



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P (MD) No.7211 of 2013

R.Jeberson

... Petitioner

Vs.

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, 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 Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in his proceedings in Na.Ka.No.A4/30493/2012 dated 12.12.2012 and quash the same and directing the respondents to select and appoint the petitioner as Grade-II Police constable in Tamil Nadu Police Subordinate Service.

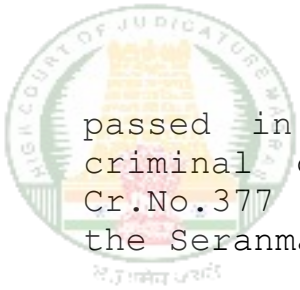
For Petitioner : M/s.G.Maheshwari

For Respondents : Mr.R.Sethuraman
Special Government Pleader

ORDER

The order of non selection issued by the second respondent in proceedings dated 12.12.2012 is under challenge in this writ petition.

2.The writ petitioner participated in the process of selection for recruitment to the post of Grade II Police Constable in Tamil Nadu Police Subordinate Service for the year 2012 through the Tamil Nadu Uniformed Services Recruitment Board. The writ petitioner submitted his application and accordingly appeared in the written examination. The writ petitioner successfully passed in the written examination and participated in the physical efficiency test, endurance test and thereafter, medical examination and certificate verification. However, the selection of the writ petitioner was deferred and an order of injunction was



passed in proceedings dated 12.12.2012 on the ground that a criminal case was registered against the writ petitioner in Cr.No.377 of 2012 under Sections 294(b), 324 and 506(ii) IPC by the Seranmakadevi Police Station.

3.The learned counsel appearing for the writ petitioner states that the criminal case was lodged by the neighbour of the writ petitioner on personal vengeance. It is further stated that on account of the selection of the writ petitioner for appointment to the post of Grade II Police Constable, the criminal case was lodged against him. Therefore, the same is to be ignored and the writ petitioner is to be selected.

4.The learned Special Government Pleader appearing on behalf of the respondents states that undoubtedly, the writ petitioner successfully passed in the written examination and participated in the physical eligibility test. However, during verification of antecedents and character of the writ petitioner, the police Department found that a criminal case was registered against the writ petitioner in Cr.No.377 of 2012 under Sections 294(b), 324 and 506(ii) IPC by the Seranmakadevi Police Station. In view of the fact that the criminal case was registered against the writ petitioner, his case was deferred and an order of rejection was passed against the writ petitioner and there is no infirmity as such.

5.The learned Special Government Pleader for the respondents further states that as per the Special Rules a person, who is having a criminal case history or pending criminal case is not eligible for appointment to the post of Grade II Police Constable and the selection committee is empowered to reject such candidates for selection to the post of Grade II Police Constable.

6.This Court is of an opinion that the selection in the present case is for the post of Grade II Police Constable, which is an uniformed services and there cannot be any compromise on character and

integrity in respect of the person recruited for the post in uniformed services. A person, whose integrity is doubtful cannot be a fit person for dealing with such arms, ammunition while on duty. Thus, the character and antecedents of the candidates, who are to be recruited, must be verified scrupulously and the selecting authorities cannot have any compromise in respect of the verification of character and antecedents.

7.The verification of character and antecedents are the subjective satisfaction of the selection authorities. The over



taken by the selection committee is limited. Thus, the writ petitioner has not established that he is eligible for appointment to the post of Grade II Police Constable and admittedly, during that relevant point of time a criminal case was registered and the same was pending against the writ petitioner.

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8.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."

9.This Court has to consider the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21, which 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

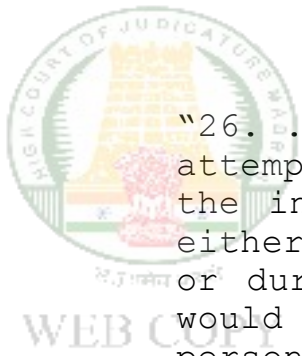


questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure 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."



"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."

11.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. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

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

+ 1 cc TO Mr.J.Parekh kumar , Advocate in SR No. 51992
+ 1 cc TO The Special Government Pleader in SR No. 52491

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AE/JC/SAR2/17.04.2018/5P/5C

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