

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.16770 of 2004

M.Palani

...Petitioner

..Vs..

1.The Secretary to Government
of Tamil Nadu, Home Department,
Fort St.George,
Chennai.

2.The Tamil Nadu Uniformed Services,
Recruitment Board rep. by its
Chairman and Director General of Police,
No.4, 9th Cross Street, Indira Nagar,
Adyar,
Chennai-20.

3.The Director General of Police,
Office of the Director General of Police,
Chennai-4.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, after calling for concerned records from the 3rd respondent, quash the order of the 3rd respondent bearing Na.Ka.No.080992/Niyamanam.3/2003 dated 21.01.2004, and consequently direct the respondents to consider and select the petitioner to the post of Constable Grade II pursuant to the selection held in the month of May 2003.

For petitioner : Mr.Balan Haridas

For Respondents: Mr.K.Ravikumar

Additional Government Pleader

ORDER

The prayer sought for in the writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for concerned records from the 3rd respondent, quash the order of the 3rd

respondent bearing Na.Ka.No.080992/Niyamanam.3/2003 dated 21.01.2004, and consequently direct the respondents to consider and select the petitioner to the post of Constable Grade II pursuant to the selection held in the month of May 2003.

2.The short facts which are required for disposal of this writ petition are as follows:

3.The petitioner belongs to most suppressed community i.e., Schedule Caste and he is the only member of the family who has completed school education. He passed S.S.L.C during May 1999, and thereafter he joined +2 course. He wrote +2 final examination during March 2001, and he appeared for +2 examination through his school called Government Adi Dravida Welfare Boys Higher Secondary School, Kannigapuram, Chennai-12.

4.While so at the time of writing Zoology examination on 19.02.2001, Flying Squad found that a bit paper was lying on the floor next to the petitioner and accordingly, flying squad found the petitioner guilty and recorded a statement from him.

5.Thereafter, a show cause notice was issued to the petitioner on 09.08.2001 for which the petitioner had given explanation on 27.08.2001. However, not accepting the said explanation given by the petitioner, the concerned authority i.e., the Director of Government Examination, has cancelled the Government Examination (Zoology) written by the petitioner and he has issued the +2 mark statement of the petitioner as regards the other subjects excepting Zoology.

6.Subsequently, the second respondent invited application from eligible candidates for the recruitment to the post of Grade II Constable in the year 2004 and pursuant to the said notification, the petitioner also had applied for selection to the said post of Grade II Constable.

7.The petitioner in fact, appeared for the written examination which was conducted in June 2003 and he passed out. Pursuant to which, the petitioner received a memo/call letter on 19.08.2003 from the 2nd respondent that he has successfully completed the examination so far conducted, therefore, he was directed to appear on 1st September 2003, for medical examination. The petitioner also had appeared for medical examination, there also he claimed to have been declared medically fit to hold the post of Grade II Constable.

8.However, subsequently the petitioner received the impugned order dated 21.01.2004, whereby petitioner's candidature was rejected by the respondents especially, by the 3rd respondent by stating the reason that, the petitioner though had completed all examination and fitness test successfully, when police verification had taken place in respect of finding

out the antecedent / character of the petitioner, it was found that the petitioner by involving copying in +2 examination, was punished and taking into account the antecedent which was adverse character on the part of the petitioner, his candidature was rejected. Challenging the said order dated 21.01.2004, the petitioner had filed this writ petition.

9.Mr.Balan Haridas, learned counsel appearing for the petitioner would submit that, first of all the petitioner had not involved in any crime within the meaning of Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978. The learned counsel would submit that, assuming that the petitioner had involved in copying in +2 examination, at that time the petitioner was only 17 years old, therefore, he was not a major, hence, he was a Juvenile. In case of a Juvenile, who had been tried under Section 19 of the Juvenile Justice [Care and Protection of Children] Act, 2000 [in short "the Act"], he would get protection from being disqualified for any future civil rights/employment etc.

10.Because of all these reasons and legal position and by taking into account the factual matrix of the case, the rejection order made by the respondents through the impugned communication, according to the learned counsel for the petitioner, is unsustainable and therefore it is liable to be quashed and a necessary direction may be given to the respondents to give appointment to the petitioner.

