

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 15.12.2017

Order Delivered : on 06.06.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.27190 and 27530 of 2017

S.Namachivayam ... Petitioner in W.P.No.27190/17
Viswanathan Petitioner in W.P.No.27530/17

vs.

1.The Director General of Police,
Tamil Nadu Uniformed Services
Recruitment Board (TNSURB),
Pantheon Road, Chennai - 8.

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

... Respondents in W.P.No.27190/17

1. The State of Tamil Nadu,
Rep. By its Secretary,
Home (Police) Department,
Fort St. George Fort,
Chennai.

2. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board (TNSURB),
Old Commissioner of Police office campus,
Pantheon Road,
Egmore, Chennai - 8.

3. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

4. The Superintendent of Police,
Cuddalore District,
Cuddalore.

.. Respondents in W.P.No.27530/17

Prayer in W.P.No.27190/17:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the second respondent and quash the impugned order dated 09.10.2017 of the

second respondent vide Na.Ka.No.A4/333/TSP/2-17-4 cancelling the appointment made to the petitioner by the first respondent TNUSRB in the post of Grade-II Constable, TSP for the year 2017 and consequently direct the respondents to appoint the petitioner in the above post with all attendant benefits.

Prayer in W.P.No.27530/17:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records sequel to the order issued by the fourth respondent pertaining to the proceedings No.Na.Ka.EN;A4/333/AR/2017-4, dated 09.10.2017 and to quash the same and consequently direct the respondents to issue appointment order to the petitioner for the Grade-II Police Constable.

For Petitioner in
WP No.27190/17 : Mr.K.Ravi Anantha Pandmanaban

For Petitioner in
W.P.No.27530/17 : Mr.R.Thirumurthy

For Respondents
in both Wps. : Mr.K.Venkataramani, AAG
Assist. By
Mr.V.Jayaprakash Narayanan,
Spl.GP

COMMON ORDER

The petitioners have filed these writ petitions challenging the impugned proceedings dated 09.10.2017 of the Superintendent of Police, Cuddalore, in and by which, the respondent police department has rejected the appointment of the petitioners on the ground that they have failed to disclose the criminal case initiated against them during the year 2012 and 2011 respectively.

2. Since the facts involved in both the writ petitions are one and the same, they are disposed of by this common order.

3. Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner in W.P.No.27190 of 2017 submitted that the Tamil Nadu Uniformed Services Recruitment Board (TNSURB) has issued a Notification in January, 2017, calling for applications from the eligible candidates for the posts of Gr.II Constables, Jail Warders and Firemen for the year 2017. On seeing this notification, the petitioner has also applied for the same and thereafter, he has also appeared in the written examination and thereby he secured 70 marks as against the cut-off marks of 69 fixed for the SC candidates. Subsequently, since he came out

successful both in the physical test and medical examination test, he was provisionally selected by the TNUSRB and thus, it is pleaded that the petitioner has become fully eligible for such appointment.

4. Continuing his arguments, it is further submitted that while uploading his application in the online, in column No.26 of the application during January, 2017, he was directed to mention about the pendency of a criminal case against him, if any, but, unfortunately, since the FIR pending against him was closed on 06.06.2016 by the learned Magistrate No.II, Cuddalore, he neither wrote 'yes' nor 'no' in the said column No.26 of the application, hence, the impugned proceedings of the respondent department rejecting his candidature on the ground that he has failed to disclose the initiation of criminal case against him is highly excessive, for, non-disclosure cannot mean suppression of facts, he pleaded.

5. It is further submitted that if the petitioner has not mentioned about his conviction by a criminal court or failed to disclose the pending adjudication of a criminal case, then no doubt it would amount to suppression of facts, but, in the present case, no such situation has arisen, as the criminal case initiated against him was closed by the criminal court at the FIR stage itself, that too even before six months prior to the Notification published by the TNUSRB for recruitment to the post of Gr.II Constables in January, 2017, therefore, such a non-disclosure cannot take away his eligibility as he has admittedly come out successful in written test as well as medical fitness test.

