

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos. 6272 of 2013

and

MP.No. 1 of 2013

A.Jayamoorthy ... Petitioner

Vs

- 1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, PT.Lee, Chengalvaraya Naicker Building,
Anna Salai, Chennai - 2.
2. The Additional Director General of Police,
(Training),
O/o. Director General of Police,
Mylapore, Chennai - 4.
3. The Superintendent of Police,
Cuddalore District, Cuddalore. ... Respondents

Prayer in WP.No. 17677 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarifid Mandamus, calling for the entire records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.A-4/35540/2012, dated 24.12.2012 and quash the same and consequently, direct the respondents to issue appointment order to the petitioner (Registration Police Constables/Grade II Jail Wardens/ Firemen - 2012.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.Akhil Akbar Ali

Government Advocate for R1 & R2

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarifid Mandamus, calling for the entire records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.A-4/35540/2012,

dated 24.12.2012 and quash the same and consequently, direct the respondents to issue appointment order to the petitioner (Registration Police Constables/Grade II Jail Wardens/ Firemen - 2012.

2. The applications were invited from the State for selection of Grade-II Police Constables/Grade II Jail Wardens/ Firemen - 2012. The petitioner who had educational qualifications applied for the post. The application form containing the column as to whether any criminal case is pending against the applicant. The petitioner against the said column ticked the option "No". The petitioner was issued a hall ticket bearing No.0503371. He took examination and participated in the physical fitness test held on 24.01.2012.

3. The petitioner submits that he had cleared the said examination also and was waiting for appointment order. The petitioner got the appointment order. The petitioner was served with an order dated 24.12.2012 in Na.Ka.No.A-4/35540/2012 passed by the Superintendent of Police, Cuddalore District, Cuddalore stating that he had suppressed the fact of a criminal case that he was involved in a criminal case for offences under Section 294(b), 323, 324 and 506(ii) IPC r/w 4 of Women Harassment Act, on the file of the Inspector of Police, kadampuliyur Police Station, Cuddalore district.

4. Rule 13(b) of the Special Rules for Tamil Nadu Special Police Subordinate Service reads as under:-

"No persons shall be eligible for appointment to the service by direct recruitment unless satisfy the appointing authority and the details of norms are furnished.

ii) that the character and antecedent are such as the qualift him for such service.

iii) that he was not involved in any criminal case before Police verification.

Explanation 1: A person who is acquitted or discharge on benefit of doubt or due to the fact that complainant turned hostile shall be treated a person involved in a criminal case.

Expalanation 2: A person involved in a criminal case at time of Police verification and the case yet to be disposed of and subsequently ended in honorable acquittal or treated as mistake of fact shall be treated as non involvement in a criminal case and he can claimed right for appointment only be participating in the next recruitment

11) Taking in to consideration, all the facts

and the law points discussed above, the plea of the petitioner for appointment to the post of Grade-III Police Constable could not be accepted as per various court decisions and explanation (1) to Rule 13(e) of Special Rules for Tamil Nadu Special Police Subordinate Service, hence his request is rejected."

5. Similar Rules were also provided in Rule 14(b) of the Special Rules for Tamil Nadu Special Police Subordinate Service is extracted here under:-

"(b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that

i) he is sound health, active health and free from any bodily defect or infirmity unfitting him for such service and

ii) his character and antecedents are such as to qualify him for such service; and

iii) such a person does not have more than one wife living and

iv) he has not involved in any criminal case before police verification

Explanation (1): A person who is acquired or discharged on benefit of doubt or due to the fact that the complainant turned hostiles shall be treated as a person involved in a criminal case.

Explanation (2): A person involved in criminal case at the time of police verification and the case has yet to be disposed of and subsequently ended in honorable acquittal or treated as a mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment.

Similar rule available in TNPSS (i.e for AR/Taluk) candidates."

It is this order dated 24.12.2012 denying the petitioner appointment as a Police Constable on the ground that he has involved in a criminal case is under challenge in the present writ petition.

6. It is contended by the learned counsel for the writ petitioner that a criminal case was registered against him, but the parties had entered into a compromise. The criminal case against him has been compounded by an order dated 30.08.2012 passed by the Judicial Magistrate-II, Panruti and therefore, the petitioner was justified by stating that he has not involved in a criminal case.

7. Heard the counsel for the parties.

8. The petitioner in the application form was required to state as to whether criminal case is pending with the applicant. The petitioner had fill in the column as "No". The material on record would shows that the petitioner was involved in a criminal case in CC.No.60/12 on the file of Judicial Magistrate-II, Panruti on offences under Section 294(b), 323, 324 and 506(ii) IPC r/w 4 of Women Harassment Act.

9. The question is as to whether the application of the candidate must be accepted or rejected. The Hon'ble Supreme Court of India in Avtar Singh Vs. Union of India & Others reported in (2016) 8 SCC 471, has observed 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."

10. As per the judgment of the Hon'ble Supreme Court of India, every suppression does not entail rejection of the application. The nature of the offence is extremely relevant.

11. Keeping in view of the judgment of the Hon'ble Supreme Court of India, it will be appropriate to remand the matter to the respondent No.2/The Additional Director General of Police, (Training), to take a decision regarding this aspect of the case, keeping in mind the pronouncement of the Hon'ble Supreme Court of India.

12. The respondent No.2 / The Additional Director General of Police, (Training), is directed to take a decision regarding the case of the writ petitioner within a period of 4 weeks from the date of receipt of a copy of this order. The writ petition stands disposed of. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn

To

1.The Member Secretary,

Tamil Nadu Uniformed Services Recruitment Board,
No.807, PT.Lee, Chengalvaraya Naicker Building,
Anna Salai, Chennai - 2.

2. The Additional Director General of Police,
(Training), O/o. Director General of Police,
Mylapore, Chennai - 4.

3. The Superintendent of Police,
Cuddalore District, Cuddalore.

+1cc to Mr. C.Prakasam, Advocate SR.No. 14690

W.P.Nos. 6272 of 2013

A.SK(18/03/2019)