11.However, Mr.K.Ravi Kumar, learned Additional Government Pleader appearing for the respondents, by relying upon Rule 14 (b) of the Said Rule, would contend that, even though the Juveniles are protected under Section 19 of the Act, insofar as the antecedent and character are concerned, the petitioner certainly can be fit in under Rule 14(b)(2) which reads that "his character and antecedents are such as to qualify him for such service". By relying upon the said rule, the learned Additional Government Pleader would submit that, merely because he was a Juvenile and because of Section 19 of the said Act, he cannot claim any immunity from the applicability of Rule 14(b) of the said rule, wherein, the character and antecedent of a person to be recruited as a Grade II Constable under any other category are vital and important. The learned Additional Government Pleader would further contend that, since it is a disciplined force where every member of such force must have clean character and antecedents in order to ensure that when they handle crime and criminals in future, they would not in any way deviate discipline which is expected from each member of the disciplined force. Only persons with such clean hands with good character and antecedents without any adverse character and antecedents are accepted for recruitment and that is the

reason why Rule 14(b) envisages that character and antecedents of an individual is a matter to be considered before making recruitment/appointment.

12.I have considered the said submissions made by both sides and also perused the materials placed before this Court.

13.Before proceed to go for the examination of such reasoning let me take the relevant rule viz; Rule 14(b) of Special Rules for Tamil Nadu Special Police Subordinate Services Rules 1978 which reads thus:

b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfied 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 this character and antecedents are such as to qualify him for such service a

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

14.Wherein amendment has been inserted vide Government Order dated 17.10.2008 in G.O.Ms.No.1410 which reads thus:

(f) A person 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 a 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 the 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.

15.On a cursory reading of a said rule including the amendment, it become quite clear that, a person who has involved in any criminal case before Police verification may not be entitled to consider for the recruitment in Police Service under the rule. Likewise, the character and antecedent of the individual who is to be considered for recruitment to the police force also shall be the matter.

16.However, in the case in hand the factual matrix discloses that, there was an allegation against the petitioner that he involved in some misdeed of copying in the +2 examination while he was writing the Zoology examination.

17.Consequently, action was taken against him departmentally by the concerned authority viz., the Director of

Government Examination by cancelling the said examination and it is evident that the said examination that is Zoology subject was cancelled, and the petitioner was given the mark statement only for the other subjects and on perusal of the +2 marks it reveals that in the column Zoology subject no entry has been made and simply it was left as blank.

18.It shows that some action has been taken against that charge of copying in the +2 examination. Since admittedly the petitioner, did not take any steps to challenge the order of cancellation of the examination of the said subject, it is safely to arrive at the conclusion that the petitioner had accepted the said punishment awarded against him.

19.However, the said punishment, whether was to be construed as a crime or a criminal case ended in conviction within the meaning of Section 14(b) of the rule referred to above is yet another issue.

20.Even in cases where persons involved in petty offences punishable under the provisions of Juvenile legislation, those persons are considered for recruitment in disciplined services where a lenient view can be taken by the recruiting agencies/departments and only if a person involved in a crime which is serious in nature or a major crime, definitely a negative view can be taken. This position has been endorsed by the Hon'ble Apex Court in the judgment reported in (2016) 8 SCC 471 in Avtar Singh .Vs. Union of India and Others, wherein it is held as follows:

"36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37.The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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.

38.4. 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.

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.

21. Apart from the aforesaid, the learned counsel appearing for the petitioner has relied upon two decisions of this Court on the principle that, if the person who has been considered for Police recruitment was a Juvenile and even if he was convicted whether that shall be the disqualification for such a candidate to be considered for an appointment, was the issue raised in those cases where it was decided by the learned Judges of this Court in two separate judgments. Of course, the earlier one followed by the later one. The view taken was that, the punishment or involvement of crime as a Juvenile shall not be a disqualification for recruitment.

22. In this regard, the learned counsel would rely upon the following two judgments:

[Unreported W.P(MD).No.3130 of 2009 in M.Senthil Kumar . Vs. The Director General of Police and Another dated 20.09.2010 wherein this Court has held as follows:

"4. Assailing the impugned order, Mr.M.Ajmalkhan, learned counsel for the

petitioner contended that a person, who tried under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, is not a criminal and the Act itself uses the word "juvenile" in conflict with law and as per Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000 [hereinafter referred to as "the Act"], a disqualification attached to the conviction was removed. It is useful to refer to Section 19 of the Act, which reads as follows:-

"19. Removal of disqualification attaching to conviction.- (i) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be."

