

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.13090 & 13095 of 2019
W.M.P.Nos.13221,13224,13314,13232 of 2019

1. S.Maharajan

...Petitioner in W.P.No.13090 of 2019

2. R.Rajaram

...Petitioner in W.P.No.13095 of 2019

Vs.

1. Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai 600 009.

2. Director General of Police,
Chennai 600 004.

3. The Chairman Member Secretary and
Director General of Police,
Uniformed Services Recruitment Board,
Anna Salai,
Chennai 600 008.

4. Additional Commissioner of Police,
Traffic Head Quarters,
Veppery,
Chennai 600 007.

.. Respondents in both W.Ps

Prayer in WP.No.13090 of 2019:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus (i) to call for the records pertaining to the impugned Notification and its Guidelines issued by third respondent herein in Notification No.2/2019, dated 08/03/2019 in so far as para 16(g) is concerned and the consequential rejection order passed by the fourth respondent herein in his proceedings Na.Ka.No.Pa.Pi.3/Po.Va/177/6237/2019 dated

16/04/2019 and quash the petitioner to attend the selection to the post of Sub-Inspector of Police(Taluk, Armed Reserve & Tamil Nadu Special Police) 2019, under the 20% reservation for the in-service candidates quota, without reference to the punishment of 'postponement of increment for one year without cumulative effect' issued in P.R.No.11/2007 u/r 3(b). (ii) To issue an interim direction directing the fourth respondent herein to issue the No Objection Certificate forthwith without reference to the punishment in P.R.No.11/2007 u/r 3(b).

Prayer in WP.No.13095 of 2019:

The Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorari Mandamus, to Call for the records pertaining to the impugned Notification and its Guidelines issued by the 3rd Respondent herein in Notification No 2/2019 dated 8-3-2019 in so far as para 16(g) is concerned and the consequential rejection order passed by the 4th respondent herein in his proceedings NA.KA.NO.PA.PI.3/PO.VA/177/6237/2019 dated 16-4-2019 and quash the same and consequently direct the respondents herein to permit the petitioner to attend the selection to the post of as Sub Inspector of police Taluk armed reserve and tamil nadu special police 2019 under the 20% reservation for the in-service candidates quota, without reference to the punishment of postponement of increment for one year without cumulative effect: issued in P.R.No.11/2010

For Petitioner : Mr.G.Bala
for M/s.G.Bala and Daisy

For Respondents : Mr.A.N.Thambi Durai
Special Government Pleader
for RR1, 2 & 4
Mr.V.Kadhirvelu
Special Government Pleader for R3.

C O M M O N O R D E R

The impugned order dated 16.04.2019 rejecting the claim of the writ petitioner for selection and appointment to the post of Sub-Inspector of Police by way of direct recruitment under the 20% of reservation for the in-service candidates is under challenge in the present writ petitions.

2. The case of the writ petitioners were rejected for selection and appointment to the post of Sub-Inspector of Police on the ground that the writ petitioners suffered a punishment of postponement of increment for one year without cumulative effect

issued in P.R.No.11/2007 under Rule 3(b). Challenging the said rejection order, the present writ petitions are filed.

3. The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners are now working as Grade II Police Constable.

4. The writ petitioners are eligible and qualified for recruitment to the post of Sub-Inspector of Police by way of direct recruitment. 20% reservations are provided for in-service candidates quota and therefore, the writ petitioner has submitted an application under the said quota.

5. The learned counsel for the writ petitioner states that the rules relating to consider the cases for grant of in-service candidates quota is that punishment awarded beyond five years need not be taken into account for the purpose of rejecting the selection and appointment for direct recruitment to the post of Sub-Inspector of Police. Relying on the erstwhile rule, the learned counsel for the writ petitioner states that the rule followed earlier to be continued in the present selection also.

6. However, the learned counsel for the writ petitioner fairly enclosed a copy of the amended rule, which was issued by the Government in G.O.Ms.No.168, Home(Police VI) Department dated 02.03.2017. As per the amended rule, the check period of five years had been deleted and in that place it is stated as "a clean record of service without any punishment other than the minor punishments of Black Mark, Reprimand and/or Censure".

