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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20981 of 2017
and
W.M.P.(MD) No.17258 of 2017

Chidambaram ... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore, Chennai - 600 008.

2.The Director General of Police,
Kamarajar Salai,
Chennai - 4.

2.The Superintendent of Police,
Tirunelveli District. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order of the 3rd respondent made in his proceedings in Na.Ka.No.A4/44294/2017 dated 31.10.2017 and quash the same and further direct the respondents to provide the order of appointment to the petitioner for the post of Grade-II Police Constable in the Armed Reserve Force at Centre Code:30 - Tirunelveli as per the notification issued by the 1st respondent for the year 2017.

For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.B.Pugalendhi,
Additional Advocate General
Asst.by Mr.A.K.Bhaskarapandian,
Special Government Pleader

O R D E R

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

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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 is 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

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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 reformative 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 antecedents, and may take appropriate decision as to the continuance of the employee.

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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 suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

4.The latest one was rendered by a two Judges Bench of the Hon'ble Supreme Court in *Civil Appeal No.67 of 2018 dated 08.01.2018 - Union Territory, Chandigarh Administration and Others Vs. Pradeep Kumar and another.* The Hon'ble Supreme Court upheld the decision of the employer after rendering a specific finding that the case of each and every candidate was individually considered and decision was taken for denying the appointment only thereafter. In the present batch of cases, this Court finds that the orders denying the appointment by invoking the said rule have been passed in a stereo typed manner. The parameters laid down in *Avtar Singh Vs. Union of*

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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 reformative 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(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore, Chennai - 600 008.

2.The Director General of Police,
Kamarajar Salai,
Chennai - 4.

3.The Superintendent of Police,
Tirunelveli District.

+2 cc to Mr.D.Venkatesh, Advocate, SR.Nos.41137, 41355

+One cc to The Special Government Pleader, SR.No.42423

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