Therefore, he submitted that when the petitioner answered question Nos.15, 16 and 18 regarding criminal case, he had given a negative answer, which is in consonance with the provisions of the Act and no exception can be taken. Alternatively, it was submitted that the columns in the form were filled up on wrong assumption.

5. The learned counsel for the petitioner also placed reliance upon an unreported decision of this Court dated 28.01.2008, passed in W.P.No.315 of 2008, [G.Pandiarajan v. The State of Tamil Nadu and 3 others]. In that case, this Court went into the identical contention and held that Section 19 of the Act only protects the juvenile and any stigma attached to said conviction is also removed. The learned counsel also submitted that the proceedings of the Juvenile Justice Board are kept confidential as mandated under Section 21 of the Act. It is also submitted that the

purpose of the Act is to reform "a juvenile in conflict with law". Therefore, the respondents ought not to have disqualified the petitioner. He has also submitted that any conflict between the Central law and the State law, the Central Law would prevail. It is unnecessary to deal with the said submission, since there is no conflict between the State Law and the Central Law. In view of the declaration under Section 19 of the Act, even if there is any conviction, the disqualification is removed, since the proceedings under the Juvenile Justice Act is by a special enactment and the person, who is tried under the Act, even has committed a crime, he is described as "juvenile in conflict with law". The purpose of the Act is to reform a juvenile. The stand taken by the respondents cannot be countenanced. The negative answers given by the petitioner as against question Nos.15,16 and 18 cannot be said to be deliberately made by suppressing vital information.

Following the said decision another learned Judge of this Court in W.P.No.6308 of 2013 in S.Sathish Kumar .Vs. Tamil Nadu Uniformed Services Recruitment Board, dated 27.02.2015 has held as follows:

"3. The factual matrix shows that the petitioner was denied appointment only on account of his involvement in a criminal case. The petitioner was a juvenile as on the date on which he committed the criminal act in question. The petitioner was acquitted by the Criminal Court by judgment dated 22 February 2011. Since there was no case pending against the petitioner, in the column earmarked in the application as to whether any criminal case was pending, the petitioner answered "No". The involvement of the petitioner in a criminal case is therefore taken as a ground to deny him appointment.

4. The only question that arises for consideration is whether the respondent was correct in denying appointment to the petitioner, not withstanding the provision contained under Section 19 of the Juvenile Justice (Cate and Protection of Children) Act,

2000 (hereinafter referred to as "the Act").

5. Section 19 reads thus:

"Removal of disqualification attaching to conviction :- (i) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law."

6. The question regarding disqualification of a juvenile on account of his conviction came up for consideration before the Supreme Court in *Kalu v. State of Haryana* (2012) 8 SCC 34. The Supreme Court observed that Juvenile Act is intended to protect the juvenile from the rigours of a trial by a criminal court. It prohibits sentencing of a juvenile and committing him to prison. It seeks to attach a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation.

7. Similar question came up for consideration before the Madurai Bench of this Court in *M.Senthil Kumar v. The Director General of Police* (Order dated 20 September 2010 in W.P.No.3130 of 2009). The learned Judge on a careful consideration of Section 19 of the Act held that Police Department was not justified in its act of disqualifying the petitioner therein on account of his involvement in a criminal case.

8. It is not the case of the respondent that a criminal case was pending against the petitioner as on the date on which he made the application. The column earmarked for "criminal proceedings" only wanted the applicant to state as to whether any case is pending. The petitioner was acquitted well before and as such it was not necessary for him to state the earlier proceedings. Even if he has given the particulars, still he cannot be disqualified on account of Section 19 of

the Act as interpreted by this Court in M.Senthil Kumar. I am therefore of the view that the petitioner must succeed.

9. In the result, a writ in the nature of a writ of Mandamus is issued directing the respondent to consider the case of the petitioner for appointment to the post of Grade II Constable for the year 2012 and pass appropriate orders on merits. In short, the claim of the petitioner should not be rejected on the ground of his involvement in a criminal case. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order".

23. On perusal of these orders passed by this Court has been referred to above, it is seen that, the involvement of a criminal case when a person was a Juvenile / under age 18, cannot be the disqualification for appointment / recruitment.