6. Referring to Rule 14(b) (ii) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, learned counsel for the petitioner contended that even if a person is involved in a criminal case at the time of police verification and if it is subsequently ended in honourable acquittal or treated as a mistake of fact, then it means that the petitioner cannot be said to have involved in a criminal case and therefore, he can claim appointment by participating in the next recruitment. Therefore, in view of such provision, the petitioner is eligible to be appointed as the very FIR itself was closed by the Criminal Court six months before date of Notification.

7. Taking support of a judgment of the Hon'ble Division Bench of this Court passed in W.A.No.1231 of 2009, dated 17.09.2009, learned counsel submitted that in a similar circumstances, it was held by the Division Bench that if vacancy is there in that particular year, the appointment can be made in the same year itself. In the above said judgment, criminal case was pending as on the date of verification and subsequently, it was closed. However, in the present case, criminal case

initiated against the petitioner was closed six months before the date of Notification and thereafter, he was selected and that there was a vacancy in present case. Hence, by applying the above said judgment, a direction may be given to the respondents to appoint the petitioner forthwith.

8. Concluding his arguments, Mr.K.Ravi Anantha Padmanaban, learned counsel, in support of his submissions, has relied on a judgment of the Hon'ble Apex Court in Commissioner of Police and others Vs. Sandeep Kumar, reported in (2011) 4 MLJ 1006 (SC), wherein it is held that Youth is youth. Modern approach should be to reform a person instead of branding him as a criminal in all his life. Therefore, on this basis, it is pleaded, by condoning such mistake committed by the petitioner who is aged 27 years, a direction may be given to the respondents to appoint him forthwith.

9. Again, referring to a judgment of the Hon'ble Apex Court in The Secretary, Vallalar Gurukulam Higher Secondary School, Vadalur, Cuddalore District Vs. District Educational Officer, Cuddalore and other, reported in 2005 (4) CTC 7, learned counsel for the petitioner submitted that once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unless expressly made retrospectively. Thus, it is contended that in the light of the aforesaid judgments, even six months prior to the filling up of an application, the case of the petitioner was closed, therefore, non-mentioning of the said case in the application form can be condoned by giving a life to him on a sympathetic ground.

10. Mr.R.Thirumurthy, learned counsel appearing for the petitioner in W.P.No.27530 of 2017, submitted that the petitioner has secured 54 marks out of 100 marks in the written examination conducted by the TNUSRB and thereafter, he was also selected in the medical test. As he has come out successful in both the written test as well as medical test, he was provisionally selected for the post of Grade-II Police Constable/Gr.II Jail Warder/Fireman. While so, the fourth respondent has passed the impugned proceedings dated 09.10.2017 rejecting his candidature on the ground that he has failed to disclose the criminal case initiated against him during the year 2011 in Crime No.859/2011 under Sections 294(b), 323 and 324 of IPC. It is further stated that since the said criminal case initiated against him ended in acquittal on 26.05.2014 by the learned Judicial Magistrate No.III, Cuddalore, he was under the fond hope that he need not mention the criminal case ended in acquittal, that too in the year 2014. Therefore, he pleaded, such a mistake committed by him cannot be construed as a

deliberate one and intentionally suppressed the material facts.

11. Mr.K.Venkataramani, learned Additional Advocate General, assisted by Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, appearing for the respondents submitted that both the writ petitioners have come out successfully in the written examination, Physical Measurement Test and Physical Efficiency Test. After their selection, during the police verification, they were given Verification Roll Form. In column 15, they were asked to write whether they were concerned with any criminal case as dependent. In Column No.16, they were asked to state whether they were arrested or convicted and sentenced to undergo imprisonment or paid a fine in any criminal case. Column No.18 relates to pendency of a Civil or Criminal case against them. In all these three Columns, the petitioners have written as "NIL". However, a criminal case initiated against the petitioner in W.P.No.27190 of 2017 in Crime No.311/2012 under Sections 147, 341, 294(b) and 324 IPC on the file of the Cuddalore Old Tow Police Station, was closed on 06.06.2016 by the learned Judicial Magistrate, Cuddalore, on 06.06.2016. Therefore, it is clear that he suppressed this fact, while filling the Verification Roll Form during the police verification.

