

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.472 of 2013
& M.P.Nos.1 & 2 of 2013

V.Jayavarthanam ... Appellant / Petitioner

versus

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807 P.T.Lee Chengaalvaraya Naicker Maaligai,
Anna Salai, Chennai 600 002
2. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore District
3. The Inspector of Police,
Pudupettai Police Station,
Panruti, Cuddalore District ... Respondents.

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order, dated 17.01.2013 passed in Writ Petition
No.1113 of 2013.

Petition Under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus to call for the
records of the proceedings of the 2nd respondent dated
24.12.2012 bearing Na.Ka.No.A4/35540/2012 and to quash the
same and further issue necessary direction to the 1st respondent
to issue appointment order to the petitioner in pursuant to the
selection process being made by the 1st respondents common
recruitment to the post of Grade II Police constables/Grade II
Jail Warders/ Fireman-2012 vide notification No.142.

For Appellant :Mr. A.Prabhakaran

For Respondents :M/s. Thangavadhana Balakrishnan

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

When, right to life - a most cherishable fundamental right, guaranteed under the Constitution of India can be meaningfully enjoyed only by exercising the right to be appointed for a suitable post commensurate with the qualification, but nature of that post expects a person with utmost rectitude, impeccable character and integrity with no criminal antecedent, what should be the nature of interpretation given to the phrase "involvement in a criminal case" is the issue raised in this Writ Appeal.

2. The petitioner who lost the earlier writ petition, viz., W.P.No.3282 of 2011 on the ground that he was guilty of suppression of vital information regarding pendency of the criminal case against him did not get discouraged and again he laid the fight for getting an appointment by filing another Writ Petition in W.P.No.1113 of 2013 and again he lost it. Challenging the dismissal of the later writ petition, the Writ Appeal is filed by the writ petitioner.

3. The whole issue involves interpretation of Rule 14 (b) of the Tamil Nadu Special Police Subordinate Service Rules (in short "the TNPSS Rules").

4. The writ petition in W.P.No.1113 of 2013 challenges the impugned order passed in terms of Explanation (2) to Rule 14 (b) of the TNPSS Rules. By the impugned order, dated 24.12.2012, the Superintendent of Police, Cuddalore, has declined appointment on the ground that the conduct, character and antecedent of the petitioner was not good and therefore, he is not eligible for the selection to the post of Grade - II Police Constable. The impugned order mentions two reasons for the said finding, namely, (a) the dismissal of the criminal case against the petitioner which had been registered under Section 294 (b), 323 and 324 IPC dated 02.11.2009; even though the case ended in acquittal under Section 248 (i) of the Criminal Procedure Code, the authorities concerned have stated that the character and conduct of the petitioner is not satisfactory; (b) under Rule 14 (b) of the TNPSS Rules, only if no criminal case is pending, the candidate shall be eligible for appointment.

5. When the criminal case has ended in acquittal even on 02.11.2009, whether a case can be said to be pending against the petitioner on 24.12.2012 is the issue raised in this Writ Appeal.

6. The learned Single Judge has justified the impugned order, by considering the decision reported in 2011 (6) CTC 440 (Ram Kumar v. State of U.P. and others) and by considering the explanations to Rule 14 (b) of the TNPSS Rules. Challenging the said order of the learned Single Judge, this writ appeal is filed by the petitioner / appellant.

7. The learned standing counsel appearing for the respondents, reiterating the above said facts, submitted that order passed by the learned Single Judge is perfectly valid and does not require any interference by this Court. The learned counsel further submitted that the rejection of the appellant's name for the post of constable, by the respondents was on the basis of his involvement in a criminal case and the suppression of the same and therefore, the rejection of his candidature is justified and do not require any interference by this Court.

8. The contention of the learned counsel appearing for the appellant is that explanation (2) to Rule 14 (b) of the TNPSS Rules is very direct and very clear on the point and the expressions "Honourable acquittal" though not defined therein, is the subject matter of judicial consideration and the decision reported in (2013) 1 Supreme Court Cases 598 : (2013) 1 Supreme Court Cases (Cri) 566 (Deputy Inspector General of Police and another v. S.Samuthiram) clearly defines what is meant by the expression "honourable acquittal" and if the facts of the case on hand are considered in terms of the said decision, the petitioner is entitled to be considered for appointment. The relevant observation, with regard to the "honourable acquittal" is in paragraph 24 of the decision, cited supra, which reads thus:-

"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619. In that case, this Court has considered the impact of Regulation 46 (4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges

levelled against the accused, it can possibly be said that the accused was honourably acquitted."

8.1. In terms of the above judgment, when the accused is acquitted, after full consideration of the prosecution case, then it can possibly be said that the accused was honourably acquitted. One instance quoted by the Hon'ble Supreme Court is that, the prosecution failing to establish the charges against the accused.

9. Now the point for consideration in this appeal is whether it can be construed that the accused has been 'honourably acquitted' in terms of the guidelines given by the Hon'ble Apex Court.

