

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	21/12/2018
Orders Pronounced on	11/1/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.7957 of 2013
and MP No.1 of 2013

S. Manikandan

... Petitioner

Vs

1. Tamil Nadu Uniformed Services Recruitment Board
rep. By its Member Secretary
No.807 P.T.Lee Chengalvarayan Naicker Maaligai
Anna Salai
Chennai 600 002.

2. The Superintendent of Police
District Police Office
Salem District
Nethimedu
Salem 632 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of declaration, declaring the action of the respondent, in not issuing the appointment order to the post of Grade II Constable for the year 2012 to the petitioner pursuant to the selection made as illegal, arbitrary and contrary to law and consequently direct the respondent to issue an appointment order to the petitioner to the post of Grade II Constable for the year 2012.

For petitioner ... Mr.Balan Haridas

For respondents ... Mr.B.Anand
Government Advocate

O R D E R

The petitioner has filed the instant writ petition, for a declaration, declaring the action of the Tamil Nadu Uniformed Services Recruitment Board, in not issuing the appointment

order, to the post of Grade II Constable, for the year 2012, to the petitioner, as illegal, to be arbitrary and contrary to law and consequently, direct the first respondent, to issue an appointment order, for the petitioner, to the post of Grade II Constable, for the year 2012.

2. Facts in brief are that the petitioner is a Graduate in B.Sc (Textile and Fashion Design). An advertisement was issued by the first respondent in March 2012, inviting applications for 11,485 posts of Grade II Constable/Grade II Jail Warders/Fireman. The petitioner applied for the same. The selection is based on a written examination and physical endurance test. The petitioner cleared both and was called for a medical test which was also cleared by him. Appointment orders were issued. Petitioner found that persons who had scored less than the petitioner were given appointment orders while the petitioner did not get any appointment order.

3. Petitioner made enquiries and found that the petitioner was not given the appointment order, on the ground that he was involved in a criminal case, for an offence, under Section 294 (b) of the Indian Penal Code.

4. Petitioner states that a complaint was lodged against him, on 30/7/2011, for an offence under Section 294 (b) of the Indian Penal Code. Case was tried as S.T.C.No.1082 of 2011, before the Judicial Magistrate No.2, Sankagiri. Petitioner was acquitted by judgment, dated 12/1/2012. After the acquittal, the petitioner filled the form, on 16/4/2012.

5. Respondents have filed a counter. According to the respondents, Rule 14 (b) of the Tamil Nadu Police Service Subordinate Rules, stipulates that, if a person is involved in a criminal case, he would not be entitled for appointment on the police force.

6. Rule 4 (b) of the Tamil Nadu Police Service Subordinate Rules, reads as under:-

"No person shall be eligible for appointment to the service by direct recruitment unless satisfy the appointing authority.

(ii). that the character and antecedents are such as to qualify him for such service.

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

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

Explanation 2: A person involved in a criminal

case at the time of Police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as non-involvement in a criminal case and he can claim right for appointment only by participating in the next recruitment. According to the respondents since the petitioner was involved in a criminal case he was not considered fit for appointment as a Grade -II Constable."

The petitioner has therefore filed the instant writ petition for a direction to appoint him as a Grade-II Constable.

7. Heard the learned counsel for the parties.

8. Application form has been filled by the petitioner. Column No.29 A of the application form reads as under:-

"29. Whether any criminal case is pending against you?

Answer:- "No".

9. Material on record further discloses that the petitioner was acquitted, on 12/1/2012. On 16/4/2012, when he filled in the application form, there was no criminal case pending against the petitioner. Petitioner has therefore, not suppressed any material fact. Column No.29 of the form does not require the petitioner to disclose as to whether he was involved in any criminal case. Had the application form stipulated that the applicant must disclose as to whether he was involved in a criminal case and if the petitioner had suppressed this, then the situation would have been different.

10. The Hon'ble Supreme Court in AVTAR SINGH Vs. UNION OF INDIA AND OTHERS {(2016) 8 SUPREME COURT CASES 471}, while dealing with the issue regarding suppression of information with respect to involvement in a criminal case, an appointment on the Police force, 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 no 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 a false information as to a fact which was not even asked for.

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

11. The trial Court, acquitted the petitioner because, the prosecution examined only the Investigation Officer and was not able to bring any other evidence. It can therefore be said that there was no evidence against the petitioner other than the testimony of the Investigation Officer and the acquittal cannot be said to be on the basis of benefit of doubt.

12. Offence under Section 294 (b) of the Indian Penal Code can be called as a case, which is trivial in nature. Section 294 of the India Penal Code reads as under:-

"267 [294. Obscene acts and songs.-Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]"

In any case, he has been acquitted and he has not suppressed any fact in the application. The petitioner had to

only disclose as to whether any criminal case is pending against him.

13. In view of the facts and circumstances of the case, the petitioner ought to have been selected and he should not have been deprived of the appointment, as Grade 2 Constable. The writ petition is allowed. Respondents are directed to appoint the petitioner, in a vacancy, for the year 2019 - 2020.

14. The writ petition is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/gsp

To

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807 P.T.Lee Chengalvarayan Naicker Maaligai,
Anna Salai,
Chennai 600 002.
2. The Superintendent of Police,
District Police Office,
Salem District,
Nethimedu, Salem 632 002.

+1 cc to Mr.Balan Haridas, Advocate Sr.No.3723

order in
Writ Petition No.7957 of 2013

RSI (CO)
CSL/21.02.2019

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