



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.377 of 2011

and

MP(MD)No. 1 of 2011

P.Kanthiya @ Karthick

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Director General of Police,
Chennai.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari mandamus, calling for the records of the first respondent in Na.Ka.No.04972/aappointment 1(2) /2010-14 dated 07.04.2010, and quash the same and consequently, direct the first respondent herein to appoint the petitioner to the post of Grade II Police Constable, or if the above post was filled up by the authorities, to which the petitioner was selected, by this time, the first respondent may be directed to appoint the petitioner as and when vacancy arises for the above said post or any post carrying the same scale of pay which requires the same qualification, whichever is earlier.

For Petitioner : M/s.R.Ramasamy

For Respondents : Mrs. VPM.Vaishnavi
Government Advocate

ORDER

The order of rejection dated 07.04.2010 issued by the first respondent in respect of the non selection of the writ petitioner for recruitment to the post of Grade II Constable is under challenge in this writ petition.



2.The learned Counsel appearing for the writ petitioner states that the pursuant to the notification issued inviting application for recruitment to the post of Grade II Constable, the writ petitioner submitted application. The writ petitioner participated in the process of selection and successfully passed in the written examinations and he was called for to attend the physical verification test and physical eligibility test and endurance test, the writ petitioner had participated in the tests. However, his selection was deferred on account of the fact that the criminal case was registered against him.

3.The criminal case was registered against him in Crime No.275 of 2009 for the offences under sections 323, 294(b) and 506 (ii) IPC. The writ petitioner was arrayed as second accused. The learned counsel for the petitioner states that the writ petitioner was acquitted from the criminal case in judgment dated 12.02.2010. Therefore, the case of the writ petitioner ought to have been considered for selection.

4.The fact remains that at the time of submitting the application by the writ petitioner, the criminal case was pending. The learned Government Advocate appearing for the respondents states that as per the Amended Rule 14 (b) of Tamil Nadu Special Police Subordinate Service Rules, 1978, vide G.O.Ms.No.101 Home (Pol.9) Department dated 30.01.2003, the petitioner is not eligible for appointment as Grade II Police Constable. The Rule position is explained in paragraph No.4 of the Counter affidavit filed by the second respondent, which is extracted hereunder.

"4.It is submitted that as per amended rule 14 (b) of the TNSPSS Rules 1978 vide G.O.Ms.No.101(POL.0) Department dated 30.01.2003, the petitioner is not eligible for appointment as Grade II Police Constable. The amended rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules 1978 in G.O.Ms.No.101 Home (pol.9) Department dated 30.01.2003 are furnished below with explanations.

14(b) No persons shall be eligible for appointment to the service by direct recruitment unless satisfy the appointing authority.

(ii) that the character and antecedents are such as to qualify him for such service.

(iii) that he has not involved in any criminal case before Police verification.

Explanation -1: A person who is acquitted or discharged on benefit of doubt or due to the fact that complaint turned hostile shall be treated as person involved in criminal case.

Explanation -2: A person involved in a criminal case at the time of police verification and the case yet to be



disposed of and subsequently ended in honorable acquittal or treated as mistake of fact shall be treated as non involvement in a criminal case and he can claim right for appointment only by participating in the next recruitment.

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5. As per the above rule, the person who is acquitted or discharged on the benefit of doubt or due to the complainant turned hostile shall be treated as person involved in criminal case. Even, this apart, this Court is of an opinion that the candidates who are having criminal case history may not be suitable for Uniformed Services and it is the wisdom of the authorities to form an opinion in respect of the nature of involvement of the candidates and the nature of crime committed.

6. A similar matter came to be considered by a Bench of Three Judges in 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) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in Paragraph 34 of the Judgment 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."

7. This Court is of the undoubted opinion, that the candidate who has a criminal case background cannot be considered, more specifically, for appointment to the post of Grade-II Police Constable.

8. In view of the emphatic pronouncement spelled out by the Hon'ble Apex Court of India, again and again re-iterating that a candidate having a Criminal case history, though acquitted, has to be screened carefully in respect of the antecedents and involvement in the criminal case. Further, the mind set and intention of a person is also to be looked into through the manner in which he has stated the facts in various formats. Accordingly, no further consideration in respect of the grounds raised in this writ petition deserves to be considered. Even in the case of the acquittal, the Selecting Authority has got every right to reject the candidature on ascertaining over all facts and the circumstances in each case. Hence, the argument advanced by the learned counsel for the petitioner deserves to be rejected. Thus, this Court, is not inclined to consider the case of the petitioner for the post of Grade-II Police constable.



9. Accordingly, this writ petition stands dismissed. However, there shall be no order as to costs. Consequently, MP(MD)No.1 of 2011 is closed.

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Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Chennai.
2. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47881

DSK
TE/CVC/SAR-4 : 16/03/2018 : 4P/4C

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MP(MD)No. 1 of 2011
09.02.2018