellant is eligible for making fresh application in the event of a fresh recruitment process, it is for him to work out his remedy in the manner known to law." Hence, the learned counsel for the petitioner submitted that the petitioner is eligible for the current selection for appointment to the post of the Tamil Nadu Special Police Youth Brigade, 2013. He has further stated that the petitioner was discharged from the charges and in criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt of the accused. The moment, the Court is not satisfied regarding the guilt of the accused and acquitted, after being given the benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate Honourable acquittal. The only words used in the code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eye of law. Hence, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the Court, the accused is acquitted and pleaded for considering the case of the petitioner.

5. The third respondent has filed the counter-affidavit and it is submitted that earlier selection for Grade-II Police Constable had been denied for the reasons that the petitioner had suppressed the material fact regarding his complicity in the Madurai Civil Supplies C.I.D Police Station in Crime No.479 of 2010 under Section 6 of the Essential Commodities Act, 1955. From the order of the Division Bench of this Court even though it is observed that "it is needless to say that if the appellant is eligible for making fresh application in the event of a fresh recruitment process, it is for him to work out his remedy in the manner known to law" and there was no direction to the effect that he must be selected in the next recruitment. The petitioner had only been discharged by the District Revenue Officer, Madurai and it cannot be construed that he was either honourably acquitted or the case was treated as mistake of fact.

6. It is to be seen that in G.O.Ms.No.432, Home (Pol.XIV) Department, dated 01.07.2013, in exercise of the powers conferred by Section 12 of the Tamil Nadu Special Police Youth Brigade Act, 2013 (Tamil Nadu Act 3 of 2013), the Governor of Tamil Nadu made the Rules, in which, qualification for appointment to the Youth Brigade was elucidated that:-

"No person shall be eligible for appointment as a member of the Youth Brigade, unless he -

<https://hcservices.ecourts.gov.in/hcservices/> passed the 10th standard examination;

(b) is of good character and is physically fit;

(c) is a resident of Tamil Nadu



(d) has completed 18 years of age and has not completed 25 years of age as on 1st January of the year in which the selection for appointment is made.

Provided that for the appointment of a candidate who is a member of a Scheduled Caste/Scheduled Tribe, the upper age limit shall be 30 years:

Provided also that for the appointment of a candidate who is a member of a Backward Class or Most Backward Class or Denotified Communities, the upper age limit shall be 27 years."

7. In the memorandum of the guidelines issued on 05.02.2014 by the Director General of Police, it has been clarified that those having good character can be selected and the same reads as follows:

"In the reference 3rd cited, the Government have prescribed Rules for TNSPYB. As per Rule 3(b) of TNSPYB Rules, the candidates should have Good Character and physically fit.

2) Previously, necessary guidelines were issued in the Chief office memo 4th cited, as mentioned below to consider the following persons for appointment to the post of Grade II PCs.

I. a) Persons acquitted honourably prior to police verification.

b) Persons acquitted under P.O Act.

c) Persons involved in criminal case and name deleted from charge-sheet prior to police verification.

d) Persons involved in criminal case and case treated as M.F prior to police verification.

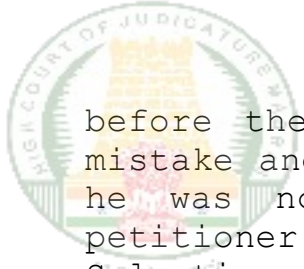
e) Dealt under Juvenile Justice Act (even conviction is not a bar for appointment).

II) The date of police verification is the date on which the Inspector of Police signed in verification roll.

III) Further the above type candidates may also be considered for appointment, if they have not suppressed the fact regarding involvement in criminal case. But, if they have suppressed, they will not be provided with appointment.

3) Now, all the COPs/SPs are instructed to follow the same guidelines for issuing appointment orders to the provisionally selected candidates for TNSPYB."