7. Thus, a clean record of service is mandatory for the purpose of considering the cases for selection and appointment to the post of Sub-Inspector of Police by way of direct recruitment for the year 2019 to in- -service candidates quota.

8. The learned counsel for the writ petitioner states that the rule was not in force and therefore, the rule should not be implemented for the purpose of selection to the post of Sub-Inspector of Police.

9. The learned Special Government Pleader appearing on behalf of the respondents states that the amendment to the said rules to the post of Sub-Inspector of Police, was issued by G.O.Ms.No.168 Home(Police VI) Department dated 02.03.2017 and as per the amended rule "a clean record of service without any punishment other than the minor punishments of Black Mark, Reprimand and/or Censure" are to be considered for the purpose of selecting candidates for direct recruitment to the post of Sub-Inspector of Police.

10. It is further contended that the candidates submitted their applications under in-service candidates quota based on the amended rules, which is in force as of now.

11. The amended rule has got a purpose and object sought to be achieved. The appointment is made to the post of Sub-Inspector of Police by way of direct recruitment, which is the uniformed service. Even the subject rules contemplates verification of antecedent and character, in respect of the candidates, who all are applying from open market. When the candidates who are submitting application from open market for recruitment to the post of Sub-Inspector of Police, the verification of Character and antecedent for in-service candidates are also of paramount importance. It is not a promotion, wherein the promotion rules are to be applied to the writ petitioner, who has submitted an application for direct recruitment to the post of Sub-Inspector of Police under the recruitment rules in force. Thus, the verification of character and antecedent in the cadre are to be done with reference to the subject rules in force.

12. The verification of character and antecedent is an important factor, which is contemplated under the subject rules. Thus, a candidate who suffered a punishment is to be screened properly and in this regard, decisions are to be taken by the administrative authorities, whether to consider those candidates for appointment to the post of Sub-Inspector of Police by way of direct recruitment.

13. Even recently, the three judges bench of the Hon'ble Supreme Court of India in the case of State of Madhya Pradesh vs Abhijit Sing Pawar reported in 2018 (6) CTC 659 held that even after the disclosure is made by a candidate, the Employer would be well within his rights to consider the antecedent and the suitability of the candidate. While so, considering the case of the candidates, the Employer can certainly take into account the job profile for which the selection is undertaken and 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. The relevant paragraphs also contemplates that verification of character and antecedent is mandatory. In the event of any adverse remarks by the reporting officer, then the same also is to be considered by the Competent Authority at the time of considering the selection of a particular candidate. Paragraph Nos.15 & 17 of the Judgment are extracted hereunder:

"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) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 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 the 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.

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities 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 as well as by the Division Bench and dismiss Writ Petition No. 9412 of 2013 preferred by the respondent. No costs."

14. Considering the judgments of the Hon'ble Supreme Court of India, the Hon'ble Full Bench of the High Court of Madhya Pradesh answered the questions in relation to the selection. In the case of Ashutosh Pawar Vs. High Court of Madhya Pradesh, reported in 2018 1 CTC 353, the Hon'ble Full Bench formulated the following questions for the decision of the Larger Bench.

1. Whether in all cases, where an FIR lodged against a person for minor offences has been quashed on the basis of a compromise arrived at between the parties or a person has been acquitted on account of a compromise between the parties, the character of the person applying for appointment thereafter, has to be treated as Good and such a person cannot be held ineligible for appointment under the Rules of 1994?

2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that

the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?

3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?

4. Whether the high standards of adjudging the good character of a candidate for appointment as a Judicial Officer, which has been adopted and followed by the State under the Rules of 1994 till the decision in the case of Arvind Gurjar (supra) were and are right and proper or whether in view of the decision in the case of Arvind Gurjar (supra), the same should be considered to be relaxed to the extent that in all cases the character of a person should be treated to be good where he has been acquitted for minor offences on the basis of a compromise?

