



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.02.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.2302 of 2018
and
W.M.P. (MD) .No.2507 of 2018

M.Ayyappan

...Petitioner

Vs.

- 1.The Director General of Police,
The Inspector General of Police,
Venals Road, Egmore,
Chennai-600 008.
- 2.The Tamil Nadu Uniformed Services
Recruitment Board,Old Commissioner
of PoliceOffice Campus,Pantheon,
Egmore,Chennai-600 008.
- 3.The Inspector of Police,
kadayam Circle,
Kadayam, Tirunelveli District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the first respondent dated 17.11.2017 under Reference No.3583/ இடபிளிட்யூ.1/2017-15 and quash the same as illegal and devoid of merits and consequently direct the respondents 1 and 2 to provide employment as Grade-II Police Constable in the Department of Prison in pursuance of the selection process as made by them earlier forthwith.

For Petitioner	: Mr.S.Palani Velayutham
For Respondents	: Mr.B.Pugalendhi Additional Advocate General Assisted by Mrs.S.Srimathy Special Government Pleader

ORDER



2.By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3.The petitioner was a candidate for the posts of Grade-II Police Constable, Grade-II Jail Warden and Fireman in the recruitment process held in the year 2017. The petitioner came out successful in the written examination as well as in the physical fitness test. He also successfully underwent the medical test. But, then, he was informed by the impugned order dated 17.11.2017, that since his antecedent character and conduct was not found to be satisfactory, he was not appointed as Grade-II Police Constable. Questioning the same, this Writ Petition has been filed.

4.The ground on which the petitioner has been denied the employment is that he was implicated as accused in Crime No.392 of 2014, on the file of the Kadayam Police Station and that the case was pending trial as on 17.11.2017.

5.The learned counsel appearing for the petitioner pointed out that the petitioner was serving Indian Army till 2017. He took voluntary retirement from Army and thereafter applied for the present post. The father of the petitioner herein and the de-facto complainant in Crime No.392 of 2014 are brothers. There was family dispute with regard to partitioning the ancestral properties. In the resultant dispute, the wife of the de-facto complainant died. When the occurrence took place, the petitioner was away and according to the petitioner he had nothing to do with the suicide of the wife of the de-facto complainant. But, then, subsequently, the matter was compromised and the Court exercising its inherent jurisdiction quashed the proceedings in S.C.No.563 of 2017 on the file of the Mahila Court, Tirunelveli District in Crl.O.P.(MD).No.17201 of 2017 dated 14.12.2017.

6.The learned counsel appearing for the petitioner drew the attention of this court to the recent decision of the Hon'ble Supreme Court reported in **(2016) 8 SCC 471 (Avatar Singh Vs. Union of India)**. In paragraph 38 of the said decision, the conclusion of the Hon'ble Supreme Court have been summarized. Paragraph 38.5, Paragraph 38.6 and Paragraph 38.8 are particularly relevant. They read as under:-

"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



circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

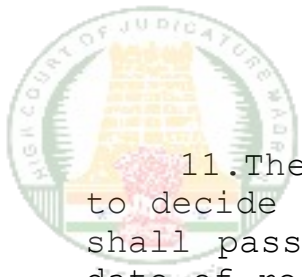
38.8.If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime."

7.The petitioner submits that the Authority ought to have taken note of the background facts. He has been disqualified in a mechanical passion by citing the fact that he stands as an accused.

8.The learned Additional Advocate General appearing for the respondents on the other hand contended that the impugned order cannot be faulted, because, definitely on the date, when the order was passed, the criminal trial was still pending.

9.This Court is entitled to take note of the subsequent developments. The fact remains that as on date, the criminal prosecution initiated against the petitioner stands quashed. The Hon'ble Supreme Court has specifically held in the aforesaid decision that where the employee has declared truthfully in the character verification form, the employer in his discretion may appoint the candidate subject to the decision of such case. In the present case, the petitioner has declared during the verification stage. Since the petitioner has made a frank disclosure about the pendency of the case registered against him, this Court is of the view that the employer should have a re-look. The employer can very well reconsider the decision. It is true that Section 306 of the Indian Penal Code is a serious offence. But, then if the veil is lifted and the facts are scrutinized a little deeper, it can be seen that the petitioner does not appear to have any role whatsoever, in the occurrence.

10.It is however, made clear that this Court is not inclined to issue any positive directions to the first respondent to appoint the petitioner. All that this court can do is to call upon the first respondent to have a second look at the whole issue. The entire thrust and purport of **Avatar Singh Vs. Union of India** is to confer a discretion on the employer to analyze the individual facts obtaining in a given case and then decide. This Court is of the view that in the present case, the disqualification has been straight way arrived at merely because the petitioner was figuring as an accused. The parameters set out in **Avatar Singh's** case have not fulfilled in this case. Hence, this Court is inclined to quash the impugned order.



11. The matter is remitted to the file of the first respondent, to decide the matter in accordance with law. The first respondent shall pass orders afresh within a period of eight weeks from the date of receipt of a copy of this Order.

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12. The Writ Petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-1)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
The Inspector General of Police,
Venals Road, Egmore,
Chennai-600 008.

2. The Tamil Nadu Uniformed Services
Recruitment Board, Old Commissioner
of Police Office Campus,
Pantheon, Egmore,
Chennai-600 008.

3. The Inspector of Police,
kadayam Circle, Kadayam, Tirunelveli District.

+1cc to Mr. S. Palanivelayutham, Advocate in Sr.No.47333

+1cc to The Special Government Pleader in Sr.No.47441

tsg

AE/SV MMS/SAR1/4P/6C/18.05.2018

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