



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2018

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

W.P.(MD) No.6717 of 2013
and
M.P(MD)No.1 of 2013

Y.Vetriselvan

... Petitioner

-vs-

1.The Tamil Nadu Uniformed Service Recruitment Board,
thorough its Chairman,
No.807, P.T.Lee Chengalvaraya Naicker Maaligai,
Anna Salai,Chennai.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent in Na.Ka.No.P1/19500/2012, dated 18.2.2013 and to quash the same and consequently to direct the respondents to appoint the Petitioner as Grade-II Police Constable within the time frame fixed by this Court.

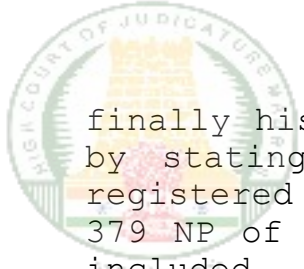
For Petitioner	: Mr.R.Anand for M/s.S.Madhan Kumar
For Respondents 1 and 2	: Ms.V.P.M.Vaishnavi Government Advocate

O R D E R

The order of non-selection in respect of recruitment to the post of Grade-II Police Constable, dated 18.2.2013, is under challenge in this Writ Petition.

2.The Writ Petitioner had completed B.Sc in Computer Science. Pursuant to the recruitment notification, the Writ Petitioner had participated in the process of selection for appointment to the post of Grade-II Police Constable in Tamil Nadu Police Service. The Writ Petitioner was successful in the written examination and called for Physical Verification Test and Endurance Test.

3.The learned counsel for the Writ Petitioner states that the Writ Petitioner was successfully selected in all respects and



finally his candidature was rejected in proceeding, dated 18.2.2013 by stating that a criminal case in Crime No.145 of 2011 was registered against the Petitioner under Sections 147, 294(b) 506(i), 379 NP of IPC and Section 4 of TNPHW Act. The Writ Petitioner was included as the fourth accused. In view of the registration of criminal case against the Writ Petitioner, the selection of the Writ Petitioner was deferred on the ground that his character and conduct was not satisfactory. Challenging the same, the present Writ Petition is moved mainly on the ground that the Writ petitioner was acquitted from the criminal case in C.C.No.52 of 2013, dated 11.11.2013, on the file of the learned Judicial Magistrate, Melur. In para 10 of the Judgement in C.C.No.52 of 2013, states that considering the contradictions in prosecution side witness, the Court came to the conclusion that the charge against the accused were not completely proved. Accordingly, the Writ Petitioner was acquitted from the criminal case. Thus it is clear that the benefit of contradictions made out in the prosecution witness were extended by the competent Criminal Court and accordingly, an order of acquittal was passed. In this context, the learned counsel for the Writ Petitioner states that the Writ Petitioner was already selected and the criminal case registered against the Petitioner, ended with an order of acquittal on 11.11.2013 and therefore, the competent authorities ought to have reconsidered the case of the Writ Petitioner for appointment to the post of Grade-II Police Constable. In this regard, the learned counsel has cited an order of this Court passed in W.P.No.8345 of 2011 and batch dated 7.11.2013 which is reported in 2013(6)CTC 423. The learned counsel has referred to Paragraphs 13 and 14 of the judgement, which is extracted hereunder:

'13.In yet another batch of Writ Petitions in W.P (MD)No.474 of 2013 batch, by order dated 26.3.2013, yet another learned Single Judge (Honourable Mr.Justice R.S.Ramanathan) had an occasion to consider the Full Bench Judgement of this Court in Manikandan's case, in a similar situation. The learned Judge had considered the subsequent judgements of the Honourable Supreme Court in Ram Kumar .vs. State of U.P and others, 2011(6) CTC 440 (SC); Daya Shankar Yadav .vs. Union of India and others, 2011(2) LLN 34(SC); and Commissioner of Police and others .vs. Sandeep Kumar, 2011(3)LLN 44(SC); 2011(4) MLJ 1006 (SC).