12. Likewise, the petitioner in W.P.No.27530 of 2017 also involved in a criminal case initiated against him in Cr.No.859/2011 under Sections 294(b), 323, 324, 326 IPC r/w 34 IPC on the file of the Thirupapuliur Police Station and that the said criminal case was also ended in acquittal by the learned trial Court on 26.05.2014. Therefore, it is clear that he has also failed to disclose this material fact, while filling the Verification Roll Form during the police verification. Hence, as per the Government Order in G.O.Ms.No.101, Home (Police IX) Department, dated 30.01.2003 and Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, no person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service and that he has not involved in any criminal case before the Police Verification. Further, Explanation (1) under Rule 14(b)(iv) states that a person, who is acquitted or discharged on the ground of benefit of doubt or due to the fact that the complainant turned hostile, should be treated as a person involved in a criminal case. When a case was filed challenging this provision by one Manikandan and others in W.P.Nos.38289 of 2005 etc. (batch case), the Hon'ble Full Bench of this Court, vide its order dated 28.02.2008, upheld the said provision by specifically holding that failure of a person to disclose in the application form, either his involvement in a criminal case or pendency of a criminal case against him on the ground of concealment of a material fact irrespective of the

ultimate outcome of the criminal case, would entitle the appointing authority to reject his application on the ground of concealment of a material fact irrespective of the ultimate outcome of the case. This judgment was also reported in 2008 (2) CTC 97 (Manikandan and others v. the Chairman, TNUSRB, Chennai and others). When this judgment was challenged before Hon'ble Apex Court, the Hon'ble Apex Court also in SLP (Civil) No.4679 to 4681 of 2009, dismissed the said appeal on 23.03.2012.

13. Therefore, it is contended, since the petitioners had failed to give correct answer in Roll Verification Form in contravention to the Explanation (1) of Rule 14(b)(iv) as stated above, they were rightly not considered for appointment as Grade-II Police Constable on the ground of suppression of material facts. Hence, on this score, learned Additional Advocate General sought for dismissal of the writ petitions.

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

15. The sole reason for rejecting the candidatures of the petitioners is that they have failed to disclose the criminal case initiated against them while filling the Verification Roll Form during the Police Verification. It is no doubt true that the criminal case initiated against the petitioner in Crime No.311/2012 under Sections rime No.311/2012 under Sections 147, 341, 294(b) and 324 IPC on the file of the Cuddalore Old Tow Police Station, was closed on 06.06.2016 by the learned Judicial Magistrate, Cuddalore. Likewise, the petitioner in W.P.No.27530 of 2017 was involved in a criminal case in Cr.No.859/2011 under Sections 294(b), 323, 324, 326 IPC r/w 34 IPC on the file of the Thirupapuliur Police Station, which was ended in acquittal by the learned trial Court on 26.05.2014. It is also an admitted fact that the petitioners have failed to disclose the above said criminal cases while filling the Verification Roll Form.

16. At this juncture, the only question that arises for consideration is whether the failure of a person to disclose in the Application Form about the involvement in a criminal case would entitle the concerned authority to reject his candidature on the ground of concealment of material fact. The said issue is no longer res-integra, as the Hon'ble Full Bench of this Court in Manikandan's case (cited supra) has held that failure of a person to disclose his involvement in a criminal case, at the earliest point of time, when the Application Form is filled upon, is fatal, besides holding that his subsequent disclosure, whether before acquittal or after acquittal will not cure the defect. For better appreciation, relevant portions of the said judgment are extracted below:-

"35. The issue is now set at rest by the Apex court in R. Radhakrishnan v. The Director General of Police and Ors. 2007(12) SCALE 539, which is the latest in this series of decisions. The Supreme Court has clarified the law on the point, as follows:

10. Indisputably, the Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who has not made such disclosures and were, thus, similarly situated had not been appointed.

