



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.03.2018
Pronounced on : 04.06.2018

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CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 3127 of 2017

and

W.M.P. (MD) Nos. 15729 and 2495 of 2017

M. Rajeev Gandhi
PC 40424,
'E' Company, Armed Reserve,
Chennai.

... Petitioner

Vs.

1. Tamil Nadu Uniformed Services Recruitment Board,
807, II Floor, Anna Salai,
Chennai-600 002,
Rep. by its Member Secretary.

2. The Director General of Police,
Office of the Director General of Police,
Chennai.

3. The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District.

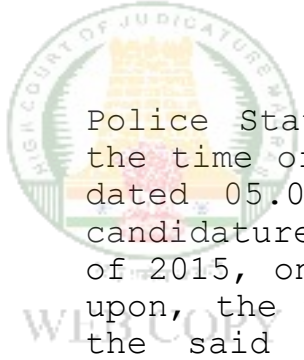
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the third respondent in Na.Ka.No.A2/1483/2015, dated 05.01.2016 and his consequential impugned proceedings in C.No.A2/1483/2015, dated 25.11.2016 and quash the same as illegal and consequently direct the respondents to appoint the petitioner to the post of Sub Inspector of Police (Taluk) for the year 2015 within the period that may be stipulated by this Court.

For Petitioner : Mr.M.E.Ilango
For Respondents : Mrs.S.Srimathy,
Special Government Pleader

ORDER

The petitioner is employed as Police Constable. He took part in the selection process for being appointed to the post of Sub Inspector of Police for the year 2015. The petitioner was shown as an accused in Crime No.156 of 2015 on the file of the Emaneswaram



Police Station. The petitioner disclosed the said implication at the time of verification of his antecedents. But, by proceeding dated 05.01.2016, the third respondent rejected the petitioner's candidature. Thereafter, the final report was filed in Crime No.156 of 2015, on 08.05.2016 and the petitioner's name was deleted. There upon, the petitioner gave a representation, dated 06.06.2016. But the said representation was rejected by the third respondent. Aggrieved by the same, the present writ petition has been filed.

2.The third respondent has placed reliance of Rule 13(e) Special Rules for TNPSS and Explanation (2) to reject the case of the petitioner. The said provisions read as under:

"Explanation (2):- A person involved in Criminal case at the time of Police Verification and the case is yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a crime case and he can claim right for appointment only by participating in the next recruitment".

3.The third respondent has also referred to the earlier decisions of this Court to hold that the deletion of the petitioner's name in the final report will not come to the rescue for providing appointment. The said orders are under challenge in this writ petition.

4.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

5.If the petitioner was involved in a criminal case, then certainly it would act as a disqualification. But in this case, the petitioner had only attempted to separate two groups who were involved in a scuffle. Therefore, his name was rightly deleted from the final report by the Investigating Officer. This was also accepted by the Jurisdictional Magistrate. Therefore, in such circumstances, it may not be fair or just to mechanically apply the aforesaid statutory provisions. The Hon'ble Supreme Court of India in the decision reported in 2016 (8) SCC 471 - Avtar Singh Vs. Union of India and Others has laid down certain parameters. 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.



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.

"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.

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

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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.

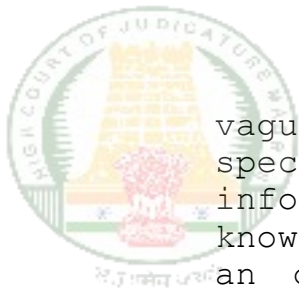
5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

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.



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."

6. This Court is of the view that, the case on hand should be revisited by bearing in mind the aforesaid parameters. Hence, the order impugned in this writ petition is quashed. The matter is remitted to the file of the third respondent to consider afresh the case of the petitioner and pass appropriate orders. Such an exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl. Side)

/True copy/

Sub Assistant Registrar

To

1. Tamil Nadu Uniformed Services Recruitment Board,
807, II Floor, Anna Salai,
Chennai-600 002,
Rep. by its Member Secretary.

2. The Director General of Police,
Office of the Director General of Police,
Chennai.

3. The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District.

+1cc to Mr. M. E. Ilango, Advocate, SR.No.66842.

+1cc to Special Government Pleader, SR.No.66959.

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and

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