

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1168 of 2017

T.Rajeshkanna ... Appellant/Petitioner

-vs-

1.Union of India
rep.by its Secretary to Government,
Ministry of Home Affairs,
New Delhi-110 001.

2.The Director General of Police,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi.

3.The Deputy Inspector General,
Group Centre, CRPF,
Avadi, Chennai-65.

4.The Commandant,
49th Battalion, CRPF,
Karan Nagar, Sri Nagar,
Jammu & Kashmir.

5.The Deputy Inspector of Police,
Range II, FOY Sagar Road, Ajmer,
Rajasthan-305 005.

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.26305 of 2012 dated 28.04.2017.

PRAYER IN WP.26305 OF 2012:

Writ Petition filed Under article 226 of the constitution of India seeking Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned orders passed by the 4th and 5th respondents in their proceedings No.P-VIII-3/2011-49-EC-II dated 05.09.2012 and No.R-

13-19/2012-Est.3 dated 27.11.2012 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential and monetary benefits.

For Appellant :: Mr.S.Ayyadurai for
Mr.R.Dhinesh Kumar

For Respondents:: Mr.C.G.Kumar

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant herein joined the services of the Central Reserve Police Force as Constable on 21.11.2005 and on completion of the training for about 11 months, he was posted in Assam State in 49th Battalion and thereafter shifted to Sri Nagar.

2.The respondents came to know about the involvement of the appellant in a criminal case filed under Sections 147, 323, 325 read with 149, 294(b) and 506(ii) of I.P.C in C.C.No.119 of 2005 on the file of the Judicial Magistrate Court No.II, Dharmapuri. At the time of appointment of the appellant in the respondent-Department, the said criminal case was pending and subsequently, after his joining in the Central Reserve Police Force, the case ended in acquittal on 20.10.2010. Since the appellant suppressed the pendency of the criminal case at the time of recruitment, the fourth respondent issued a charge memo under Section 11(1) of the Central Reserve Police Force Act and thereafter, enquiry was conducted and the charges have been proved, pursuant to which the appellant was removed from service by order dated 05.09.2012 and the same was confirmed in appeal by proceedings dated 27.11.2012. Challenging the said proceedings, the appellant filed a writ petition in W.P.No.26305 of 2012 and this Court, by order dated 28.04.2017, dismissed the writ petition. Challenging the order passed in the writ petition, the appellant has come up with this appeal.

3.The learned counsel for the appellant has submitted that the charges framed against the appellant are minor in nature and moreover the case was filed only based on assumptions and presumptions against a group of persons including the appellant; the case filed against the appellant ended in acquittal as the appellant is in no way connected with the said offences. He further submitted that it is a case of family rivalry. The learned counsel also submitted that the appellant herein was 24 years at the time of filing of the criminal case and at that age, young people often commit indiscretions and such indiscretions can often be condoned. It is his further

submission that the approach of the Court should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. To fortify his contentions, he relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Police and others v. Sandeepkumar, reported in (2011) 4 SCC 644. Stating so, he prayed for quashing the impugned order passed by the learned single Judge and to reinstate the appellant in service.

4.The learned counsel for the respondent-Department has submitted that at the time of making application for the post of Constable in the Central Reserve Police Force, the appellant was required to furnish correct particulars as to whether any criminal case is pending against the appellant or not, but he has not made any mention of the pending of the criminal case in his Verification Roll (CRPF-25). Failure of the appellant to furnish the same, amounted to suppression of facts and hence, in exercise of powers vested under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955, the appellant was correctly removed from service by the Department, and hence the same does not require any interference. He relied upon the decision of the Hon'ble Supreme Court in the case of Avtar Singh v. Union of India and others, reported in (2016) 8 SCC 471, and submitted that employees are required to furnish correct information relating to their character and antecedents in the verification form, before or after their induction in the service; the whole idea of verification of character and antecedents is that the person appointed should be suitable to the post and not otherwise. It is also his submission that the appellant was also charged with offence under Section 506(ii) of IPC and hence it cannot be said that the appellant was not involved in a major offence. Stating so, he prayed for dismissal of the writ appeal.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It appears that while making application to the post of constable, the appellant had failed to state in the column provided for that purpose, about his involvement in the criminal case. It is the contention of the learned counsel for the appellant that subsequently the appellant was acquitted. We are of the view that even though the appellant was acquitted subsequently, non-furnishing of the details regarding pending criminal case against him, amounts to suppression of material facts. It appears that he was charge-sheeted for criminal offence. Whether he has been acquitted or not in the criminal case is immaterial. When it has been asked to furnish the particulars, it has to be furnished. It is also seen that apart from other sections, the appellant was charged with offence

under Section 506(ii) of IPC and he was acquitted only on the ground of benefit of doubt.

