



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2018

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P (MD) No. 20773 of 2017
and
W.M.P. (MD) No. 17056 of 2017

D. Anandharaj

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
807, 2nd Floor, Anna Salai,
Chennai- 600 002.

2. The Director General of Police,
Mylapore, Chennai - 4.

3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 3rd respondent in Na.Ka.No.a3/9645/2017 dated 24.10.2017, quash the same as unconstitutional and consequently, direct the respondents to appoint the petitioner as Police Constable Grade-II in the services of the Tamil Nadu Police Department.

For Petitioner : Mr.P.T.Ramesh Raja
For Respondents : Mr.B.Pugalendhi,
Additional Advocate General
Asst.by Mr.A.K.Bhaskarapandian,
Special Government Pleader

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Advocate General appearing for the respondents.

2. The writ petitioner was one of the candidates, who took part in the recruitment process conducted by the Tamil Nadu Uniformed Services Recruitment Board for the post of Grade-II Police Constables/Grade-II Jail Warders/Fireman for the year 2017. The writ petitioner was successful in the selection process. But, he



was denied appointment by invoking Rule 14(b)(ii) and (iv) of the Tamil Nadu Special Police Subordinate Service Rules. Therefore, the writ petitioner has filed this writ petition.

3. This writ petition was taken up for consideration along with a batch of more than 100 writ petitions. In some cases, the candidates had disclosed the registration of criminal cases against them and also the final outcome while submitting the application form itself. In some cases, the disclosure was made at the time of verification. But, in a large number of cases, there was no disclosure at all and the factum of involvement in the criminal cases came to light only during the verification of the antecedents of the candidates. In all the cases, the criminal cases got concluded in favour of the candidates. In some cases, acquittal was made on account of the witnesses having turned hostile. In some cases, the matters were compromised. In some cases, this Court had quashed the prosecution by exercising the inherent jurisdiction available under Section 482 of Cr.P.C. In few other cases, the police themselves had dropped further action or closed the cases as 'Mistake of Fact'. In some cases, the investigating officer had himself deleted the names of the candidates in final report. The approach to be adopted by the appointing authority in such cases was the subject matter of more than one decision. The Hon'ble Supreme Court, in the decision reported in **2015(2) SCC 377 - Joginder Singh Vs. Union Territory of Chandigarh**, took the view that a person, who was honourably acquitted ought not to be deprived of being appointed to a post in public employment. Of course, in the said case, the candidate concerned had made a fair and frank disclosure of his involvement. The matter was again taken up by a three Judges Bench of the Hon'ble Supreme Court in **2016 (8) SCC 471 - Avtar Singh Vs. Union of India and Others**. The concluding paragraphs 34 to 38.11 are particularly relevant, which read 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 in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in 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.

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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.

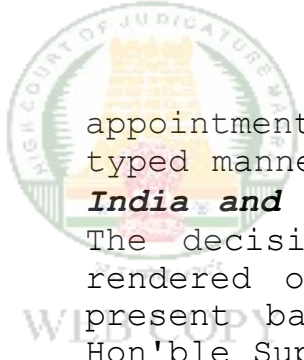
3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 adopted : -

(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



appointment by invoking the said rule have been passed in a stereo typed manner. The parameters laid down in **Avtar Singh Vs. Union of India and Others** reported in **2016 (8) SCC 471** were not applied. The decision in **Avtar Singh Vs. Union of India and Others** was rendered on 21.07.2016. In none of the orders impugned in the present batch of writ petitions, the aforesaid decision of the Hon'ble Supreme Court has been referred to. As already pointed out, the Hon'ble Supreme Court specifically observed that even if there is suppression in the case of a deserving candidate, it is even open to the employer to apply the reformatory principle and condone the lapse. Therefore, this Court is of the view that the order impugned in this writ petition will have to be set aside and the matter remitted to the file of the third respondent for fresh consideration.

5. Accordingly, this writ petition is partly allowed by quashing the order impugned in this writ petition and the matter is remitted to the file of the third respondent, who in turn, shall consider the case of the petitioner herein and take a decision afresh, within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
807, 2nd Floor, Anna Salai,
Chennai- 600 002.

2. The Director General of Police,
Mylapore, Chennai - 4.

3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

+ 1 CC TO Mr.P.T.RAMESH RAJA, ADVOCATE IN SR No. 40414

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 40697

ARUL

TE/RSK/SAR-1 : 09/02/2018 : 5P/6C