

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.11.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.9597 of 2013

K.Manikandan

...Petitioner

Versus

1.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Chengalvaraya Naicker Maligai,
Anna Salai,
Chennai - 2.

2.The Director General of Police,
Law & Order, Tamilnadu,
Dr.Radhakrishnan Salai,
Chennai - 4.

3.The Superintendent of Police,
Villupuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.A2/13000/2012 dated 22.12.2012 issued by the third respondent, and quash the same and consequently, direct the 2nd respondent to consider the petitioner for appointment to the post of Grade - II Police Constable - 2012 on the basis of the selection made pursuant to the notification issued by the first respondent in Advertisement No.112 in the year 2012.

For Petitioner : Mr.A.Rajaram
For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

The relief sought for in the present writ petition is to call for the records in Na.Ka.No.A2/13000/2012 dated 22.12.2012 issued by the third respondent, and quash the same and consequently, direct the 2nd respondent to consider the

petitioner for appointment to the post of Grade - II Police Constable - 2012 on the basis of the selection made pursuant to the notification issued by the first respondent in Advertisement No.112 in the year 2012.

2. It is the case of the petitioner that he had completed 12th Standard and he participated in Grade II Police Constable Selection in the year 2012 conducted by the first respondent Recruitment Board and he was selected to the post of Grade - II Police Constable. In the year 2011, the writ petitioner was implicated in a Criminal Case as a First Accused (A1) and later acquitted by the Judicial Magistrate Court No.I, Thindivanam in C.C.No.61/2012 dated 11.01.2013.

3. The writ petitioner passed the written test in the year 2012, physical test on 22.08.2012 and medical test on 24.06.2012. However, but the writ petitioner had not received appointment order, till date, since his alleged involvement in a criminal case. Similarly placed persons on par with him, were selected and appointment orders were issued. Hence, the petitioner made representations to the respondents 1 & 2 but the same was yet to be considered by the respondent.

4. While so, the third respondent passed an order in Na.Ka.No.A2/13000/2012 dated 22.12.2012, rejected the petitioner's appointment to the post of Grade - II Police Constable. In the said order, it is stated that the petitioner was involved and implicated in Criminal Case in Ps.Cr.No.102/11 s/s 294(b), 293(b), 323, 324, 506(ii) IPC as A1 on the file of Vellimedupet Police Station. Hence, he was not selected for the post of Grade II Police Constable. Aggrieved by the aforesaid order of the third respondent, the petitioner has filed the present writ petition for the relief stated supra.

5. The learned counsel for the petitioner submitted that Criminal Case was pending against the petitioner in Crime No.102 of 2011 and subsequently, he was acquitted in the Criminal Case by its judgement dated 22.12.2012, on the file of the Judicial Magistrate Court, Tindivanam, therefore, he is eligible for selection to the post of Grade II Police Constable for the academic year 2012. Therefore, the impugned order passed by the third respondent is liable to be quashed and the first respondent may be directed to issue appointment order to the petitioner.

6. The learned Special Government Pleader appearing for the respondents would contend that the petitioner involved in a Criminal Case in Ps.Cr.No.102/11 under Sections 294(b), 323, 324 and 506(ii) IPC as A1, but he has not disclosed the same in the

application filed by him for the selection to the post of Grade II Police Constable. Hence, the third respondent passed the impugned order dated 22.12.2012, rejecting the appointment of the petitioner since he was found ineligible to the said post as per the Recruitment Conditions prescribed by the respondents.

7. Heard both sides and perused the materials available on record.

8. The first respondent Recruitment Board called for applications for the post of Grade II Police Constable for the year 2012, the petitioner was selected to the said post, but the third respondent rejected the petitioner's selection on the ground that he was previously involved in a Criminal Case as First Accused (A1). However, he was acquitted from the said Criminal Case in Crime No.102 of 2011 on the file of the Judicial Magistrate Court, Tindivanam.

9. It is relevant to rely on the decision rendered in W.A.No.2977 of 2019, dated 27.09.2019, wherein the Division Bench of this Court, held as follows:

"13. In Commissioner of Police, New Delhi and another Vs. Mehar Singh (2013) 7 SCC 685, the Hon'ble Supreme Court held as under:

"23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extend of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its

object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P.Kapur Vs. Union of India* [AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable."

