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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6020 of 2013

and

M.P.No.3 of 2013

R.Vijayakumar

... Petitioner

Vs

The Commandant,
Tamil Nadu Special Police,
IIIrd Battalion, Veerapuram,
Chennai - 55.

... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the file in C.No.A1/4601/12 Bo.No.255/2013 on 26.03.2013 from the file of the respondent and quash the same and issue a fresh order of appointment to the petitioner as Grade II Police Constable in the Tamil Nadu Special Police Service in the list of selection 2012.(Prayer amended as per order dated 03/11/2014 in MP.No.1 of 2013 in WP.No.6020 of 2013).

For Petitioner : Ms.R.T.Sundari

For Respondents : Ms.K.Bhuvaneswari,
Additional Government Pleader

O R D E R

The instant writ petition is for a writ of Certiorarified Mandamus calling for the file in C.No.A1/4601/12 Bo.No.255/2013 on 26.03.2013 from the file of the respondent and quash the same and issue a fresh order of appointment to the petitioner as Grade II Police Constable in the Tamil Nadu Special Police Service in the list of selection 2012.

2.The petitioner had applied for the post of II Grade Police Constable. He participated in the written test, physical test and medical examination. The petitioner was issued with the appointment order vide proceedings Na.Ka.A1/4601/2012 dated 23.01.2013 and the petitioner was informed that he will be communicated about the date of joining the training. However, the petitioner did not receive a letter and he was informed that his appointment has been canceled on the ground that there was a



criminal case pending against him. The cancellation order was ultimately communicated to the petitioner on 10.04.2013 and this order is under challenge in the the instant writ petition.

3.The petitioner was involved in a criminal case registered in Katpadi Police Station in crime no.598 of 2010 under Section 294(a), 324 and 506(2) of IPC. The said case ended in acquittal by the Judicial Magistrate, Katpadi on 25.11.2010. The petitioner therefore states that the order canceling his appointment is unsustainable in law.

4.The respondents have filed a counter affidavit stating that there was a suppression of fact in the application form submitted by the petitioner and the petitioner, having been involved in a criminal case, was not entitled for appointment to the said post.

5.Heard, the learned counsel for both sides.

6.The petitioner was involved in a criminal case registered in Katpadi Police Station in Crime No.598 of 2010 filed under Section 294(b), 324, 506 (2) IPC. Subsequently, he was acquitted by an order dated 25.11.2010. The date on which he filed his application for selection to the post of TSP Police Constable is 12.11.2012 ie., after the date of acquittal. He was therefore, not convicted or was he facing any criminal proceedings on the date on which he filed the application. The respondent therefore could not have canceled his appointment on the ground that he was involved in a criminal case. This issue is covered by a Judgment of the Hon'ble Supreme Court in the case of Avtar Singh Vs. Union of India. Paragraph 38 of the said order reads as under:

"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."

7. The impugned order is not in line with the Judgment of the Hon'ble Supreme Court. It is therefore set aside. The matter is remanded back to the respondent and the respondent is directed to reconsider the case of the petitioner in the light of the Judgment of the Hon'ble Supreme Court of India cited supra and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.



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8.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commandant,
Tamil Nadu Special Police,
IIIrd Battalion, Veerapuram,
Chennai - 55.

+1 cc to M/s.R.Margabandhu, Advocate Sr.No. 87072
+1 cc to The Government Pleader Sr.No. 87396

AKM/08.01.2020/5P- 4C /

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