

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.02.2019

CORAM

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

W.P.No.5098 of 2018  
and  
W.M.P.No.6270 of 2018

M.Bharathiraja

..Petitioner

vs

- 1.The Chairman  
Tamil Nadu Uniformed Service  
Recruitment Board  
807, P.T.Lee Chengalvarrayar Maligai  
Anna Salai, Chennai - 2.
- 2.The Additional Director General of Police  
(Prisons), Wallens Road  
Egmore, Madras - 600 008

..  
Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in proceedings No.3583/EW1/2017 and dated 26.12.2017 and quash the proceedings therein as manifestly erroneous, illegal, incompetent and irregular and further direct the 1st respondent to select him to the post of Police Constable Grade II.

For Petitioner : Mr.V.Raghavachari

For Respondents : M/s.Narmadha Sampath  
Additional Advocate General  
Assisted by  
Mr.V.Kathirvel,  
Special Government Pleader for R1  
Mr.A.N.Thambidurai  
Special Government Pleader for R2

# O R D E R

The order of rejection passed by the 2<sup>nd</sup> respondent in proceedings dated 26.12.2017, deferring the selection of the writ petitioner for appointment to the post of Grade II Prison Warder is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the writ petition referred in the impugned order namely W.P.No.38296 of 2005 dated 28.02.2008 is no way connected with the writ petitioner. This apart, the criminal case registered against the writ petitioner ended with an order of acquittal. Therefore, the writ petitioner is entitled to be appointed as Grade-II Warder in the Tamil Nadu Jail Service.

3.The learned counsel for the petitioner states that none of the criminal case registered against the writ petitioner was proved and therefore, he established his innocence before the Criminal Court of Law and the details of the criminal cases registered against the writ petitioner, which are narrated in paragraph 3 of the affidavit filed in support of the writ petition, are extracted hereunder:-

|                                                                               |                                                                                                                |                                                  |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| 1.Thirunavalur PS Cr No:457/2010 U/s.342,323,324,IPC                          | The FIR was ordered to be closed u/s.468 (2) Cr.P.C.on the point of limitation.                                | Judicial Magistrate No:II, Ulundurpet            |
| ii) Thirunavalur PS Cr No:194/2012 U/s.147,148,294(b) 341,323,506(ii) IPC     | As per the requisition filed by the Investigation Officer in the above crime number further action is dropped. | Judicial Magistrate No:II, Ulundurpet            |
| (iii) Thirunavalur PS Cr No:500/2013 U/s.147,148,294 (b),323,324,506 (ii) IPC | Name of the petitioner is removed                                                                              | Assistant Inspector, Thirunavalur Police Station |
| (iv) Thirunavalur PS Cr No:370/2015 U/s.147,294(b), 353,506(ii) IPC           | The Magistrate records that no such incident could have taken place                                            | Judicial Magistrate No:II, Ulundurpet            |
| v) Thirunavalur PS Cr N:108/2017 U/s.294(b), 353,IPC r/w Sec 4 of TNWH Act    | Complainant not named.                                                                                         | FIR filed against an unidentified person.        |

4.The Column Nos.15,16 and 18 of the applications, inviting for the Post, which reads as follows:-

"Column Nos.15,16 and 18 of the application inviting for the post reads as follows:

"15.Have you ever been concerned in any criminal case as defendant?

16.Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with C.C.No and Court.

18.Are where any civil or criminal cases pending against you?"

5.In this regard, an explanation was provided by the writ petitioner, which is extracted hereunder:-

"A candidate has to disclose as to whether he has been concerned in any criminal case; whether he has been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence and whether any criminal or civil cases are pending against him. None happened here for me to record irrelevant material on an application. I was not (a) arrayed as an accused or convicted in any criminal case at any time I was involved in any case, criminal. Thus, the reason given for are absolutely bad and suffers from non-application of mind. The respondent cannot be casual or lethargic in its approach. Had the respondent issued notice I would have produced the material and this litigation could have been averted, the non-selection of the writ petitioner therein or rejection of my candidature by the respondent is not valid nor justified."

6.The learned Additional Advocate General appearing on behalf of the respondents made a submission that the writ petitioner had suppressed the very fact in relation to the registration of a criminal case against him. In this regard, the counter affidavit filed by the 2<sup>nd</sup> respondent, which reads as under:-

"It is submitted that the selection to the post of Grade II Warder is an initial appointment in the prison department, and therefore, the verification of the character and antecedents are of paramount importance in the selection. The petitioner has suppressed the fact of involvement in criminal case, he has also not furnished the details of criminal case. Further, it is submitted that the petitioner's name was included in the provisionally select list for the post of Grade II Warder in the Prison Department. He was subjected to Police verification and Medical examination. In the

Police verification roll, the petitioner has given the following undertaking.

i. I am applicant for appointment to the Tamil Nadu Police Force, do solemnly and sincerely declare that the answer furnished by me to the following questions are entirely true and accurate.

ii. I realize that if I am enlisted and my statement which has been made by me is found to be false, I shall render myself liable to be dismissed for obtaining service under false pretences.

While filling up of Verification Roll form on 16.09.2017(i.e) he has furnished the following details.

"15. Have you ever been concerned in any criminal = No" case as defendant?

"16. Have you ever been arrested or convicted and = No" sentenced under go imprisonment or pay a fine in any criminal or other offence?

"18. Are there any civil or criminal cases pending = No" against you?