5. Whether the decision in the case of Arvind Gurjar (supra) lays down the correct law?

6. Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide?

15. The Hon'ble Full Bench elaborately adjudicated the issues involved in respect of selection and the pendency of criminal case against the candidates and the relevant paragraphs 33 to 45 of the judgment cited supra are extracted hereunder:

33. This brings us to consider the Question Nos. 2 and 3 referred to for the opinion, which read as under:-

QUESTION Nos. 2 & 3:

" 2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person

concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?

3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

34. The power of judicial review under Article 226 of the Constitution of India is not that of a Court of appeal but to find out whether the decision-making process is in accordance with law and is not arbitrary or irrational. In a Constitution Bench judgment reported as AIR 1954 SC 440 (T.C. Basappa v. T. Nagappa) it was held that the High Court has power to issue writs in a case where subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of record but such jurisdiction is not wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned. Relevant extract of the said decision is reproduced as under:-

"(11) In dealing with the powers of the High Court under article 226 of the Constitution this Court has expressed itself in almost similar terms vide - 'Veerappa Pillai v. Raman and Raman Ltd., AIR 1952 SC 192 at pp. 195-196 (I) and said:

"Such writs as are referred to in article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction, vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in

manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under article 226 of the Constitution.

(24). As regards the omission to include hiring charges the High Court has observed that the Tribunal did not record any finding that such hiring was proved. The Tribunal has in fact found that as regards some cars they were hired, while others had been taken on loan, the money value for their use having been paid by the first respondent which is tantamount to saying that he had to pay the hiring charges. The matter has been dealt with in paragraph 29(d) of the Tribunal's order and the entire evidence has been gone through.

We are unable to say that the finding of the Tribunal that the respondent No. 1 had omitted to include in his return of election expenses the dinner and hotel charges is a finding unsupported by any evidence. Reference may be made in this connection to paragraph 29(f) of the Tribunal's order which deals with the matter in detail.

On the whole our opinion is that the so-called apparent errors pointed out by the High Court are neither errors of law nor do they appear on the face of the record. An appellate Court might have on a review of this evidence come to a different conclusion but these are not matters which would justify the issue of a writ of certiorari. In our opinion the judgment of the High Court cannot be supported and this appeal must be allowed. The writ issued by the High Court will therefore be vacated. We make no order as to costs of this appeal."

35. In another Constitution Bench judgment reported as AIR 1965 SC 532 (State of Mysore v. K.N. Chandrasekhara), the question examined was in relation to the appointment to the post of Munsif by the Karnataka Public Service Commission. The Court

held that if the High Court was satisfied that the persons, who were occupying the post were appointed contrary to the Rules, the High Court could set aside the proceedings of the Commission and direct preparation of fresh list according to law but could not direct to include the name of the six petitioners only because they applied to the Court. The relevant extract read as under:-

"10. It may at once be observed that the order passed by the High Court cannot in any view of the case be sustained. The High Court could, if it held that the notification issued by the Commission and the appointments made by the State pursuant thereto were made in violation of the statutory rules, quash the list but the High Court could not direct that the names of six persons merely because they had applied for setting aside the list of candidates selected for promotion be incorporated in that list. The direction made by the High Court was in the nature of mandamus. Such a direction could be issued against a person or body to compel the performance of a public duty imposed upon it by law-statutory or common. The commission is undoubtedly a body constituted pursuant to the provisions of the Constitution and has to exercise powers and perform functions entrusted to it by the Rules framed under Art. 309. But the order which the High Court made was not for compelling performance of its duty imposed upon the Commission by statute or common law. If the High Court came to the conclusion that the proceeding of the Commission was vitiated on account of some irregularity or illegality, it could declare the proceeding void. The High Court however held that the orders including respondents 4 to 13 to the petitions in the list of persons eligible for appointment should be allowed to stand, because the petitioners in the petitions before it did not insist on the issue of a writ of quo warranto. If the High Court was satisfied on an application specifically made in that behalf that the persons who were occupying posts to which they were appointed contrary to the rules governing the appointment and consequently were not competent to occupy the posts, it is difficult to appreciate the ground on which the High Court would be justified in declining to pass appropriate orders. Either the High Court could set aside the proceeding of the Commission and direct preparation of a fresh list according to law, or the High Court could dismiss the petitions because in its view the list was regularly