14. In the case of *Union Territory, Chandigarh Administration and Others Vs. Pradeep Kumar and another* 2018 (1) SCC 797, the Hon'ble Supreme Court held as follows:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh [Commr. of Police Vs. Mehar Singh]*, (2013) 7 SCC 685: (2013) 3 SCC (Cri) 669: (2013) 2 SCC (L&S) 910] and *Parvez Khan [State of M.P. Vs. Parvez Khan]*, (2015) 2 SCC 591: (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be

recruited to the Police Service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character."

15. In the case of State of Madhya Pradesh and others Vs. Abhijit Singh Pawar [2018 (6) CTC 659], the Hon'ble Supreme Court held as under:

"15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) Cr.P.C, the law declared by this Court in Mehar Singh [Commr. of Police Vs. Mehar Singh, (2013) 7 SCC 685: (2013) 3 SCC (Cri) 669: (2013) 2 SCC (L&S) 910], specially in paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and suitability of the candidate. While so, considering the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohd. Imran (Mohd. Imran Vs. State of Maharashtra, Civil Appeal No.10571 of 2018, order dated 12.10.2018 (SC)] is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of the said decision, this Court had found that the only allegation against the

appellant therein was that he was travelling in an autorickshaw which was following the autorickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohd.Imran (Mohd.Imran Vs. State of Maharashtra, Civil Appeal No.10571 of 2018, order dated 12.10.2018 (SC)) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (Commr. of Police Vs. Mehar Singh, (2013) 7 SCC 685: (2013) 3 SCC (Cri) 669: (2013) 2 SCC (L & S) 910], Parvez Khan [State of M.P. Vs. Parvez Khan, (2015) 2 SCC 591: (2015) 1 SCC (L & S) 544] and Pradeep Kumar [UT, Chandigarh Admn. Vs. Pradeep Kumar, (2018) 1 SCC 797: (2018) 1 SCC (Cri) 504: (2018) 1 SCC (L&S) 149]

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge [Abhijit Singh Pawar Vs. State of M.P., W.P.No.9412 of 2013, order dated 31.07.2014 (MP)] as well as by the Division Bench [State of M.P. Vs. Abhijit Singh Pawar, 2015 SCC Online MP 7517] and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."

16. In the instant case, the appellant had not disclosed his involvement in a criminal case, in the respective column of the application. The Superintendent of Police, Dharmapuri in his proceedings in R.C.No.13100/2012/A3, in paragraph 3 has stated as follows:

"(3) As per Government Rule No.101 Sub (Police 9) Department, dated 30.12.2003 and Tamil Nadu Special Police Subordinate Service Rule No.14(b) for appointment to the post of Police Constable Grade II, he should

not be involved in any criminal case and his antecedent conduct and character should be satisfactory. Further, as per explanation No.1 of Tamil Nadu Special Police Subordinate Service Rule No.14(b), a person acquitted on benefit of doubt or discharged in a criminal case due to the fact that the complainant turned hostile, he can be considered as person involved in criminal case. Hon'ble Chennai High Court in the judgment issued in W.P.No.38296/2005 dated 28.02.2008, on 28.02.2008, it was ordered that if the applicant while completing his form had concealed his involvement in criminal case or criminal case is pending against him, the appointing authority considering the fact that he concealed the fact, inspite of result of the criminal case in any manner, his appointment can be rejected."

17. Therefore, the respondent department rejected his selection, based on unsatisfactory character and antecedents of the appellant as stated in the aforesaid proceedings. The appellant/writ petitioner made a representation on 22.07.2017 informing that CrI.O.P.No.20191 of 2013 was allowed on 15.02.2017. Further, in addition to the aforesaid fact, the respondent rejected the selection of the writ petitioner/appellant by stating the reason that the appellant suppressed his involvement in criminal case pending against him in the application. The writ petitioner/appellant challenged the criminal case registered against him in Cr.No.16 of 2011 under Section 147, 427 and 323 of I.P.C before this Court in CrI.O.P.No.20191 of 2013 under Section 147, 427 and 323 of I.P.C before this Court in CrI.O.P.No.20191 of 2013. It was not quashed as stated by the appellant, but it was closed by recording the statement of Additional Public Prosecutor. Thereafter only, the writ petitioner/appellant made a representation to the respondent on 22.07.2017 for considering appointment to the appellant after a lapse of five years. Hence, the writ petition is liable to be dismissed on the ground of delay and latches also.

