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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.6023 of 2018
and W.M.P.No.7410 of 2018

P.Parasuraman

...Petitioner

Vs.

1. The Principal/Commandant,
Ty.PRS, TSP III Battalion,
Veerapuram, Chennai - 55.

2. The Additional Director General of Police,
Police Training College,
Ashok Nagar, Chennai - 83.

....Respondents

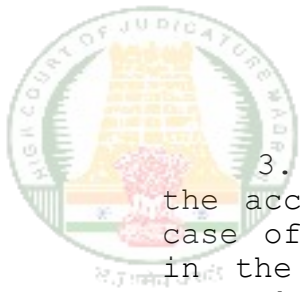
PRAYER: Writ petition filed under Article 226 of Constitution of India, seeking a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent dated 06.01.2018 issued in C.No.D2/145/Ty.PRS-TSP III/2017 and quash the same and consequently to direct the 1st respondent to reinstate the petitioner with all attendant service and monetary benefits.

For Petitioner	:Mr.P.I.Thirumoorthy
For Respondents (for R2)	: Mr.P.S.Sivashanmuga sundaram, Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent terminating the service of the petitioner and cancelling the appointment order given to the petitioner.

2. It is seen from records that the petitioner was appointed as a youth Brigade in the year 2014 in the selection that was conducted by TNUSRB on 10.07.2015. There was a clash in which the petitioner along with three other persons are said to have attacked with wooden log and iron rod and caused grievous injuries. An FIR came to be registered in crime No.175 of 2014 for offences under Sections 294 (b), 295 (a) and 506 (2) of IPC. After investigation, a final report came to be filed and as against the petitioner who has shown as A2, charges were framed for the offences under Sections 294 (b), 341, 323, 295 (A), 298 and 506 (ii) of IPC.



3. The case ultimately ended in acquittal as against all the accused persons, since none of the witness supported the case of the prosecution. The petitioner made an application in the year 2017 for selection to the post of Grade II Constable. The petitioner was also appointed as a Grade II Constable on 25.11.2017. Ultimately, a show cause notice came to be issued against the petitioner on 05.01.2018 on the ground that he was involved in a criminal case and as to why his appointment should not be cancelled. The petitioner gave his explanation and the 1st respondent passed an impugned order cancelling the appointment order. The said order has been made the subject matter of challenge in this writ petition.

4. The learned counsel for the petitioner submitted that the petitioner was acquitted from all charges since there was absolutely no evidence available against the petitioner. The learned counsel further submitted that the 1st respondent went wrong in finding that the petitioner was not honourably acquitted. The learned counsel submitted that such an expression is not found in the Code of Criminal procedure and the latest Judgment of the Hon'ble Division Bench of this Court in C.Surendhar Vs. the Director General of Police, Dr.Radhakrishnan Salai, Chennai and others in W.A.No.3877 of 2019 has categorically held that the Judgment given by the Criminal Court will have to be taken as it is and nothing can be read into the Judgment to hold it as honorable acquittal or an acquittal based on benefit of doubt.

5. The learned counsel submitted that the petitioner did not have any criminal case against him on the date on which he made the application and in fact the petitioner was also selected and he worked for nearly a month as a Grade II Constable. Thereafter, the impugned order came to be passed, cancelling the appointment.

6. The learned counsel for the petitioner would place reliance on the decision of the Hon'ble Supreme Court in Mohammed Imran Vrs. State of Maharashtra and others in Civil Appeal No.10571 of 2018, dated 12.10.2018 and he submitted that the Hon'ble Supreme Court had interfered with the cancellation of an appointment on the ground that the concerned person was acquitted of all charges in a criminal case and therefore the employer went wrong in canceling the appointment. The learned counsel submitted that the impugned order passed by the 1st respondent requires interference.

