

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM:

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

W.P.No.27814 of 2018
and WMP No.32326 of 2018

B.Sathish Kumar

...Petitioner

Vs.

The Principal District Judge,
Principal District and Sessions Court,
Chengelpet.

...Respondent

Writ Petition Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in his Letter No.4898/A/2018 dated 06.09.2018 and quash the same and consequently direct the respondent to appoint the petitioner as Office Assistant in the light of selection made on 18.3.2017, Letter No.1702/A/2017 dated 23.03.2007 and the order of the acquittal passed by the learned Judicial Magistrate, Maduranthagam in C.C.No.248/2017 dated 31.07.2018.

For Petitioner : Mr.Karthik Raja
for M/s.Menon

For Respondents : Mr. Ayyadurai, Senior Counsel
for Mr.A.Durai Eswar

O R D E R

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The prayer in the Writ Petition is as follows:

"Issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his Letter No.4898/A/2018 dated 06.09.2018 and quash the same and consequently direct the respondent to appoint the petitioner as Office Assistant in the light of selection made on

18.3.2017, Letter No.1702/A/2017 dated 23.03.2007 and the order of the acquittal passed by the learned Judicial Magistrate, Maduranthagam in C.C.No.248/2017 dated 31.07.2018."

2. The petitioner who belongs to Scheduled Tribe community, applied for the post of Office Assistant, pursuant to an advertisement issued by the 1st respondent. The petitioner was called for personal interview and Certificate verification by the respondent on 18.03.2017. After the interview, the 1st respondent published a list of 8 successful candidates and the petitioner's name was found at Sl.No.7 in the said list. By communication dated 23.03.2017, the respondent informed the petitioner that he has been provisionally selected for the post of Office Assistant, subject to the outcome of criminal case pending against him in FIR No.156 of 2013. He was asked to appear on 06.04.2017 along with documents disclosing the present status of the criminal proceedings. Since the petitioner was not issued an appointment order, the petitioner came before this Court in Writ Petition No.21403 of 2017, seeking issuance of Writ of Mandamus, directing the respondent to give effect to his order dated 18.03.2017 selecting the petitioner for the post of Office Assistant by issuing a provisional appointment order, subject to the outcome of the Criminal proceedings.

3. A Division Bench of this Court by an order dated 10.08.2017 permitted the petitioner to withdraw the Writ Petition preserving his liberty to take other legal proceedings.

Thereafter, the petitioner filed Crl. OP No.19704 of 2017, before this Court seeking to quash the FIR. This Court by an order dated 19.09.2017 made in Crl.OP No.19704 of 2017, directed the respondent Police to complete the investigation and file a Final Report within a period of four weeks. Thereafter, the Final Report was filed by the Police and the case was taken up as Calendar Case No.248 of 2017, before the learned Judicial Magistrate, Maduranthagam.

4. After trial, the learned Judicial Magistrate, Maduranthagam, honourably acquitted the petitioner by judgment dated 31.07.2018. It is not in dispute that the said judgment of the Judicial Magistrate, Maduranthagam has become final. After the acquittal, the petitioner approached the respondent seeking an appointment order in terms of the selection made on 18.03.2017, however, the respondent rejected the claim of the petitioner stating that since an FIR was pending against the petitioner on the date of provisional selection it gets automatically cancelled. It is this rejection of the request of the petitioner that is challenged in this Writ Petition.

5. We have heard Mr. Karthikraja, learned counsel appearing for M/s.Menon, for the petitioner and Mr.V.Ayyadurai, learned Senior Counsel appearing for Mr.A.Durai Eswar, for the respondent.

6. Mr.V.Karthikraja, learned counsel appearing for the petitioner would contend that having provisionally selected the petitioner and having informed him that the selection would be subject to the outcome of the criminal case, the respondent was not justified in rejecting his claim for appointment, even after the petitioner was honourably acquitted in the Criminal case.

7. Contending contra, Mr.V.Ayyadurai, learned Senior Counsel appearing for the respondent would submit that the selection process was over and the selected candidates were appointed even in the year 2017. Inasmuch as the selection processes itself has been completed, the petitioner cannot claim an appointment pursuant to the selection made in 2017. Unable to accept the contention of the learned Senior Counsel appearing for the respondent, we had by our order dated 23.10.2018 had required the respondent, namely the Principal District Judge, Chengelpet, to file an affidavit indicating the total number of vacancies that were notified and the total number of vacancies that were filled up. We had also directed the Principal District Judge, Chengelpet, to produce the records.

