



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.09.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN
W.P. (MD) No.19612 of 2018

and

W.M.P. (MD) No.17401 of 2018

WEB COPY

P.Manimaran

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Chennai 600 008.

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

3.The Superintendent of Police,
Office of the Superintendent of Police,
Virudhunagar,
Virudhunagar District.

... Respondents

PRAYER: 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 order issued by the 3rd respondent in C.No.A2(1)/68/3870/2017 dated 07.05.2018 and quash the same and consequently, direct the respondents to appoint the petitioner in the post of Police Constable Grade II - 2017.

For Petitioner : Ms.A.S.Rajeswari

For Respondents : Mr.B.Pugalendhi, AAG

O R D E R

The petitioner has come forward with the present Writ petition to issue a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent in C.No.A2(1)/68/3870/2017 dated 07.05.2018 and consequently, direct the respondents to appoint the petitioner in the post of Police Constable Grade II - 2017.

2.The candidature of the petitioner to the post of Police Constable Grade II - 2017 has been rejected on the ground that he has not disclosed the fact of involvement in a criminal case as the same has come to light on verification.

3.The case of the petitioner is that he has been provisionally selected for the post of Grade-II Police Constable for the year 2017 subject to police verification and medical examination. On verification, it was found that the petitioner has involved in a



criminal case in Crime No.34 of 2016 on the file of A.Mukkulam Police Station on 26.04.2016 under Sections 294(b), 323, 506(i) IPC. After investigation, the name of the petitioner has been deleted from charge sheet on 11.05.2016. Thereafter, he has applied to the said post, without mentioning the said criminal case, as he has been dragged into the said case and thereafter, his name has been removed from the array of accused.

4.A perusal of the application form it is seen that the petitioner ought to have informed the respondents about the implication in the said criminal case. Hence, the respondents have rejected the request stating that a person having a criminal antecedents and bad character are likely to spoil the credibility and that he does not deserve to enter into Police Department. It has also been brought to the attention of this Court to a decision reported in 2016(8) SCC 471 (*Avtar Singh Vs. Union of India and others*). The relevant paragraphs are extracted hereunder:

"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:

38.1 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.

38.2. 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.

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

38.4. 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 recourses appropriate to the case may be adopted:

38.4.1. 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.



38.4.2. Where conviction has been recorded in a case which is not trivial in nature, employer may conceal candidature or terminate services of the employee.

38.4.3. 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.

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 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.

38.7. 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.

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.

38.9. 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.

38.10. 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.

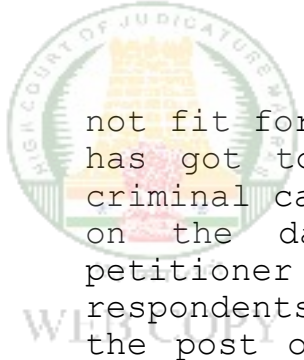
38.11. Before a person is held guilty of suppression veri or suggestio falsi, knowledge of the fact must be attributable to him."

5. It has been contended by the petitioner that the information furnished by candidates to the employer should be genuine and there should not be any suppression or false information and it is the discretion of the employer to ignore such suppression of fact or false information if the case is trivial in nature. On the date of application, the petitioner's name has been removed by the Investigation Officer as it could be seen in the proceedings dated 11.05.2016. Disclosing the involvement of criminal case in the application form is mandatory. Since the name of the petitioner has been deleted from array of accused in the charge sheet, the same was not disclosed by him. In the impugned order, the respondent concerned have clearly mentioned that the name of the petitioner was deleted from the charge sheet by the Investigating Officer. As the name of the petitioner has been removed in the charge sheet, no one could come to a conclusion that he does not deserve to enter into the police department and that he is not maintaining integrity and honesty.

6. In view of the decision reported in 2016(8) SCC 471 (cited supra), the Supreme Court has held that 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. Therefore, the discretion vests with the employer to consider the case of the petitioner.

7. In the present case on hand, believing the fact that the name of the petitioner has been deleted from the charge sheet, he has assumed that he has not at all involved in the said criminal case. Though disclosure is the must and from the documents produced by the parties, I am of the view that the intention of the petitioner does not appear to give false information since on the date of sending application, his name was removed from the array of accused and therefore, he has mentioned that he has not involved in any criminal case.

8. Taking note of the aforesaid facts, this Court is inclined to interfere with the impugned order. As there is no suppression of material fact, no one can come to the conclusion that the petitioner does not have impeccable character and dignity. It is not the case where the petitioner is having criminal antecedent and that he will



not fit for job. Hence, I am of the view that the petitioner's case has got to be considered as he has not at all involved in the criminal case and after investigation, his name has been removed and on the date of sending application, the presumption of the petitioner is that there is no case is pending against him. The respondents are directed to consider the case of the petitioner for the post of Police Constable Grade II - 2017, if he is otherwise found fit.

9. In the result, this Writ petition is allowed. No costs. Consequently, connected W.M.P. is closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-I)

To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Chennai 600 008.
2. The Director General of Police,
Office of the Director General of Police,
Mylapore,
Chennai 600 004.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Virudhunagar,
Virudhunagar District.

+2cc to Mr. A. S. RAJESWARI, Advocate, SR.No. 83538
+1cc to M/s. Special Government Pleader, SR.No. 84082

W.P. (MD) No. 19612 of 2018
11.09.2018

NBJ
KK/RP/SAR-1/09.11.2018/5P-7C