It is clear that a candidate who had suppressed the material fact at the initial stage of submitting the application for recruitment to the Post of Grade II Warder is not entitled for getting appointment to the said post. This apart, recruitment to the Post of Grade II Warder in the uniformed service and any leniency or displaced sympathy in this regard by the authorities will jeopardize the administrative system, more specifically, the uniformed service. Taking into consideration, all the facts and Government order, the plea of the petitioner for appointment to the Post of Grade-II Warder could not be accepted as per Explanation 1 and 2 of G.O.Ms.No.1410, Home(Pri-II) Department, dated 17.10.2008. Hence, the petitioner was informed of the reasons for not appointing him to the post of Grade II Warder as per memo No.3583/EW.1/2017 dated 26.12.2017 of the 2<sup>nd</sup> respondent.

7. It is categorically stated that the writ petitioner had suppressed the material facts and not provided the information regarding the registration of the criminal case against him and his involvement in the criminal case. Thus, the decision taken by the authorities are in consonance with the rules in force and there is no infirmity as such. This apart, verification of character and antecedents are of paramount importance in respect of the selection to the Uniformed Services. Even on verification, the authorities were not satisfied in respect of the character and antecedent of the writ petitioner and considering all these aspects, the decision was taken and the

impugned order has been passed.

8.The writ petitioner had not informed the fact regarding the registration of the criminal case and his involvement in his original application submitted before the respondent for selection. The very suppression itself is a ground for rejection of the candidature. This apart, the verification of character and antecedent is also an important factor and the rules also says that satisfaction of the selection authorities are to be complied with and if there is any adverse record or behaviour, then the authorities competent are empowered to reject the candidature on that ground also.

9.In the present case on hand, the 5 criminal cases were registered against the writ petitioner. Though the writ petitioner states that the actions were dropped in respect of certain cases, it is brought to the notice of this Court that in one case, he was acquitted on the ground of benefit of doubt in respect of Crime No.108/2017.

10.This being the factum, this Court is of an opinion that the character and antecedent of the writ petitioner is not satisfactory, so as to consider his case for appointment to the Post of Jail Warder Grade II. The legal principles governing the selection of Uniformed Services are adjudicated by this Court in W.P.No.7606/2017 and a judgment was delivered on 21.04.2017, wherein Mr.V.Lakshmi Narayanan, the very same learned counsel, who is also a counsel on record in the present writ petition, advanced his arguments and the relevant paragraphs are extracted hereunder:-

"23.The submission of Mr. Lakshmi Narayanan, the learned counsel for the petitioner, that this Bench has earlier considered the case of similar facts on 08th March, 2017, we are of the opinion that all the aspects in this regard were meticulously considered with reference to the principles laid down by the Honourable Apex Court of India. We would like to quote certain paragraphs of the said Judgment to re-emphasize the views expressed by us in earlier Judgment.

"9.Thus, the 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."

24. We have considered the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 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."

25.In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our firm opinion as under:

"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.The Hon'ble Supreme Court of India in the case of UNION TERRITORY, CHANDIGARH ADMINISTRATION Vs.Pradeep Kumar and another in Civil Appeal No.67 of 2018 dated 8<sup>th</sup> March, 2018, also dealt with the point regarding the criminal case history and the right of appointment and the relevant paragraphs 9, 10, 11, 12, 13, 17 are extracted hereunder:-

"9. On 23.06.2010, the Inspector General of police, UT Chandigarh issued Standing Order No.44 of 2010 laying down the guidelines to consider cases of candidates selected in Chandigarh Police on having

found involvement in criminal cases in the past. This standing order deals with the cases of candidates before issuance of appointment and after issuance of appointment and joining. Relevant portion of the said Guidelines reads as under:- "GUIDELINES

(A) CASES BEFORE ISSUE OF APPOINTMENT

a) The candidature will be cancelled in case the candidate does not disclose the fact of his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the attestation form and the fact is subsequently found out from any verification report Page No. 6 of 15 received from the District authorities or for any/other source.

(b) If a candidate has disclosed his involvement and/or arrest in criminal cases (s), complaint case(s), preventive proceedings etc. the case will be referred to the Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal.

....."

In Guideline 2(A)(b), it is prescribed that if a candidate has disclosed his involvement in some criminal case in the attestation form then such case will be referred to Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal. In the present case, in all the cases of respondents, the aforesaid situation arises. On noticing the acquittal of the candidates, the cases of respondents were referred to Screening Committee. The Screening Committee carefully examined the cases of the respondents and the reasonings for their acquittal and the candidature of the respondents were rejected finding them not suitable.

10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person Page No. 7 of 15 is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598, in which this Court held as

under:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commissioner of Police, New Delhi and Another v. Mehar Singh* (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though Page No. 8 of 15 acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in *Mehar Singh* case, this Court held as under:-

"23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming

a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* AIR 1964 SC 787 this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram* (2013) 1 SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court

observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

.....

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be Page No. 10 of 15 treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

.....

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in

public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

The same principle was reiterated in *State of Madhya Pradesh and Others v. Parvez Khan* (2015) 2 SCC 591.

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in *Avtar Singh v. Union of India and Others* (2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (38.5), "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."

13. It is thus well settled that an 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 character and 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.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in *Mehar Singh* case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening

Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

12. In view of the legal principles settled both by the Hon'ble Division Bench of this Court as well as by the Apex Court of India, this Court is of an undoubted opinion that the candidate, who had suppressed the material facts in the application as well as the candidates, who had involved in a criminal case is certainly not eligible to seek appointment to the Uniformed Services and therefore, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman  
Tamil Nadu Uniformed Service  
Recruitment Board  
807, P.T. Lee Chengalvarrayar Maligai  
Anna Salai, Chennai - 2.
2. The Additional Director General of Police  
(Prisons), Wallens Road  
Egmore, Madras - 600 008

+1cc to Mr. V. Raghavachari, Advocate, S.R.No.14860  
+1cc to the Government Pleader, S.R.No.15571 & 15153

W.P.No.5098 of 2018

SR(CO)  
CS/25/03/2019