10. The consideration of that issue requires detailed scrutiny of the judgment passed by the criminal court. A perusal of the judgment passed by the criminal court in C.C.No.46 of 2009, more particularly, paragraphs Nos. 6, 7 and 8 (wrongly noted as 9) would go to show that the learned Magistrate has considered appropriate issues and appreciated the evidence in proper perspective. According to the evidence, the allegation itself is that the petitioner / accused caused only simple injuries by beating with hands and legs. This is the only allegation against the petitioner. While considering the veracity of the evidence, the trial court has considered the fact that P.Ws.1 and 3 are closely related witnesses and that the independent witnesses examined did not support the prosecution case. It is a different matter if there are no independent witnesses to speak about the occurrence and the available evidence was only the evidence of the closely related persons. It is a case where there had been independent witnesses who did not support the prosecution case. Therefore, the court has given a finding that it is difficult to believe the prosecution version. Thus, there is a clear finding that the available evidence is not sufficient to find the accused guilty. This discussion will go to show that the merits of the matter has been considered and there is a clear finding that the prosecution has failed to establish the charges levelled against the accused person. If this judgment is considered in the light of the decision of the Hon'ble Supreme in (2013) 1 Supreme Court Cases (Cri) 566 (referred to supra), one can easily come to the conclusion that the case of the petitioner / appellant has ended in Honourable Acquittal.

11. Then the next issue is, whether the case of the appellant is covered under explanation (1) or explanation (2) to Rule 14 (b) of the TNPSS Rules?

11.1. It is appropriate to refer Rule 14 (b) of the TNPSS Rules, along with explanations, in order to interpret / appreciate the issues raised, which reads as under:-

"14 (b). No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

(i) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and

(ii) that his character and antecedents are such as to qualify him for such service; and

(iii) that such a person does not have more than one wife living.

(iv) That he has not involved in any criminal case before police verification.

Explanation (1): A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant "turned hostile" shall be treated as person involved in a criminal case.

Explanation (2): A person involved in a criminal case at the time of Police Verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment."

11.2. These two explanations are with reference to considerations which should be relevant in order to decide the involvement /non-involvement of a candidate in a criminal case. When, a person can be said to have involvement in a criminal case? Just because, a person is acquitted by the court concerned, whether it can be said that the person has no criminal background or whether the acquittal based on reasons should be the criteria to decide the involvement of a particular candidate in a criminal case. Whether the language used in the operative portion of the judgment would be the deciding factor to conclude a person's involvement in a criminal case or whether the totality of the facts and circumstances and the consideration of the case on merits should be the criteria to conclude a person's involvement in a criminal case.

11.3. So far as explanation (1) of the TNPSS Rules is concerned, there are two circumstances under which a person is treated as having involved himself in a criminal case. Those two circumstances are: (i) when the complainant turned hostile and (ii) when the court acquits or discharges the person on the

basis of benefit of doubt. It may not be out of place to mention that the phrase "benefit of doubt" is indiscriminately used covering wide range of circumstances, irrespective of the merits of the case or even with reference to the merits of the case. Even when the complainant turns hostile, cases have been acquitted ultimately using the phrase "benefit of doubt". Therefore, even if the language used is benefit of doubt, still the court has to consider whether the acquittal is based on merits or on technical aspects. Explanation (1) of the TNPSS Rules has been framed perhaps taking into account the possibility of the accused threatening the complainant and thereby making the complainant a hostile witness.

11.4. There may be cases where the complainant may turn hostile not in the strict sense of the term, but the complainant may come forward with a case that: (a) he did not prefer complaint of that nature, which is reflected in the First Information Report; (b) part of the content of the complaint is not that of him; (c) admitting the signature, but disputing the contents of the complaint.

11.5. Since this case does not pertain to case of that nature, we leave it at that.

11.6. The circumstances under which the person is considered as not involved in a criminal case is highlighted in explanation (2) of the TNPSS Rules. The circumstances are: (i) a case treated as mistake of fact; and (ii) a person involved in a criminal case at the time of police verification and the case is yet to be disposed of and subsequently ended in honourable acquittal.

11.7. From these two explanations, the scope and object of a person's involvement in a criminal case is sought to be tested on the basis of involvement on account of his own conduct or involvement on account of others conduct. There may be cases where there would be a deliberate attempt on the part of third parties to get a person involved in a criminal case. There may be cases where unfortunately a person may have an uncultured neighbour / life partner / surrounding society, who may pull the person to a criminal justice system. Keeping into account all these factors, the law itself provides for exoneration from criminal liability under certain circumstances (for example private defence), lesser punishment considering the part played by the complainant, (for example, sudden and grave provocation) and considering the mitigating circumstances (for example, first offender being considered for probation).

11.8. Considering large majority of cases being ended in acquittal and considering large number of unreported cases /

under reported cases, one cannot say that persons who are in incarceration alone are criminals and those who are outside are all innocents.