14.Having considered the same, the learned Single Judge took the view that until the Larger Bench of the Supreme Court decides the issue in Jainendra Singh .vs. State of U.P. Tr.Prinl.Sec., Home and others, 2012(3) LLN 497 (SC):2012(7) MLJ 65(SC), the Full Bench judgement of this Court in Manikandan's case cannot hold the field. In paragraph No.33 and 34 of the Judgement, the learned Single Judge had held as follows:

'133.Further there is a saying 'every saint had a past, every thief has a future'. Further, the Petitioners are involved in the offences under Sections



323, 324, 506(i) and 325 IPC and such offences cannot be held to be serious and some of the Petitioners were fined under the provisions of the Tamil Nadu City Police Act and the Tamil Nadu Gaming Act. The offences are only petty in nature as held by the Honourable Supreme Court, in the judgement reported in Pawan Kumar's case, those offences cannot be brought under 'Moral Turpitude', and when those offences cannot be brought under the caption 'Moral Turpitude' it cannot be advisable to hold that the suppression of those particulars in the Application form a serious one. In this connection, the observations of the Honourable Supreme Court made in Pawan Kumar's case 1006(2)LLJ 703(SC), is relevant and it is as follows"

"Before concluding this judgement, we hereby draw attention of the Parliament to step in and perceive the large number of cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before Summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum of plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provisions need be made that punishment of fine upto a certain limit say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as a conviction at all for any purpose and all the more for entry into and retention in Government service, this can brook no delay, whatsoever.

34. Further, the Government has given pardon to hard-core Criminals, Naxalities, when they surrendered and undertook to lead a normal life respecting the law of the land and having regard to their reformation, those persons were given appointment in the Police force. When such persons were given appointments in Police force, in my opinion, the Petitioners can also be given appointment in the Police force, considering their age and their age at the time of involvement in the Criminal cases and the fact that they were also honourably acquitted. Considering the fact that the offences, in which there were involved could not be characterised as offences, involving Moral Turpitude and such persons must be given chance to reform themselves, in my opinion, the



Respondents can take final decision on the basis of the judgement by the Larger Bench of the Honourable Supreme Court. Further, it is always open to the Department to take action against them in the event of their involvement in the criminal cases in future.''

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4. However, the learned Government Advocate appearing on behalf of the respondents states that the antecedents and character of the Writ Petitioner had been verified by the competent Police authorities and they found that it was not satisfactory. Therefore, mere acquittal in a criminal case alone will not constitute a ground for the Writ Petitioner to seek an order of appointment.

5. Considering the arguments advanced by the respective counsel appearing on behalf of the Petitioner and the respondents, this Court is of an opinion that the question that is raised before this Court which is fallen for consideration time and again, in one form or another namely:

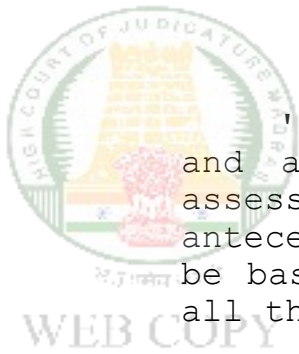
Whether the involvement in a criminal case is an automatic fact or for disqualification of the candidature itself?

6. This very question that has fallen for consideration on several cases before this Court as well as before various other Courts as well as the Honourable Supreme Court of India. Various views has been expressed by various courts for a long period of time spectrum of ranges from:

1. Involvement in a criminal case is itself a disqualification
2. It all depends upon the nature of selection.
3. It all depends upon the nature of exoneration secured in the criminal case; and
4. It depends upon the status of employment.

7. In fact, the Supreme Court of India had an occasion to deal with the various related questions for over a long period of time. As a result Civil Appeal No. 5671 of 2012 between Jainendra Singh and State of UP (reported in 2012 (8) SCC 748) has come for consideration, the Supreme Court and after noticing the range of views expressed by various Benches of the Supreme Court till then, had noticed the divergence of opinion to a certain extent. Hence, the Supreme Court felt it appropriate to refer the said Civil Appeal to be considered by a Larger Bench so as to express one uniform opinion on the subject.

8. Thus, the matter came to be considered by a Bench of Three Judges in Avtar 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 the 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 Judgement in Avtar 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 the relevant aspects.'

9. The Supreme Court has pointed out that verification of character and antecedents is one of the important criteria to assess the very suitability of the candidate for employment and hence it is open to the employer to adjudge the antecedents of the incumbent based upon objective criteria. It is also held that though a person is guilty of suppression of material information and consequently has no claim of unfettered right of appointment or continuity in service, however, he has right not be dealt with arbitrarily. It is further held that the ultimate decision, which is the result of exercise of necessary power by the employer, shall be carried out in a reasonable manner with objectivity having due regard to the facts of the case.

10. In para 38 of the said judgement, the following principles have been settled:

'We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourses appropriate to the case may be adopted:-

(a) In a case of 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.