7. Per contra, Mr.P.S.Sivashanmuga sundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the Police force is a disciplined force and it cannot afford to have persons with criminal background. The learned Special Government Pleader submitted that what ever may be the reason for the acquittal, the employer is entitled to independently consider the criminal



antecedents and take a decision. The learned Special Government Pleader submitted that the 1st respondent has taken into consideration the facts of the case and considering the seriousness of the allegations made against the petitioner and the fact of the witnesses turned hostile, had come to a conclusion that the appointment of the petitioner must be cancelled, since he was not eligible to hold the post of Grade II Constable as per concerned rules. The learned Special Government Pleader in order to substantiate his submissions placed reliance upon the following Judgments of the Supreme Court:

i. 2018 (1) SCC 797 in the case of Union Territory, Chandigarh Administration and Ors. Vs Pradeep Kumar

ii. 2018 (6) CTC 659 in the case of State of Madhya Pradesh Vs. Abhijit Singh.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. Before going into the facts of the case, this Court wants to place reliance upon the judgment that were cited by the learned Special Government Pleader in the case of Union Territory, Chandigarh Administration and Others vs. Pradeep Kumar and Another reported in (2018) 1 SCC 797. In this judgment, the earlier judgment in Avatar Singh vs. Union of India and others was taken into consideration. The relevant portions of the judgment is extracted hereunder:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character."

10. The next judgment that can be taken into consideration is the judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar reported in (2018) 18 SCC 733. Even in this judgment, the judgment of the Hon'ble Supreme Court in Avatar Singh vs. Union of India and others was taken into consideration. The relevant portions in the judgment is extracted hereunder:



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"13. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition."

11. Hence, it is clear that the Hon'ble Supreme Court has strictly warned that persons with criminal antecedents should not be taken into Police force and their candidature must be rejected at the threshold. The Hon'ble Supreme Court has further held that the Police force is a disciplined force and it has a greater responsibility to maintain the law and order and public order in the society. Therefore, taking in persons having criminal antecedents, will create a wrong impression in the eyes of the public and such persons should be rejected even at the threshold.

12. The Hon'ble Supreme Court in Avtar Singh Vs Union of India & Ors in 2016 (8) SCC 471 had given certain guidelines. The above two judgments were rendered after taking into account the Judgment in Avtar Singh case and the above two judgments specifically deals with the Police force. Therefore, it becomes the duty of this Court to look into the allegations made against the delinquent employee in the criminal case, more particularly where it involves police force.

13. In the present case, the allegations made against the petitioner in the criminal case is that he along with three other accused persons had attacked the victim with wooden log and iron rod and had also abused him in filthy language and



they have also orally abused against his religion. It is further seen that P.W.1 who was the victim had clearly explained about the incident in the chief examination. However, he turned hostile at the time of cross examination. All other witnesses also turned hostile.

14. The Criminal Court therefore had acquitted all the accused persons on the ground that the prosecution has not proved charges. The finding given by the Criminal Court and the result of the criminal case does not have a binding effect on the respondents. The respondents are entitled to independently consider the case of the petitioner. The 1st respondent found that the allegations made against the petitioner is quite serious and all the witnesses turned hostile in the case and therefore, he thought it fit to cancel the appointment of the petitioner, since he did not want the candidate with such a criminal antecedent, to continue in the Police force.

15. In the considered view of this Court, the decision taken by the 1st respondent is clearly supported by the two Judgments of the Hon'ble Supreme Court which has been referred supra. This Court is also convinced with the fact that the allegations made against the petitioner in the criminal case are quite serious and it is not as if the petitioner got acquittal on merits. The Judgments of acquittal was a direct fall out of all the witnesses turning hostile in the case. This Court does not find any illegality in the order passed by the 1st respondent and there is no ground to interfere with the same.

16. In the result, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Principal/Commandant,
Ty.PRS, TSP III Battalion,
Veerapuram, Chennai - 55.
2. The Additional Director General of Police,
Police Training College,
Ashok Nagar, Chennai - 83.
3. The Public Prosecutor, Madras High Court, Chennai.

+1cc to Mr.P.I.Thirumoorthy , Advocate SR.No. 103799

+1 cc to Government Pleader Sr.No. 104053

W.P.No.6023 of 2018
and WMP.No.7410 of 2018

A.SK(03/01/2020)