11.9. It is also relevant to point out that the law in all precautions provides for probation period to prove one's ability, capacity and quality to prove that he is fit for discharging the responsibilities of the post. Moreover, any system would provide for checks and balances to ensure that there is good governance and discharge of duties in accordance with law. Therefore, instead of closing the doorsteps at the entry level itself, thereby denying the right to life under Article 21 of the Constitution of India, it is preferable that those doors are shut down or by operating the exit door, if the candidate proves himself unfit, despite opportunity given. Perhaps, in consideration of these possibilities, the rule making authority has provided explanation (2) to Rule 14 (b) of the TNPSS Rules. The case of the petitioner is squarely covered under the explanation (2) to Rule 14 (b) of the TNPSS Rules, though the learned Magistrate has inadvertently used the expression "benefit of doubt". Therefore, it is clear that the petitioner is entitled to be considered for appointment to the post of the Grade - II Police Constable.

12. The learned Standing Counsel appearing for the respondents relied upon the judgment of the Full Bench of this Court rendered in Manikandan and others v. The Chairman, Uniformed Services Recruitment Board, Chennai and others reported in (2008) 2 CTC 97. The necessity or otherwise of overruling Manikandan's case was referred to the decision of the Larger Bench of this Court, in the case of J.Alex Ponselan vs The Director General Of Police, in W.P.(MD)No.8345 of 2011, etc., case where-under the judgment of the Hon'ble Supreme Court is referred to with the following observations:-

"80. At this juncture, it is apposite to look into paragraph-35 of the Judgment rendered in (2013) 7 Supreme Court Cases 685 [Commissioner of Police, New Delhi and another Vs. Mehar Singh], wherein it is stated like thus:

"The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a

possibility of his taking to the life of crimes poses a threat to the discipline of the police force."

12.1. From the complete reading of the judgment of the Supreme Court, nobody can conclude that just because a case happened to be registered against a particular person, he is having a criminal background. The Supreme Court has given a beautiful guideline balancing the interests of both sides, by asking the authorities to look into the circumstances to find out whether the candidate is completely exonerated in the case. If this guideline is adopted, in this case, the only conclusion is that the petitioner has been completely exonerated from the case and therefore, he is entitled to be considered for the post of Grade II Police Constable.

13. Under normal circumstances, this Court would have chosen to direct the respondents to consider the case afresh, in the light of the legal position indicated. However, this is a case where already there is a delay and the petitioner is fighting for his right from the year 2011. Even though the petitioner is held guilty of suppression of material fact of pendency of the criminal case, in the sense of suppressing his involvement in a criminal case, on a perusal of the entire facts, it is evident that the involvement in a criminal case is a matter of interpretation. The petitioner was asked to answer a question "whether the petitioner is involved in a criminal case?" The answer has to be yes or no. The petitioner has answered No. Whether this answer is right or not is the issue raised in the earlier writ petition. The petitioner and in fact, anybody for that matter, would have understood the question in two different ways, viz., whether there was involvement in a criminal case as on date or whether there was involvement in a criminal case earlier to that. It can also mean that the acquittal given by the Court can be interpreted as meaning that the involvement is ruled out and only on account of that, he is acquitted (the acquittal was in the year 2009).

14. Under these circumstances, when the question itself is capable of several answers subject to the context of the case and understanding of a person, the petitioner could not have been blamed for suppression of material facts. Even in the earlier writ petition, the Court did not give any finding regarding the suppression, but has only left it to the satisfaction of the appointing authority to decide whether the petitioner is eligible for appointment or not.

15. Under the circumstances, when the petitioner has suffered already on account of the delay involved and the

petitioner has already proved himself by his performance in the written as well as oral tests and the judgment being the subject matter of interpretation by this Court, we deem it appropriate to direct the respondents to provide the order of appointment to the petitioner.

16. At this juncture, the learned counsel appearing for the appellant submitted that the appellant participated in the examination conducted by the Tamil Nadu Uniformed Service Recruitment Board held during 2012 and got provisionally selected to the post of Grade II Police Constable.

17. In view of the foregoing reasonings, the order dated 17.01.2013 of the learned Single Judge, in W.P.No.1113 of 2013 is set-aside. The first respondent is hereby directed to issue appointment order to the petitioner / appellant, whose name is found in the provisional list as 0505362 (70-TSP) for the post of Grade II Police Constable, within a period of four weeks from the date of receipt of a copy of this order.

18. The writ appeal is allowed. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk
To

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807 P.T.Lee Chengaalvaraya Naicker Maaligai,
Anna Salai, Chennai 600 002
2. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore District.
3. The Inspector of Police, Pudupettai Police Station,
Panruti, Cuddalore District.

+1cc to Mr.A.Prabhakaran, Advocate Sr.30290
+1cc to the Government Pleader Sr.30758

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srg 20/06/2018