24. Here in the case in hand, whether the action taken against the petitioner in cancelling the Zoology examination of +2 examination where the petitioner had reportedly copied, is a crime within the meaning of Rule 14(b) of the said Rule itself is a question. Assuming that it is an offence or a crime for the purpose of Rule 14(b) since it was happened admittedly when the petitioner was Juvenile i.e., under age 18, certainly the protection provided under Section 19 of the Act would come to the rescue of the petitioner. Therefore, on the said ground of bad antecedent or character by taking into account, the action taken against the petitioner for copying in +2 public examination whether could be the reason to reject the candidature is to be looked into.

25. On perusal of the impugned order of rejection, it is seen that the petitioner was otherwise qualified both academically as well as by way of physical fitness and he has passed out all the tests conducted by the recruitment board i.e., the 2nd respondent and ultimately, they decided to reject the candidature only on the ground of bad antecedent.

26. If a person is otherwise eligible to be considered for recruitment in disciplined force as an entry level employee/member of the force i.e., Constable Grade II, by merely stating the alleged character or bad antecedent without even involving any crime within the meaning of punitive law that to in the context of Section 19 of the Act, if it is considered,

the answer would be that, such a rejection cannot be made on the candidature of the person like the petitioner in the absence of any involvement in crime nor in the absence of any conviction for the crime committed by him.

27.The mere involvement of copying assuming that he is not disclosed the order of punishment, by cancelling the examination he has written, cannot be construed as a crime/criminal case within the meaning of Section 14(b) of the said rule.

28.Moreover, even if the said involvement of copying which ended in punishment of cancelling the examination, is a crime within the meaning of rule 14(b) or the said rule, certainly he is having the protective cover under Section 19 of the Act, in view of the said judgments referred to above.

29.Since, the said involvement of copying on the part of the petitioner had taken place admittedly when he was a Juvenile, the provisions of the said Act can be made applicable to the petitioner, and therefore, the principle laid down in the said decisions of this Court by the learned Judges, referred to above, can very well be applied in the present case also.

30.In view of the aforesaid discussions, this Court is of the considered view that, the impugned order cannot be sustained, and therefore it is liable to be interfered with by this Court.

31.However, since the recruitment was of the year 2004, and at that time the petitioner was physically fit for consideration of recruitment as Grade II Police Constable and fourteen long years had passed by in between during the pendency of this writ petition and the submission of the learned Additional Government Pleader in this regard that his physical fitness as of now as well as the antecedent and good character of the petitioner subsequent to the rejection order also have to be looked into, is worthy to be considered.

32.In the afore said circumstances to meet the ends of justice this Court is inclined to pass this following order:

- i)The impugned order is quashed.
- ii)The respondents are directed to consider the candidature of the petitioner for recruitment to the post of Grade II Constable.
- iii)While making such exercise of consideration of the candidature of the petitioner, it is open to the respondents to test the physical fitness of the petitioner by way of regular testing methods and also it is open to the respondents to have a thorough verification about the antecedent and character of the petitioner during these 14 years that is from the date of

impugned order till date. In this regard if the respondents ultimately found that there was no subsequent adverse remarks for character against the petitioner and the petitioner also found to be physically fit to be recruited to the post of Grade II Constable, the respondents shall pass necessary orders for such an appointment.

33. Once, such appointment is given, ultimately by the respondents, the same shall take effect only from the date of appointment, and in this regard the petitioner shall not claim any retrospective appointment/service benefits etc.

34. The endeavor as directed above shall be undertaken by the respondents within a period of three months from the date of receipt of copy of this order. With these directions, the writ petition is ordered accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Secretary to Government
of Tamil Nadu, Home Department,
Fort St. George,
Chennai.

2. The Tamil Nadu Uniformed Services,
Recruitment Board rep. by its
Chairman and Director General of Police,
No.4, 9th Cross Street, Indira Nagar,
Adyar, Chennai-20.

3. The Director General of Police,
Office of the Director General of Police,
Chennai-4.

+1cc to Mr. Bala Haridass, Advocate, S.R.No. 56154

+1cc to the Government Pleader, S.R.No. 56443

W.P.No.16770/2004

SSD(CO)
GN(05/03/2019)