8. Pursuant to our direction, the learned Principal District Judge, Chengelpet, has filed an affidavit, wherein, it is stated that the number of vacancies that were notified for the recruitment were 9 and 7 of them were filled up. And as on date, there are 33 vacancies in the post of Office Assistant. It is also stated that the notification is to be issued for filling up the existing and anticipated vacancies by direct recruitment shortly. Therefore, there are existing vacancies in the post of Office Assistant in the District Unit. The petitioner, when he applied, had fairly disclosed the fact that the FIR was pending against him. The Principal District Judge had issued the proceeding on 18.03.2017 indicating that the petitioner has been selected for appointment and he has been called upon to appear for Certificate verification. After Certificate verification by his proceedings dated 23.03.2017, the learned District Judge has informed the petitioner that he has been selected for appointment as Office Assistant, subject to the final outcome of the Criminal case pending against him. By the same proceeding, the learned Principal District Judge had required the petitioner to appear before him on 06.04.2017. It is stated that the petitioner had appeared before the Principal District Judge, on 06.04.2017 and had undertaken to produce the

details regarding the Criminal case within a period of one month. While so, we are unable to understand, as to how, the learned Principal District Judge can now reject the claim of the petitioner to appointment on the ground that the appointment process is over. Even as per the undertaking dated 06.04.2017, the petitioner has only stated that he would produce the records relating to the criminal case within a period of one month.

9. It is seen from the judgment of the learned Judicial Magistrate, Maduranthagam, dated 31.07.2018 that the petitioner has been honourably acquitted in the Criminal case. Having selected the petitioner subject to the outcome of the criminal case with the knowledge of the fact that the criminal case is pending against him, the respondent was not justified in refusing to issue the appointment order, despite the fact that the petitioner has been honourably acquitted and the availability of the vacancies. It was well open to the respondent to have rejected the candidature of the petitioner on the ground that the Criminal case is pending against him, but the same was not done. The application of the petitioner was accepted, the petitioner was called for an interview, he underwent a selection process and was eventually selected subject to the outcome of the criminal case. The criminal case ended in favour of the petitioner and there are vacancies available hence the respondent was not justified in rejecting the claim of the petitioner for appointment.

10. In view of the above, the Writ Petition was allowed. The impugned order of the respondent in letter No.4898-A-2018 dated 06.09.2018 is quashed. The respondent is directed to appoint the petitioner as an Office Assistant, pursuant to the selection made on 18.03.2017, in view of the fact that the petitioner has been honourably acquitted of the criminal charges that were pending against him at the time of the selection. Such exercise shall be carried out within a period of four weeks from the date of receipt of a copy of the order. There shall be no order as to costs in this Writ Petition.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv

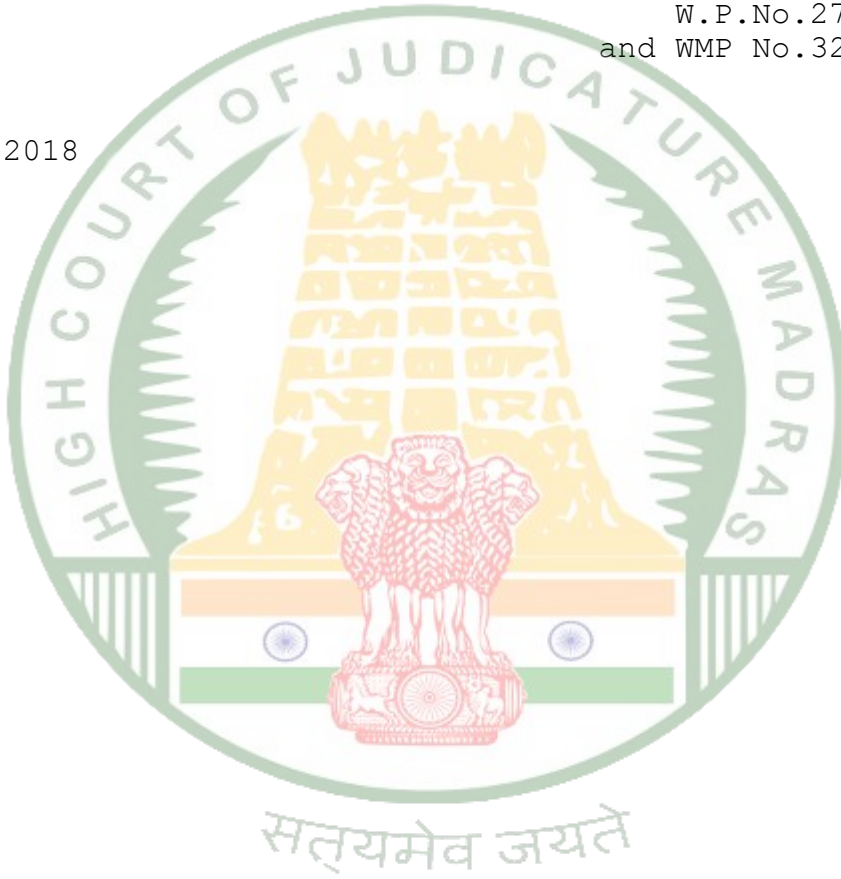
To

The Principal District Judge,
Principal District and Sessions Court,
Chengelpet.

+1 cc to M/s.Menon,Karthik,Mukundan, Advocate Sr.No.72956

W.P.No.27814 of 2018
and WMP No.32326 of 2018

NRJK (CO)
CSL/26.11.2018



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