



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.01.2018

CORAM

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.2818 of 2011
and
M.P(MD)No.1 of 2011

Ravisankar

... Petitioner

-vs-

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
Thanjavur District,
Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus calling for the records of the first respondent relating to his rejection order in Na.ka.No.22733/Niyamanam 1(2)/2009-36, dated 8.1.2010 and to quash the same and to direct the first respondent to appoint the Petitioner in the post of Grade-II Police Constable.

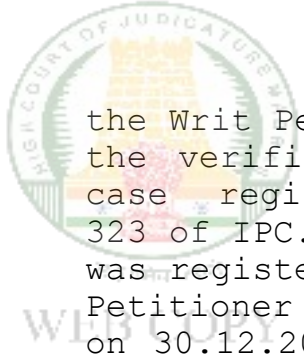
For Petitioner : M/s.S.Deenadhayalan

For Respondents : Mr.R.Sethuraman
Special Govt.Pleader

O R D E R

The order of rejection issued by the first respondent in proceeding, dated 8.1.2010 in respect of non-selection of the Writ Petitioner to the Post of Grade-II Police Constable in Tamil Nadu Police Service, is under challenge in this Writ Petition.

2.The Writ Petitioner had participated in the selection of Grade-II Police Constable in the Tamil Nadu Police Service for the year 2007-2008. The Petitioner had successfully passed in the written examination. Thereafter, his selection was rejected on the ground that the Petitioner had involved in a Criminal case and further, it is stated that the Petitioner had suppressed the material facts in his application form. The rejection order was passed on 8.1.2010 stating that the antecedents and the character of



the Writ Petitioner was verified by the Police Department and as per the verification, the Writ Petitioner had involved in a criminal case registered in Crime No.130 of 2008 under Sections 294(b) and 323 of IPC. He was arrayed as second accused and the criminal case was registered by Nadukavery Police Station, Thanjavur District. The Petitioner was acquitted by the Judicial Magistrate, Thiruvaiyaru on 30.12.2008, on benefit of doubt, more specifically, the witness turned hostile. Further, it is stated in the impugned order that in the Declaration Form, the Writ Petitioner had suppressed the fact in respect of the registration of the criminal case against him. Thus, the suppression of fact is in violation of instructions given to the candidates along with the application form. Thus, the Writ Petitioner is not entitled for any appointment as per the selection made to the post of Grade-II Police Constable.

3.The learned Special Government Pleader appearing for the respondents states that it is a case of suppression of material facts in the Declaration Form submitted by the Writ Petitioner. Therefore, the Petitioner is not entitled for any relief as such sought for in this Writ Petition.

4.In the application form itself, columns are provided for furnishing the facts regarding the criminal case history. Further, the Writ petitioner has not mentioned the registration of criminal case against him and also there is suppression of material facts. The selection being for Uniformed Force, suppression of facts is vital and antecedents and registration of the criminal case was found by the Police Department while verifying the antecedents and character of the Writ Petitioner. Thus, the claim of the Writ Petitioner deserves to be rejected.

5.Though the Writ Petitioner was acquitted on the benefit of doubt, initially the learned counsel for the Petitioner states that the appeal preferred was allowed in favour of the Writ Petitioner and therefore, his case ought to have been considered. Acquittal is one aspect of the matter and suppression is an another aspect. The suppression of material facts in the application form has to be considered as vital in respect of the impugned rejection order. The appointment to the post of Grade-II Police Constable involves serious responsibilities of handling arms and ammunitions Integrity and accountability is of prime consideration in respect of Uniformed personnel dealing with arms and ammunitions. A person of doubtful integrity can at no point of time be appointed in Police service or as a matter of fact in any Uniformed force. Thus, the Recruiting Agency is expected to be doubly cautious in such issues. The Writ Petitioner had suppressed the material fact in respect of registration of criminal case against him and created inconsistencies in the Declaration Form. Thus, he is not entitled for any leniency in this regard. The various circumstances in this regard was considered by the Honourable Three Judges Bench of the Honourable Supreme Court of India in the case of Avatar Singh .vs. Union of India reported in 2016(8)SCC 471. After reviewing all the

earlier cases including the one in Daya Shankar Yadav .vs. Union of India reported in 2010(14)SC 103 and State of West Bengal .vs. S.K.Nazrul Islam reported in 2011(10 SC 184, the following principles have been settled by the Larger Bench in paragraph 34 of the Judgement in Avatar Singh:

'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 aspects."

24. We have considered the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 are extracted below:

"15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not



furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

"21.If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi Versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straight forward. Be that as it may."

25.In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our firm opinion as under:

#26.we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service.#

6.In view of an emphatic pronouncement spelled out by the Honourable Apex Court of India, this Court is of an opinion that the candidate having a criminal case history, though acquitted, has to be screened carefully in respect of the nature of involvement and related facts. Further, the mind set and intention of a person is also to be looked into though the manner in which he has stated the facts in various formats, declaration form etc. Thus the arguments advanced by the learned counsel for the Petitioner that the Writ Petitioner was acquitted from the criminal case deserves no consideration. In this view of the matter, no further adjudication needs to be entertained in this Writ Petition.



7. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar

To

1. The Director General of Police,
Chennai.

2. The Superintendent of Police,
Thanjavur District,
Thanjavur.

+1CC to Mr.S.Deenadhayalan, Advocate, SR.No. 45592

+1CC to the Special Government Pleader SR.No.45515

W.P.(MD) No.2818 of 2011

and

M.P(MD)No.1 of 2011

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vsn

AM/GT/SAR 2/13.02.2018/5P/5C