18. The contention of the appellant that the criminal proceedings in Cr.No.16 of 2011 is quashed by this Court cannot be accepted as the same is contrary to the records. Further, under clause 15 of the application, the appellant has not disclosed the particulars of his involvement in the criminal case

pending against him in the application. Therefore, in the light of the decision of the Hon'ble Supreme Court in Pradeep Kumar case (supra), a candidate recruited to the Police Service must be impeccable character and integrity and a person having criminal antecedents will not fit in this category. Even though the candidate is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case. The decision of the authority must be taken as final unless it is malafide against the respondent. Therefore, the respondent department passed the final order on 08.01.2013, rejecting the selection of the appellant on the ground that the appellant concealed the material fact. The appellant has not challenged the decision of the respondent authority by attributing any malafide against the respondent authority. Further, recruitment for the post of Grade II Police Constable was held during the year 2012, but the appellant, after a long lapse of time that too after order passed by the respondent rejecting the selection of the appellant, has filed the writ petition. Therefore, the writ petition is liable to be rejected on the ground of laches also. Thus, we have no hesitation to reject the arguments advanced by the learned counsel appearing for the appellant. The writ appeal is devoid of merit and the same is liable to be dismissed.

19. In the facts and circumstances of the case and the decisions cited supra, the writ appeal stands dismissed. No costs."

10. Thus, the aforesaid decision squarely apply to the facts of the case on hand. Therefore, there is no valid ground on the contention of the writ petitioner to interfere with the impugned order passed by the respondent. Hence, the writ petition deserves to be rejected as the same is devoid of merit.

11. In view of the facts and circumstances of the case coupled with the decision rendered by the Division Bench of this Court in W.A.No.2977 of 2019 dated 27.09.2019, this Writ Petition shall stand dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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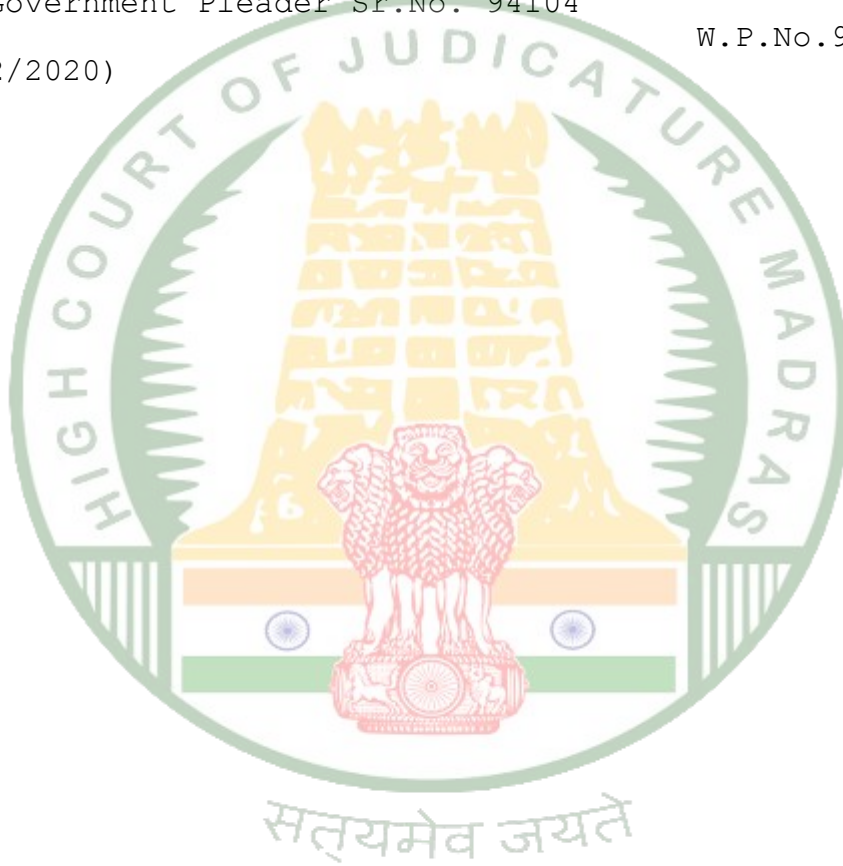
To

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+1 cc to Government Pleader Sr.No. 94104

W.P.No.9597 of 2013

A.SK(19/02/2020)



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