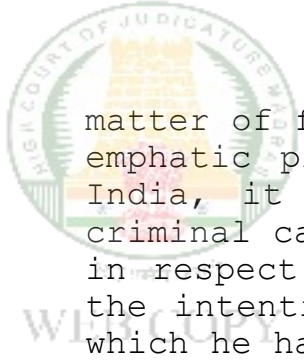
(8) If criminal case was pending but not known to the candidate at the time of filing the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(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 the 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 suppression or suppression falsi, knowledge of the fact must be attributable to him.''

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



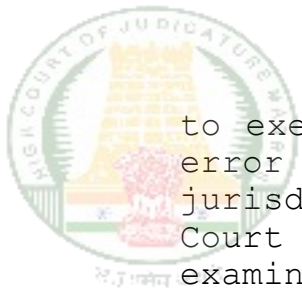
matter of fact of any disciplined uniformed services. In view of the emphatic pronouncements spelt out by the Honourable Apex Court of India, it is necessary to reiterate that a candidate having the criminal case history, though acquitted has to be screened carefully in respect of the nature of involvement and related facts. Further the intention of a person is also to be looked into in the manner which he has stated the facts in various formalities. In spite of an order of acquittal, the selecting authority has got every right to reject the candidature to ascertain the overall facts in each case. Thus the arguments of the learned counsel for the Writ Petitioner that the Writ Petitioner was acquitted from the criminal case cannot form a sole criteria for reconsideration in the case of the Writ Petitioner, more specifically to the post of Grade-II Police Constable.

12. Very recently, the Full Bench of Madras High Court in the case of Ashutosh Pawar .vs. High Court of Madhya Pradesh and another reported in 2018(1) CTC 353 categorically referred to the judgements of the Honourable Supreme Court of India including the case of Avtar Singh and Mehar Singh and other cases and finally, answered the question that whether the High Court in exercise of its power under Article 226 of the Constitution of India can step into the shoes of the appointing authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the authority has wrongly exercised the discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the Authority concerned for reconsideration or fresh consideration as to the eligibility of the person.

13. The next question is whether the powers conferred under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date of his batch-mates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the Authority for taking a decision in this regard?

14. The very same question fallen in respect of facts and circumstances of the present case and the Full Bench has answered in Para 34 to 45 which reads as under:

34. The power of judicial review under Article 226 of the Constitution of India is not that as of Court of appeal but to find out whether the decision-making process is in accordance with law and is not arbitrary or irrational. In a Constitution Bench judgment reported as MANU/SC/0098/1954 MANU/SC/0098/1954 : AIR 1954 SC 440 (T.C. Basappa vs. T. Nagappa and another) it was held that the High Court has power to issue writs in a case where subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice, or refuse



to exercise a jurisdiction vested in them or there is an error apparent on the face of record but such jurisdiction is not wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned. Relevant extract of the said decision is reproduced as under:-

"(11) In dealing with the powers of the High Court under article 226 of the Constitution this Court has expressed itself in almost similar terms vide - 'Veerappa Pillai vs. Raman and Raman Ltd., MANU/SC/0057/1952MANU/SC/0057/1952 : AIR 1952 SC 192 at pp. 195-196 (I) and said:

"Such writs as are referred to in article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction, vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under article 226 of the Constitution.

(24). As regards the omission to include hiring charges the High Court has observed that the Tribunal did not record any finding that such hiring was proved. The Tribunal has in fact found that as regards some cars they were hired, while others had been taken on loan, the money value for their use having been paid by the first respondent which is tantamount to saying that he had to pay the hiring charges. The matter has been dealt with in paragraph 29(d) of the Tribunal's order and the entire evidence has been gone through.

We are unable to say that the finding of the Tribunal that the respondent No. 1 had omitted to include in his return of election expenses the dinner and hotel charges is a finding unsupported by any evidence. Reference may be made in this connection to paragraph 29(f) of the Tribunal's order which deals with the matter in detail.



On the whole our opinion is that the so-called apparent errors pointed out by the High Court are neither errors of law nor do they appear on the face of the record. An appellate Court might have on a review of this evidence come to a different conclusion but these are not matters which would justify the issue of a writ of certiorari. In our opinion the judgment of the High Court cannot be supported and this appeal must be allowed. The writ issued by the High Court will therefore be vacated. We make no order as to costs of this appeal."

