



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.6024 of 2018
and W.M.P.No.7411 of 2018

M.Poovendra Raja

...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.D2/142/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: Mr.P.S.Sivashanmuga sundaram,
(for R2) 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. On 09.01.2016, there was a wordy quarrel between the victim



3. The case ended in acquittal, since the defacto complainant himself did not support 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.

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.

<https://hcservices.ecourts.gov.in/hcservices/>



WEB COPY

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:



WEB COPY

"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:

"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



WEB COPY

(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 Judgment in Avtar Singh 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 that have been made against the petitioner does not involve any moral turpitude. The entire incident is said to have happened at the heat of the moment. The incident itself is not supported by the defacto complainant and Court had acquitted the petitioner.

14. The Hon'ble Supreme Court in Avtar Singh Vs Union of India & Ors in 2016 (8) SCC 471 cited supra, has given certain guidelines with regard to the manner in which the case will have to be considered. In paragraph



WEB COPY

No.38.4.1, it was categorically held that the case which is trivial in nature and was involved in a petty offence, the employer can always condone the lapse. The Hon'ble Supreme Court has held that where a case involved moral turpitude or offences are serious in nature and the acquittal is as a result of technical ground, such acquittal should not be taken to be an honorable acquittal.

15. In the facts of the present case, the incident in question had happened in a spur of the moment and it did not involve any moral turpitude or a pre-planned attack. Considering the age of the petitioner during the relevant point of time and considering the facts and circumstances of the case, the 1st respondent ought to have condoned the lapses and should not have terminated the service of the petitioner by cancelling the appointment. Every individual deserves an opportunity to improve, learn from past and move ahead in life. If such cases are taken seriously, the petitioner will lose his hopes for future.

16. In the considered view of this Court, the impugned order passed by the 1st respondent requires interference. The facts of the case do not deserve such a harsh decision on the part of the 1st respondent, resulting in cancelling of the appointment of the petitioner.

17. In the result, the impugned proceedings of the 1st respondent made in C.No.D2/142/Ty.PRS-TSP III/2017, dated 06.01.2018 is hereby quashed and the 1st respondent is directed to reinstate the petitioner with all attendant benefits. This process shall be completed within a period of six weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vum



To

WEB COPY

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. 103800

+1 cc to Government Pleader Sr.No. 104053

W.P.No.6024 of 2018
and WMP.No.7411 of 2018

gj (CO)

A.SK(03/01/2020)