



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 23.11.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P (MD) No.13985 of 2015
and
M.P (MD) Nos.1 and 2 of 2015

G.Mukeshkumar

.. Petitioner

Vs.

1.The Director General of Police,
Chennai - 600 004.

2.The Additional Director General of Police,
Armed Police, Chennai - 10.

[Respondents 1 and 2 are deleted vide
orders dated 13.04.2016 and 16.11.2017
made in W.M.P (MD) No.5026/2016].

3.The Commandant,
The Tamil Nadu Special Police Regimental Centre,
Avadi, Chennai - 54.

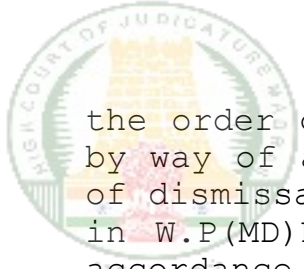
.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records and the impugned order passed by the third respondent in P.R.No.4 of 2013, dated 06.12.2013 and quash the same and consequently direct the respondents to permit the continue service of the Police Constable Grade II and pass such further or other orders.

For Petitioner : Mr.H.Velavadhas
For Respondent No.3 : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.

ORDER

The writ petitioner herein was selected for the post of Grade II Police Constable and appointment order was issued to him on 23.01.2013. As instructed, he reported for training on 17.02.2013. While he was undergoing the training, he was dismissed from service on 10.03.2013 for suppression of the criminal case pending against him in Crime No.28 of 2013 registered by Bazaar Police Station, Ramanaithapuram for offences under Sections 147, 148, 294(b), 323, 324 and 506(ii) IPC. For not affording opportunity before passing



the order of dismissal, the petitioner herein approached this Court by way of a writ petition. The writ petition was allowed. The order of dismissal was set aside by this Court vide order dated 25.04.2013 in W.P(MD)No.6918 of 2013 with liberty to initiate proceedings in accordance with the law and pass appropriate order. Thereafter, the third respondent herein after placing the petitioner herein under suspension pending enquiry, had passed the impugned order of removal from service on 06.12.2013. The said order of removal from service is under challenge in the present writ petition.

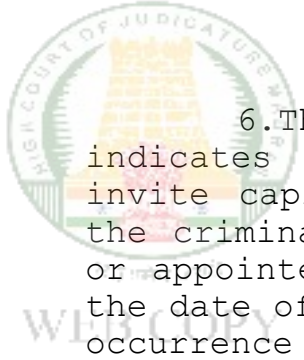
2.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader representing the third respondent.

3.According to the learned Additional Government Pleader, who represents the third respondent submit that, the petitioner was selected as Grade II Police Constable in the recruitment held by the Tamil Nadu Uniform Service Recruitment Board for the year 2012. The appointment order dated 23.01.2013 was issued to him with instruction to report before the Training Centre, Avadi on 17.02.2013. While reporting to the training, the petitioner has declared no criminal case pending against him and signed the form along with his reporting letter. However, during the police verification, it was brought to the notice of the respondent that petitioner was arrested on 28.01.2013 in Crime No.28 of 2013 by the Bazaar Police. He was remanded to judicial custody and later released on bail. When he reported for training on 17.02.2013 and signed the declaration, he was fully aware of the pendency of the criminal case registered against him. In order to keep the morale and regulations of the police force, the writ petitioner was removed from service.

4.The Learned counsel appearing for the writ petitioner admitting the suppression of fact would plead that the criminal case was registered against him due to previous enmity subsequent to the order of appointment. Later the criminal case also ended in acquittal after trial. For suppression of pendency of investigation for the alleged crime happened after the date of appointment, but before reporting duty which ultimately ended in acquittal, punishment of removal from service is excessive and therefore the impugned order has to be set aside.

5.To buttress the above submission, the learned counsel appearing for the petitioner would refer the following judgments:

- Commissioner of Police and Others v. Sandeep Kumar reported in 2011-4-L.W.138.
- Avtar Singh v. Union of India and Others reported in (2016)8 SCC 471.
- Unreported judgment of the Madras High Court (Madurai Bench) in Alagar v. State of Tamil Nadu rep. by its Secretary, Home Department, Fort St. George, Chennai - 9 and others. [W.P(MD) 20763 of 2017, dated 24.01.2018, by Justice G.R.Swaminathan].



6.The sum and substance in the Judgments referred above indicates that all suppression of pending criminal case cannot invite capital punishment of removal from service. The gravity of the criminal charge, the nature of the post likely to be appointed or appointed, the proximity between the date of alleged crime and the date of appointment and the age of the delinquent at the time of occurrence are few factors to be looked into before awarding the capital punishment of removal from service, so that minor delinquency or crime done at the young age should not stand in the way of a person getting appointed. The Courts have indicated that the employer has to bear in mind the principle of reformatory theory of punishment to arrive at just conclusion in case of suppression of criminal case either pending or acquittal.

7.Considering the facts of the case and the principle laid down in Judgements cited above, this Court is of the opinion that the request of the petitioner herein is to be reconsidered by the third respondent herein afresh taking note of the Judgements rendered by the High Court as well as the Hon'ble Supreme Court which are cited supra.

8.The petitioner herein is directed to give representation within 15 days from the receipt of the order copy. On receiving the representation, the third respondent shall consider the representation and pass appropriate orders in the light of the observation and guidelines given by the Hon'ble Supreme court in Avtar Singh case, within two months from the date of the receipt of the representation. While considering the representation, the respondent shall also ensure the petitioner has not come to any further adverse notice of the law enforcing agencies.

9.In the result, writ petition is disposed of with the above directions. No orders as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To
The Commandant,
The Tamil Nadu Special Police Regimental Centre,Avadi, Chennai - 54.

: 1 CC TO Mr.H.Velvadhas , ADVOCATE IN SR No.97214.
+1 cc to Special Government Pleader, SR.No.97623.

Smn

DS RSK SAR2 04 12 2018 3P 4C

ORDER MADE IN
W.P (MD) No.13985 of 2015
and
M.P (MD) Nos.1 and 2 of 2015