35. In another Constitution Bench judgment reported as MANU/SC/0364/1964MANU/SC/0364/1964 : AIR 1965 SC 532 (State of Mysore and another vs. K.N. Chandrasekhara), the question examined was in relation to the appointment to the post of Munsif by the Karnataka Public Service Commission. The Court held that if the High Court was satisfied that the persons, who were occupying the post were appointed contrary to the Rules, the High Court could set aside the proceedings of the Commission and direct preparation of fresh list according to law but could not direct to include the name of the six petitioners only because they applied to the Court. The relevant extract read as under:-

"10. It may at once be observed that the order passed by the High Court cannot in any view of the case be sustained. The High Court could, if it held that the notification issued by the Commission and the appointments made by the State pursuant thereto were made in violation of the statutory rules, quash the list but the High Court could not direct that the names of six persons merely because they had applied for setting aside the list of candidates selected for promotion be incorporated in that list. The direction made by the High Court was in the nature of mandamus. Such a direction could be issued against a person or body to compel the performance of a public duty imposed upon it by law - statutory or common. The commission is undoubtedly a body constituted pursuant to the provisions of the Constitution and has to exercise powers and perform functions entrusted to it by the Rules framed under Art. 309. But the order which the High Court made was not for compelling performance of its duty imposed upon the Commission by statute or common law. If the High Court came to the conclusion that the proceeding of the Commission was vitiated on account of some irregularity or illegality, it could declare the proceeding void. The High Court however held that the orders including respondents 4 to 13 to the petitions in the list of persons eligible for appointment should be allowed to



stand, because the petitioners in the petitions before it did not insist on the issue of a writ of quo warranto. If the High Court was satisfied on an application specifically made in that behalf that the persons who were occupying posts to which they were appointed contrary to the rules governing the appointment and consequently were not competent to occupy the posts, it is difficult to appreciate the ground on which the High Court would be justified in declining to pass appropriate orders. Either the High Court could set aside the proceeding of the Commission and direct preparation of a fresh list according to law, or the High Court could dismiss the petitions because in its view the list was regularly prepared. But the order passed by the High Court maintaining the inclusion of respondents 4 to 13 in the list and then directing the Commission to include the names of the six petitioners in the list merely because they had applied to the High Court is without authority."

36. In another judgment reported as 1969 (3) SCC 489 (Thakur Birendra Singh vs. The State of M.P. and others), the Court held that the High Court could have quashed the orders but the High Court was not sitting in appeal over the decision of the Board of Revenue. Once the orders complained of are quashed, the matter should have been left at large without any further direction leaving the Revenue Authorities free to take any steps.

37. The scope of power of judicial review has also been examined in a judgment reported as MANU/SC/0002/1996 : (1994) 6 SCC 651 (Tata Cellular vs. Union of India), the Supreme Court held as under:-

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In Chief Constable of the North Wales Police v. Evans MANU/UKHL/0007/1982 : (1982) 3 All ER 141, 154, Lord Brightman said:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed,



the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In R. v. Panel on Takeovers and Mergers, exp Datafin plc MANU/UKWA/0092/1986 : (1987) 1 All ER 564, Sir John Donaldson, M.R. commented:

"An application for judicial review is not an appeal." In Lonrho plc v. Secretary of State for Trade and Industry MANU/UKHL/0039/1989 : (1989) 2 All ER 609, Lord Keith said: "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin v. Entry Clearance Officer, MANU/UKHL/0040/1983 : (1983) 2 All ER 864, Re, Lord Fraser observed that:

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In R. v. Panel on Take-overs and Mergers, exp in Guinness plc MANU/UKWA/0092/1986 : (1989) 1 All ER 509, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of



preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

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1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind MANU/UKHL/0008/1991 : (1991) 1 ACR 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

38. The Supreme Court in a judgment reported as MANU/SC/4463/2007MANU/SC/4463/2007 : (2008) 1 SCC 683 (Aravalli Golf Club vs. Chander Hass) has held that in the name of judicial activism Judges cannot cross their



limits and try to take over functions which belong to another organ of the State. The Court held as under:-

"17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* MANU/SC/4993/2006MANU/SC/4993/2006 : (2007) 1 SCC 408; and *S.C. Chandra v. State of Jharkhand* MANU/SC/3501/2007MANU/SC/3501/2007 : (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

"When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of



the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

(Emphasis supplied)

We fully agree with the view expressed above. Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for "overreach" and encroachment into the domain of the other two organs."

39. A Full Bench of this Court in Writ Appeal No. 581/2017 (Nitin Pathak vs. State of M.P. and others) examined the question as to whether in exercise of power of judicial review the Court can refer the matter to a Court chosen expert or whether the Court itself can act as Court of appeal and make a different view than what has been finalized as the model answer key by the Examining Body. The Bench held as under:-

"32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power."

40. In view of the law laid down in above said judgments, there is no doubt that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of appeal over the reasons recorded by the State Government. We find that the decision of the State Government holding that the petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post and the duties to be discharged.

