

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.753 of 2018
and
C.M.P.No.7153 of 2018

1.The Director General of Police,
Kamarajar Salai,
Chennai - 600 004.

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

... Appellants

versus

S.Satheesh Kumar

... Respondent

PRAYER: Appeal filed against the order passed by this Court dated 18.07.2017 made in W.P.No.1578 of 2013.

W.P.No. 1578 of 2013: Petition under Article 226 of the constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the concerned records relating to the Na.Ka. No.M1/6241/2012 dated 10.12.2012 passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to issue an order of appointment to the petitioner appointing him as Police Constable Grade II with all consequential monetary benefits.

For Appellants : Mr.V.Anandhamoorthy,
Additional Government Pleader

For Respondent : Mr.M.Gnanasekar

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this appeal is to the order of the learned Single Judge dated 18.07.2017 made in W.P.No.1578 of 2013, in

and by which, the Writ Petition filed by the respondent was allowed directing the appellants to appoint the respondent as Police Constable Grade-II.

2. The respondent approached this Court seeking to quash the proceedings of the 2nd appellant in Na.Ka.No.M1/6241/2012 dated 10.12.2012 rejecting the application of the respondent for appointment as Police Constable Grade - II. The respondent would contend that he had applied for the post of Police Constable Grade - II pursuant to the advertisement issued by the Tamil Nadu Uniformed Services Recruitment Board, Chennai - 2 for being appointed as Police Constable Grade - II. The respondent had cleared the written examination and the selection process also. While he was awaiting an order of appointment, to his surprise, the order impugned in the Writ Petition came to be issued rejecting the application itself on the ground that he had suppressed his involvement in a criminal case viz., STC.No.414 of 2012, wherein, the respondent was charged with offences under Sections 341, 249(b) and 323 of Indian Penal Code. Contending that the said rejection is bad in view of the fact that the respondent was acquitted of the offence by the Judicial Magistrate, Kanchipuram. In view of the said acquittal the respondent would claim that there was no criminal proceeding pending against him and therefore, he should have been benefited with an appointment order.

3. The claim of the respondent was resisted by the appellant contending that during verification roll conducted by the Police Department in the month of November 2012, the appellant had made a declaration to the effect that he has not been concerned in any criminal case at any point of time. Referring to Clause 15 of Annexure-III, the Form meant for verification roll, which reads as follows:

"15. Have you ever been concerned in any criminal case as defendant?

நீர் கிரமினல் வழக்கில் எப்பொழுதாவது
சம்பந்தப்பட்டதுண்டா- "सत्यमेव जयते"

the appellants would contend that the respondent was bound to have made a true and full disclosure of facts while seeking appointment, but he had suppressed the fact that he was an accused in a criminal case. Even though he had been acquitted he should have given those details to enable the Department to verify the proceedings. Therefore, according to the appellants, such non-disclosure amounted to suppression of material facts, the 2nd appellant had issued proceedings dated 10.12.2012 rejecting the application for appointment as grade - II Constable.

4. The learned Single Judge who heard the Writ Petition concluded that in view of the fact that the charges framed against the petitioner/ respondent related to a family quarrel and were not serious charges, denying employment to the respondent on the ground that he was charged for certain offences, which are very minor in nature is not justified. The learned Single Judge also took note of the fact that the respondent has been honourably acquitted by this Court in Crl.R.C.No.1474 of 2013 filed by him challenging the acquittal based on the benefit of doubt made by the trial Court. On the aforesaid conclusion the learned Single Judge quashed the order dated 10.12.2012 and directed the appellants to grant appointment to the petitioner/ respondent to the post of Police Constable Grade - II with all consequential and attendant benefits. Hence this appeal.

5. The sole ground on which the benefit of appointment has been denied to the respondent is that he had not made a true and full disclosure of his involvement in a criminal case. The form prescribed for application for the post of Grade - II Police Constable has one Clause viz., Clause 29 which reads as follows:

"29. Whether any criminal case is pending against you?"

உம் மீது குற்றவழக்கு நிலுவையில் இருக்கிறதா- "

6. This would mean that the applicant is bound to disclose the pendency of any criminal case as against him. However in Annexure-III viz., verification roll, the question is worded differently where the requirement is to disclose involvement in any criminal case as a defendant. Based on the above difference Mr.V.Anandhamoorthy, learned Additional Government Pleader would contend that, though not at the stage of application, at the stage of verification of the rolls the applicant is bound to disclose even his involvement in a criminal case, if it is found that the applicant had suppressed his involvement in any criminal case then the Authorities were justified in rejecting his application for appointment.

7. Mr.M.Gnanasekar, learned counsel appearing for the respondent would submit that the respondent had not given an answer "No" to the question No.15 in the verification role. He has just left it unfilled. Therefore, according to Mr.M.Gnanasekar, a willful suppression cannot be attributed to the respondent. This very question regarding disclosure to be made by the employees and the right of the employer to cancel the selection on the ground of suppression of information was considered by the Division Bench of this Court in W.P.Nos.1241, 9338, 9339 of 2015 etc., batch to which one of us [Hon'ble Mr.Justice K.K.Sasidharan] was a party. The Division Bench has

reproduced the legal position as laid down by the Hon'ble Supreme Court in Avtar Singh Vs. Union of India and others reported in (2016) 8 SCC 471 and the same reads as follows:-

"38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 recourses 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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed.

If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits. "

8. The Hon'ble Supreme Court after setting out the wide parameters had conferred the discretion on the employer to cancel the appointment or otherwise condone the omission or the false representation. In the case on hand, we find that there is no false representation or suppression, the failure on the part of the respondent to disclose his involvement in the criminal case can at best be termed as omission.

9. We are also of the opinion that the appellants who have the discretion to cancel the appointment should have taken note of the fact that the respondent had been acquitted of the charges on the day when he made the declaration viz., on 27.11.2012 subsequently, in Revision filed by the respondent this Court had converted the acquittal on benefit of doubt as an honourable acquittal. It is also seen from the judgment of the learned Judicial Magistrate, Kanchipuram rendered in STC.No.414 of 2012 the offences attributed to the respondent are not very serious offences and the entire dispute had arisen out of the family quarrel. We are therefore of the considered opinion that, the appellants will do well to reconsider the entire issue in the light of the honourable acquittal granted by this Court in CrI.R.C.No.1474 of 2013 on 28.11.2013.

10. In view of the foregoing reasons, the Writ Appeal is partly allowed and the order of the learned Single Judge is set aside only in respect of the positive direction given by the learned Single Judge to appoint the respondent as Grade - II Police Constable with all attendant benefits. The portion of the order of the learned Single Judge quashing the impugned proceedings dated 10.12.2012 is confirmed. The appellants are directed to reconsider the matter afresh in the light of the judgment of the honourable acquittal passed by this Court in CrI.R.C.No.1474 of 2013 dated 28.11.2013 and take a decision as

to whether the selection of the respondent should be rejected or the failure on the part of the respondent to disclose his involvement in a criminal case could be condoned. The said exercise shall be completed within four weeks from the date of receipt of a copy of the order. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

dsa

To

1.The Director General of Police,
Kamarajar Salai,
Chennai - 600 004.

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

+1cc to Government Pleader SR.No.50854

W.A.No.753 of 2018

GP (CO)
GN (23/08/2018)



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