



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition(MD)No.4931 of 2018

S.Praveen Kumar

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai 600 008.

2. The Director General of Police,
Office of the Director General of Police,
Beach Road,
Chennai 600 004.

3. The Superintendent of Police,
Sivagangai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in his proceedings bearing Na.Ka.No.A3/9545/2017 dated 25.10.2017 and quash the same with a consequential direction directing the respondents to issue appointment order and training to the petitioner to the post of Grade II Police Constable / Jail Warden / Fire Servicemen for the year 2017.

For Petitioner : Mrs.Porkodi Karnan
for M/s. Polax Legal Solution

For Respondents : Mr.Chellapandian,
Additional Advocate General assisted by
Mrs.S.Srimathy, Special Govt. Pleader

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Heard the learned counsel on either side.

2. The writ petition is taken up for final disposal at the stage of admission itself.



3. The petitioner was an applicant for the post of Grade-II Police Constable / Grade-II Jail Warden and Fireman for the year 2017. The petitioner was successful in the selection process. However, by order dated 25.10.2017, the third respondent herein had disqualified the petitioner for being appointed to the said post. The same is under challenge in this writ petition.

4. It is true that the petitioner was shown as an accused in Crime No.2 of 2017 on the file of Palayanur Police Station. The case was pending against the petitioner in P.R.C.No.35 of 2017 on the file of Judicial Magistrate, Manamadurai. The petitioner had omitted to disclose the same, when he applied for the post in question. In view of the suppression on the part of the petitioner and in view of the statutory disqualification which would follow if one is involved in a criminal case, the impugned order came to be passed against the writ petitioner.

5. This Court is of the view that the petitioner had disclosed the pendency of the criminal case against him at the time of verification of the antecedents. Therefore, the petitioner cannot be said to have been guilty of suppression of material facts. That apart, on 06.10.2017, the case against the petitioner got quashed by this Court in Crl.O.P.No.13571 of 2017. Of course, the quashing was following a compromise between the parties.

6. The Hon'ble Supreme Court of India, in **Avtar Singh Vs. Union of India and Others** reported in **2016 (8) SCC 471**, has laid down a set of parameters to be borne in mind, while considering such cases. The relevant paragraphs reads as under:

"34.No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspect.

35.Suppression of "material"information presupposes that what is suppressed that "matters"not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity is service but he has a right not to be dealt with arbitrarily and exercise of power has to be in a reasonable manner with objectivity having due regard to facts of cases.



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 informed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned 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 the aforesaid discussion, we summarise our conclusion thus:

"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.

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.

3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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



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(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.

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.

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.

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.

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.

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.



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.

11. Before a person is held guilty of suppression or suggestio falsi, knowledge of the fact must be attributable to him.

7. In the present case, this Court is of the view that such an approach has not been adopted. The third respondent has not even taken note of the fact that there has been a disclosure on the part of the petitioner at the time of verification of his antecedents. Again, the order impugned in the writ petition was passed on 25.10.2017. The case against the petitioner was quashed by this Court on 06.10.2017 itself. Therefore, instead of mechanically invoking the statutory Rule in question, there must have been an appreciation of the facts involved in the light of the parameters laid down by the Honourable Supreme Court of India. Since such an exercise was not undertaken in this case, this Court quashes the order impugned in this writ petition. The matter is remitted to the file of third respondent to consider the issue afresh, in the light of the parameters laid down in **Avtar Singh Vs. Union of India and Others** reported in **2016 (8) SCC 471**. The third respondent shall pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

8. This writ petition is partly allowed. No costs.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,



2. The Director General of Police,
Office of the Director General of Police,
Beach Road,
Chennai 600 004.

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3. The Superintendent of Police,
Sivagangai District.

+1cc to M/s. Polax Legal Solutions, Sr.No.53729

AKV

VB/SKN/RSK/SAR4/04.06.2018/6P/5C

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