41. Even if the High Court finds that the decision of the State Government is suffering from some illegality, the jurisdiction of the High Court in a writ petition under Article 226 of the Constitution of India



is to remit the matter to the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own. The Supreme Court in a judgment reported as MANU/SC/0732/1994MANU/SC/0732/1994 : (1994) 4 SCC 448 (State of Haryana vs. Naresh Kumar Bali) was examining a question: as to whether there could be a direction to appoint a candidate, who sought appointment on compassionate ground. The Supreme Court held as under:-

"16. With regard to appointment on compassionate ground we have set out the law in Life Insurance Corpn. of India v. Asha Ramchandrar Ambekar MANU/SC/0453/1994MANU/SC/0453/1994 : (1994) 2 SCC 718. The same principle will clearly apply here. What the High Court failed to note is the post of an Inspector is a promotional post. The issuing a direction to appoint the respondent within three months when direct recruitment is not available, is unsupportable. The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasized, is directed against the decision-making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226."

42. Again while considering the question of compassionate appointment in a judgment reported as MANU/SC/3729/2008MANU/SC/3729/2008 : (2008) 8 SCC 475 (General Manager, State Bank of India and others vs. Anju Jain), the Supreme Court held that there could not be any direction for appointment or promotion. The relevant para of the said decision is extracted as under:-

"37. Even on second ground, the submission of the Bank is well-founded. As noted earlier, the learned Single Judge issued direction to the Bank to appoint the writ petitioner, widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person."

43. Similar view has been expressed in a judgment



reported as MANU/SC/1149/2013MANU/SC/1149/2013 : (2014) 3 SCC 767 (Ganapath Singh Gangaram Singh Rajput vs. Gulbarga University represented by its Registrar and others) wherein while dealing with the scope of Writ of Mandamus in the matter of appointment/recruitment, the Supreme Court held, thus:-

"25. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order (Shivanand v. Gulbarga University, Writ Appeal No. 3216 of 2004, order dated 19-11-2009/24-11-2009 (KAR) of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion."

44. Therefore, the High Court could not issue any direction for appointment of a candidate from the date the other candidates were appointed as such is not the jurisdiction vested in the High Court under Article 226 of the Constitution of India.

45. In view of the above, we find that the judgment of this Court in Arvind Gurjar's case (supra) does not lay down the correct law as the High Court has substituted its decision regarding suitability of a candidate and also issued a direction to appoint the petitioner, therefore, the entire judgment does not lay down correct law and is thus, overruled. The question Nos. 2 and 3 are answered accordingly.

QUESTION No. 6:

(6) Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide?

15. The Honourable Supreme Court of India in the case of Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and others in Civil Appeal No. 67 of 2018 delivered judgement on



8.1.2018, the Honourable Supreme Court has categorically held that importance of integrity and high standard has been emphasised, as held in Mehar Singh decision of the screening unless it is mala fide. The relevant paragraphs 15 and 16 are extracted hereunder:

''15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken a decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per guideline 2(A) (b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the Court cannot substitute its views for the decision of the Screening Committee.

16. On behalf of the respondents, much reliance was placed upon Joginder Singh .vs. Union Territory of Chandigarh and others (2015) 2 SCC 377. In the said case, the appellant thereon was charged under Sections 148, 149, 323, 325 and 307 IPC but acquitted by the trial Court holding that the prosecution has failed to prove the charges levelled against him since complainant as well as injured eye witnesses failed to identify the assailants and the complainant had stated that his signature was obtained on a blank sheet by the Investigating Officer. The case involved was a family dispute. In such facts and circumstances, this Court held that acquittal of appellant Joginder Singh was an honourable acquittal and hence, he should not be denied appointment to the post in question. The decision in Joginder Singh case does not advance the case of the respondents herein.''

16. In the case on hand, there is nothing to suggest that the decision of the Screening Committee is mala-fide. The decision of the Selection Committee that the Writ Petitioner is not a suitable candidate for being appointed to the post of Grade-II Police Constable does not call for any interference by this Court and therefore, the Writ Petition deserves no merit consideration.



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

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.T.Lee Chengalvaraya Naicker Maaligai,
Anna Salai, Chennai.

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

+1CC to Mr.S.Madhan Kumar, Advocate, SR.No. 56637
+1CC to the Special Government Pleader SR.No.56556

W.P. (MD) No.6717 of 2013
and
M.P (MD) No.1 of 2013
19.03.2018

vsn

AM/SKN RSK/SAR 1/05.04.2018/2P/5C