7. In the case of Avtar Singh v. Union of India, reported in (2016) 8 SCC 471, the Hon'ble Supreme Court has held as follows:

"38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:-

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee."

सत्यमेव जयते

From a reading of the above, it is clear that in case there is suppression or false information of involvement in a criminal case, before filling of the application, and such fact later comes to the knowledge of the employer, the employer may, considering the nature of the offence, take an appropriate decision, either to terminate the services of the employee or ignore such suppression, and it has been left to the discretion of the employer. Further, it is also clear that if the acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts

available as to the antecedents, and may take appropriate decision as to the continuance of the employee. In the case on hand, it is pertinent to note that the appellant was appointed on 21.11.2005, but he was acquitted in the criminal case only on 20.10.2010. This shows that at the relevant point of time, ie., while making application, he was not acquitted and his case was pending. Thus, admittedly he has suppressed the material facts as regards the pendency of the criminal case, while making application. Taking note of the said lapse on the part of the appellant, the authority, after taking into account the facts and circumstances of the case, had taken a decision in accordance with law, not to continue the employment of the appellant any further. In such circumstances, this Court is not inclined to interfere with the impugned order passed by this Court in the writ petition.

8. In view of the reasons stated supra, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of India,
Ministry of Home Affairs,
New Delhi-110 001.
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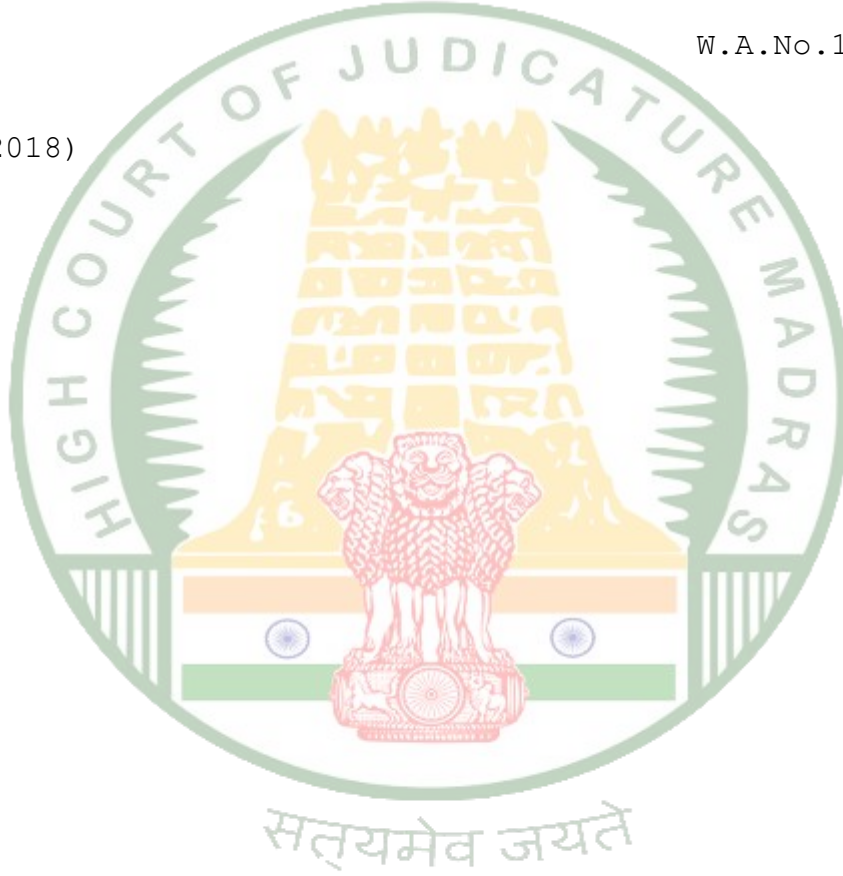
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5.The Deputy Inspector of Police,
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+1cc to Mr.C.G.KUMAR, Advocate, S.R.No. 27632

W.A.No.1168 of 2017

GJ(CO)
TR(04/05/2018)



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