

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2019

Coram:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P. No.5896 of 2013

R.Govindasamy

... Petitioner

..vs..

1. Tamil Nadu Uniform Services Recruitment Board,
Represented by its Chairman,
Chennai-600 002.

2. The Director General of Police,
O/o. Director General of Police,
Chennai-600 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 2nd respondent herein in Na.Ka.No.22584/Appointment 1(2)/2010 dated 20.07.2010, quash the same, further direct the 2nd respondent herein to issue appointment order and send the petitioner for training for the post of Police Constable Grade-II along with any subsequent batch which is sent for training.

For Petitioner : Mr.V.Babu

For Respondents: Ms.K.Bhuvaneshwari, AGP

ORDER

The instant writ petition has been filed, challenging the orders issued by the Director General of Police in Na.Ka.No.22584/Appointment 1(2)/2010 dated 20.07.2010, and to quash the same, further direct the 2nd respondent herein to issue appointment order and send the petitioner for training for the post of Police Constable Grade-II along with any subsequent batch which has been sent for training.

2. The petitioner applied for the post of Constable Grade-II in the year 2007. The petitioner after passing the written test, was selected for appointment to the said post. The petitioner's appointment was cancelled on the ground that the petitioner was involved in a criminal case. The petitioner stated that he had married a girl by name Brindha and her father

had given a complaint against the petitioner for offences of kidnapping and rape. Thereafter, on 19.01.2019, the petitioner gave a representation to the 2nd respondent stating that he had been acquitted in S.C.No.5 of 2010 on the file of Assistant Sessions Court, Dharmapuri by an order dated 20.07.2010. The representation was rejected by the 2nd respondent and the same is under challenge in the instant writ petition.

3. The learned counsel for the petitioner would contend that merely initiating a criminal case is not a sufficient ground to disqualify the appointment of the petitioner. The learned counsel also relied on a judgment of the Hon'ble Supreme Court in the case of Avtar Singh v. Union of India and Others reported in (2016) 8 SCC 471 which lay down the circumstances which should be taken his allotment before rejecting an application of a candidate who is involved in a criminal case.

4. The learned counsel for the respondent on the other hand would contend that as per Rule 14(b)(iv) of the Tamil Nadu Special Police Sub-ordinate Service Rules, 1978 the petitioner is not entitled for the appointment to the post of Grade-II Police Constable.

5. The Hon'ble Supreme Court in its decision held in Avtar Singh v. Union of India and Others reported in (2012) 8 SCC 471, has observed in paragraph No.38 as follows:

'38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. 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.

38.2. 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.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. 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:

38.4.1. In a case 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.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. 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.

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.

38.6. 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.

38.7. 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.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the

appointing authority would take decision after considering the seriousness of the crime.

38.9. 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.

38.10. 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 basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.'

6. The said judgment has also been followed by the Hon'ble Supreme Court in the case of Vikram Singh v. Commissioner of Police reported in (2018) 1 SCC 308.

7. The learned counsel for the respondents relied on the subsequent judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and others v. Abhijit Singh Pawar in Civil Appeal No.11356 of 2018. The facts of that case is that the respondent therein was alleged the offence of rape and the issue was compromised. The said case is distinguishable in facts and cannot be applied in the present case.

8. The impugned order is not in line with the judgment of the Hon'ble Supreme Court in Avtar Singh v. Union of India (cited supra). The petitioner is happily married to his wife. It is only his father-in-law who had filed the criminal case. The criminal case has also ended in acquittal, by an order dated 29.04.2010, passed by the learned Assistant Sessions Judge, Dharmapuri.

9. All these factors are not taken into consideration which are relevant to the law as per the judgment of the Hon'ble Supreme Court in the case of Avtar Singh v. Union of India and Others reported in (2012) 8 SCC 471.

10. Accordingly, this Writ Petition is allowed and the impugned order passed by the 2nd respondent herein in Na.Ka.No.22584/Appointment 1(2)/2010 dated 20.07.2010, is set aside. The 2nd respondent is hereby directed to consider the application of the petitioner afresh in the light of the judgment of the Hon'ble Supreme Court in Avtar Singh's case cited supra. The 2nd Respondent shall pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Chennai-600 002.
2. The Director General of Police,
O/o. Director General of Police,
Chennai-600 004.

+lcc to the Government Pleader, S.R.No. 87397

W.P. No.5896 of 2013

PA(CO)
GN(11/12/2019)

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