8. From the materials placed on record, it is seen that the petitioner was involved in a criminal case, in which it is alleged that he and two others travelled in an Auto carrying Indane Gas cylinders and another cylinder from Bharat Gas agency meant for domestic use. The gas cylinders have been supplied to some tea shops and the same was seized by the police. An explanation has been sought for from those persons involved in the crime and the petitioner has pleaded



before the Revenue Divisional Officer that he has not done any mistake and he travelled only as a passenger in the said Auto and he was not aware of the happenings in the said Auto. The petitioner also stated that he has been selected to the post of Selection Grade Police Constable and he wanted to exonerate him from the said crime. The Revenue Divisional Officer has given a finding that since the petitioner has denied the charge and he has been selected to the police force, considering his future prospects, the Revenue Divisional Officer has discharged him from the case.

9. Now, the petitioner has appeared for the post of Youth Brigade and the application was rejected stating that the petitioner has been discharged only by considering his selection to the police force. The Revenue Divisional Officer, considering his future prospects, has allowed him to get discharged and he has not been Honourably acquitted.

10. It is seen from the records that even in the year 2009-2010, the petitioner appeared for selection and appointment to the post of Grade-II Police Constable. However, he was not selected. The petitioner, challenging such non-selection, filed W.P(MD) No.7402 of 2011 before this Court and the same was dismissed on 18.07.2011. Before the Writ Court, it was contended that the petitioner involved himself in a criminal case in Crime No.479 of 2010 under Section 6(b) of the Essential Commodities Act, 1955 and that is the reason for his non-selection.

11. Challenging the order, dated 18.07.2011 passed in W.P(MD) No.7402 of 2011, the petitioner has filed a Writ Appeal in W.A.No.698 of 2011. The Division Bench of this Court while confirming the order passed by the learned Single Judge made an observation that if the appellant is eligible for making fresh application in the event of fresh selection process, it is for him to work out his remedy in the manner known to law.

12. On the strength of the observation made by the Division Bench of this Court, the petitioner participated in the present selection process conducted during the year 2013 for the post of Tamil Nadu Special Police Youth Brigade. This time also the petitioner was not selected by citing the same criminal case in Crime No.479 of 2010. As mentioned above, the Revenue Divisional Officer, exonerated the petitioner from the criminal proceedings only on the ground that he participated for selection and appointment to a post in the Police Department, but also on the ground of sympathy and the pleading that he has not involved in the Act and of violation of the provisions contemplated under Section 6(b) of the Essential Commodities Act. An order was passed by the Revenue Divisional Officer on 26.04.2011 and the present selection relates to the year 2013.



13. Whether the Revenue Divisional officer has exonerated the petitioner Honourably or not cannot be gone into by this Court and it is for the respondents to consider the effect of such order. This is more so, the petitioner is sought to be appointed in a disciplinary force wherein a person who joins the disciplinary force is required to truly and correctly disclose his antecedents without any suppression. If there is any past criminal proceedings pending or initiated or acquitted against such person, the effect of which can be gone into only by the respondents, who are the concerned authorities. Hence the authorities have correctly rejected the petitioner's plea.

14. In G.O.Ms.No.432, Home (Pol.XIV) Department it was stated that "the person has completed 18 years of age and has not completed 25 years of age as on 1st January of the year in which the selection for appointment is made:

Provided that for the appointment of a candidate who is a member of a Scheduled Caste/Scheduled Tribe, the upper age limit shall be 30 years:

Provided also that for the appointment of a candidate who is a member of a Backward Class or Most Backward Class or Denotified Communities, the upper age limit shall be 27 years."

15. At the time of filing of the Writ Petition in the year 2014, the petitioner was aged 26 years and we are in the year 2017, now the petitioner would have crossed the upper age limit and on this ground also, the Writ Petition cannot be entertained.

16. In the above stated facts and reasons, this Court is not inclined to interfere with the order passed by the third respondent. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

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

2. The Director, The Tamil Nadu Uniformed Services

Recruitment Board, Chennai - 600 002.

3. The Commissioner of Police, Madurai City, Madurai.

4. The Inspector of Police, Jaihindpuram Police Station,

Madurai City.

+1CC to Mr.R.V.Venkatesan, Advocate, SR.No. 94519

+1CC to the Special Government Pleader SR.No.94749

Order made in

W.P(MD)No.5249 of 2014

22.12.2017