prepared. But the order passed by the High Court maintaining the inclusion of respondents 4 to 13 in the list and then directing the Commission to include the names of the six petitioners in the list merely because they had applied to the High Court is without authority."

36. In another judgment reported as (1969) 3 SCC 489 (Thakur Birendra Singh v. The State of M.P.), the Court held that the High Court could have quashed the orders but the High Court was not sitting in appeal over the decision of the Board of Revenue. Once the orders complained of are quashed, the matter should have been left at large without any further direction leaving the Revenue Authorities free to take any steps.

37. The scope of power of judicial review has also been examined in a judgment reported as (1994) 6 SCC 651 (Tata Cellular v. Union of India), the Supreme Court held as under:—

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, 154, Lord Brightman said:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * *

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of

authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In R.v.Panel on Takeovers and Mergers, exp Datafin plc (1987) 1 All ER 564, Sir John Donaldson, M.R. commented:

"An application for judicial review is not an appeal." In Lonrho plc v.Secretary of State for Trade and Industry (1989) 2 All ER 609, Lord Keith said: "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin v. Entry Clearance Officer, (1983) 2 All ER 864, Re, Lord Fraser observed that:

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In R. v. Panel on Take-overs and Mergers, exp in Guinness plc (1989) 1 All ER 509, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,

4. Reached a decision which no reasonable tribunal would have reached or,

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality,** namely, **Wednesbury unreasonableness.**

(iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* (1991) 1 ACR 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

38. The Supreme Court in a judgment reported as (2008) 1 SCC 683 (*Aravali Golf Club v. Chander Hass*) has held that in the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State. The Court held as under:-

"17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen (2007) 1 SCC 408; and S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State-the legislature, the executive and the judiciary-must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book The Spirit of Laws) broadly holds the field in India too. In Chapter XI of his book The Spirit of Laws Montesquieu writes:

"When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

(Emphasis supplied)

We fully agree with the view expressed above. Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for "overreach" and encroachment into the domain of the other two organs."

39. A Full Bench of this Court in Writ Appeal No. 581/2017 (Nitin Pathak v. State of M.P.) examined the question as to whether in exercise of power of judicial review the Court can refer the matter to a Court chosen expert or whether the Court itself can act as Court of appeal and make a different view than what has been finalised as the model answer key by the Examining Body. The Bench held as under:-

"32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power."

40. In view of the law laid down in above said judgments, there is no doubt that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of appeal over the reasons recorded by the State Government. We find that the decision of the State Government holding that the petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post and the duties to be discharged.

41. Even if the High Court finds that the decision of the State Government is suffering from some illegality, the jurisdiction of the High Court in a writ petition under Article 226 of the Constitution of India is to remit the matter to the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own. The Supreme Court in a judgment reported as (1994) 4 SCC 448 (State of Haryana v. Naresh Kumar Bali) was examining a question: as to whether there could be a direction to appoint a candidate, who sought appointment on compassionate ground. The Supreme Court held as under:-

"16. With regard to appointment on compassionate ground we have set out the law in Life Insurance Corp'n. of India v. Asha Ramchandra Ambekar (1994) 2 SCC 718. The same principle will clearly apply here. What the High Court failed to note is the post of an Inspector is a promotional post. The issuing a direction to appoint the respondent within three months when direct recruitment is not available, is unsupportable. The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226."

42. Again while considering the question of compassionate appointment in a judgment reported as (2008) 8 SCC 475 (General Manager, State Bank of India v. Anju Jain), the Supreme Court held that there could not be any direction for appointment or promotion. The relevant para of the said decision is extracted as under:-

"37. Even on second ground, the submission of the Bank is well-founded. As noted earlier, the learned Single Judge issued direction to the Bank to appoint the writ petitioner, widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person."