11. The question came up for consideration before this Court in Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar , wherein it was categorically held:

3.The Tribunal in the impugned order allowed the application on the ground that since the respondent and been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC. and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of

the case cannot be said to be unwarranted...."

12. Mr. Prabhakar has relied upon a decision of this Court in T.S. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Ors. 1998 Supp. SCC 795. The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise.

Thus the above latest decision of the Apex Court has cleared the cloud of suspicion on the issue. Therefore we hold that the failure of a person to disclose his involvement in a criminal case, at the earliest point of time, when the application form is filled up, is fatal. His subsequent disclosure, whether before acquittal or after acquittal, will not cure the defect. In any case, the subsequent disclosure may not have any effect upon his selection, since his case will then fall under any one of the 2 Explanations under Clause (iv) of Rule 14(b) and make him ineligible for the current selection or for all future selection depending on whether the acquittal is honorable or otherwise.

36. Coming to the individual cases, it is seen that all these cases fall either under the category covered by Explanation-1 to Rule 14(b) of the aforesaid Rules or under the category of suppression of the factum of involvement in the criminal case. Therefore, none of the writ petitioners are entitled to any relief.

39. In any event, it is well settled that provisional selection does not confer an automatic right to appointment. The petitioners in all these writ petitions, crossed the stages of physical fitness test, written test, interview and medical test in the entire process of selection. In the last lap of selection, police verification of their character and antecedents took place. The petitioners in all these writ petitions had adverse reports in the last lap and hence,

the appointing authority did not issue orders of appointment. The stage at which the petitioners were shown the red card by the referee, is not the stage at which the petitioners had acquired an inviolable right to be appointed. Therefore, the petitioners cannot make out a grievance, especially when their involvement in the criminal cases either prior to the date of commencement of selection or during the course of selection process, is not disputed.

40. Therefore, in conclusion, we hold that the amended Rule 14(b) of the Special Rules for Tamil Nadu Police Subordinate Services is not ultra vires or unconstitutional. We also hold that the non selection of the writ petitioners or the rejection of their candidatures, by the respondents, either on the basis of their involvement in criminal case or on the basis of the suppression of their involvement, is perfectly valid and justified.

In answer to the reference made to the Full Bench, we hold-

(a) that by virtue of Explanation 1 to Clause (iv) of Rule 14 (b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified; and

(b) That the failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case.

In view of the above, all the writ petitions fail and they are dismissed. No costs."

17. Now, turning to Avtar Singh Vs. Union of India and others [(2016) 8 SCC 471], it is to be noted that some of the portions have been repeatedly referred to by the learned counsel appearing on either side, therefore, it is apposite to extract below the relevant portions of the said judgment:-

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

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.

38.10. 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."

Paragraph 38.10 of the above said judgment clearly depicts that for determining suppression or false information, attestation/verification form has to be specific, not vague. However, in the present case, although the petitioners were directed to state whether they were concerned in any criminal case as dependent as could be seen from Column No.15 of the Verification Roll Form, they have failed to state about their acquittal in a criminal cases before the issuance of said Notification. Therefore, the respondent, as an employer, is entitled to prescribe such a restriction at the entry level, especially in a police force. There cannot be a dispute about the proposition that an employer has the right to prescribe any qualification for appointment to a post. If that be so, an employer has a concomitant right even to prescribe

disqualification when it comes to make appointment to a civil post.

18. Thus, in view of the aforesaid well settled legal position and also in view of Explanation (1) of Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, this Court is of the considered view that the respondent department is right in rejecting the candidatures of the petitioners on the ground of concealment of material facts. Accordingly, on the ground of concealment of material facts, the writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Director General of Police,
Tamil Nadu Uniformed Services
Recruitment Board (TNSURB),
Pantheon Road, Chennai - 8.
2. The Superintendent of Police,
Cuddalore District, Cuddalore.
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5. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4.

+1 CC to Mr. K. Ravi Anantha Pandmanaban, Advocate sr 34955.

WP Nos. 27190 & 27530 of 2017

SP(19/06/2018)