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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.T. ASHA

W.A.No.1796 OF 2019

- 1 TAMILNADU UNIFORMED SERVICES
RECRUITMENT BOARD OLD COMMISSIONER OF
POLICE OFFICE CAMPUS PANTHEON ROAD EGMORE
CHENNAI.
- 2 THE SUPERINTENDENT OF POLICE
CUDDALORE CUDDALORE DIST. ... Appellants/Respondent

versus

M.SUDHAN ... Respondent/Petitioner

Writ Appeal filed to set aside the order dated 18-12-2017 made in WP.27518/2017.

WP No.27518/2017 : Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for records in Na.Ka.No.A4/333/AR/2017-9 dated 09.10.2017 on the file of the 2nd respondent and quash the same as unsustainable and unconstitutional and consequently direct the 1st respondent to issue order of appointment to the petitioner for the post of Gr.II Police Constable, Gr.II-Jail Warden and Fireman.

For appellants : Mrs.A.Sri Jeyanthi, Spl.G.P.

For Respondent : Ms.S.Thilaka
for Mr.N.Ramesh

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The learned Single Judge set aside the order dated 9 October 2017 on the file of the Superintendent of Police, Cuddalore, and directed the appellants to issue order of appointment to the respondent as Grade II Police Constable/Grade II Jail Warder/Fireman notwithstanding his involvement in a criminal case, which was the basis for the rejection of his



candidature. The order is under challenge at the instance of the Tamil Nadu Uniform Services Recruitment Board.

2. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel appearing for the respondent.

3. The respondent submitted application for appointment to the post of Grade II Police Constable. The application was pursuant to the notification issued in the year 2016. The respondent has come out successful in the written test, physical measurement test and physical efficiency test. The respondent in the attestation form indicated that he was not involved in any criminal case. The attestation form was sent for verification. The police found that he was involved in Cr.No.647/2016. Since there was non disclosure about the criminal case, he was not considered for appointment. Even after taking note of the acquittal of the respondent in C.C.No.33/2017, the second appellant issued a proceedings dated 9 October 2017 indicating that the character and antecedent of the respondent is not satisfactory and as such, he would not be given appointment. It was the said order which was challenged before the writ court.

4. The Hon'ble Supreme Court in Avatar Singh vs. Union of India and others, 2016(8) SCC 471, has considered conflict of opinion in the various decisions rendered by the earlier Benches on the question of suppression of information or submission of false information in the verification form pertaining to the involvement, arrest or prosecution or the pendency of a criminal case. The Hon'ble Supreme Court after considering a string of decisions rendered earlier, observed that verification of character and antecedents is one of the important criteria for assessing the suitability of a candidate. The Supreme Court further observed that it is open to the employer to adjudge the antecedents of the incumbent, but ultimate action has to be based upon objective criteria on due consideration of all relevant aspects.

5. The Hon'ble Supreme Court summarized its conclusion in the following words :-

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



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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 recourse 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



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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. This Court, in similar circumstances, by judgment dated 23 November 2017 in W.A.Nos.741 of 2017 etc. batch, remanded the matter to the Police Department to reconsider the case of denial of appointment in the light of the law declared by the Hon'ble



Supreme Court in Avatar Singh. The said judgment was followed by another Division Bench, of which one of us (K.K.S., J.) was a party, in W.A.Nos.211 and 632 of 2016 dated 10 April 2019. Since the facts are similar in nature, we are of the view that the case of the appellant should also be considered by the respondents in the light of the judgment in Avatar Singh.

7. The order dated 9 October 2017 is set aside. We direct the appellants to consider the case of the respondent for appointment on merits and in the light of the law declared by the Hon'ble Supreme Court in Avatar Singh. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

8. The intra court appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

- 1 TAMILNADU UNIFORMED SERVICES
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POLICE OFFICE CAMPUS PARTHON ROAD EGMORE
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- 2 THE SUPERINTENDENT OF POLICE
CUDDALORE CUDDALORE DIST.

+1cc to Government Pleader SR.No.58580

W.A.No1796 OF 2019

RSI (CO)
GMY (28/08/2019)
GMY (13/09/2019)