43. Similar view has been expressed in a judgment reported as (2014) 3 SCC 767 (Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar) wherein while dealing with the scope of Writ of Mandamus in the matter of appointment/recruitment, the Supreme Court held, thus:-

"25. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order (Shivanand v. Gulbarga University, Writ Appeal No. 3216 of 2004, order dated 19-11-2009/24-11-2009 (KAR) of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion."

44. Therefore, the High Court could not issue any direction for appointment of a candidate from the date the other candidates were appointed as such is not the jurisdiction vested in the High Court under Article 226 of the Constitution of India.

45. In view of the above, we find that the judgment of this Court in Arvind Gurjar's case (supra) does not lay down the correct law as the High Court has substituted its decision regarding suitability of a candidate and also issued a direction to appoint the petitioner, therefore, the entire judgment does not lay down correct law and is thus, overruled. The question Nos. 2 and 3 are answered accordingly.

QUESTION No. 6:

(6) Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide?

16. In view of the above judgment, which was delivered by the Hon'ble Full Bench relying on the judgments of the Hon'ble Supreme Court of India, the case of the writ petitioner cannot be considered and the order of rejection passed by the respondents is in accordance with law and there is no infirmity as such.

17. In the present case on hand, the Government issued an order amending the rules in G.O.Ms.No.168 Home(Police VI) Department dated 02.03.2017, which is the order of the Governor issued under Article 309 of the Constitution of India. This being the principles to be followed, this Court is of the considered opinion that the amended rule has got a meaning and sense that the person having clean records in service alone must be considered for direct recruitment to the post of Sub-Inspector of Police. The post of Sub-Inspector of Police carries duties and responsibilities, which is important in nature. Thus, a person who suffered punishment in service need not be considered for direct recruitment to the post of Sub-Inspector of Police. This apart, the verification of character and antecedent includes the verification of punishment suffered in the various other posts held by the candidates, who are all aspiring to secure Sub-Inspector of Police, by way of direct recruitment.

18. Thus, the amended rule is in accordance with the legal principles settled by the Supreme Court as well as by the larger bench of the Madhya Pradesh High Court. Based on the Supreme Court judgment, when the amended rule is sensible and has got object that the person having clean records alone are to be recruited to the post of Sub-Inspector of Police, there is no infirmity as such in respect of the impugned order passed by the respondent in this regard. Admittedly, the writ petitioners suffered a punishment of postponement of increment for one year without cumulative effect and therefore, the rejection is in consonance with the legal principles as well as in accordance with amended rules.

19. The learned counsel for the writ petitioners brought to the notice of this Court that some other candidates who suffered punishment were included in the selection list issued, as they had been granted with no objection certificates. The learned Additional Government Pleader replied that in some cases, no objection certificates were issued erroneously and it was brought to the notice of the Chairman Recruitment Board, who in turn immediately sent letters to the authorities concerned for the purpose of cancellation of no objection certificate issued in violation of the amended rules in force.

20. This Court made it very clear that once the amended rules are implemented it must be uniform to all the candidates, who are all submitting their respective applications, aspiring to secure appointment by way of direct recruitment to the post of Sub-Inspector of Police. There cannot be any discrimination in application of the rules in force. Even in some cases, where no objection certificate issued by mistake

or inadvertently, suitable actions are to be taken to maintain consistency and uniformity in the matter of selection and appointment to the post of Sub-Inspector of Police.

21. Thus, the authorities competent are bound to ensure the appropriate actions to conduct selection strictly in accordance with the rules in force and by providing equal opportunity to all the candidates who are all aspiring to secure appointment under the 20% reservation for the in-service candidates quota to the post of Sub-Inspector of Police.

22. Accordingly, the writ petitions stand devoid of merits and they are stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai 600 009.
2. Director General of Police,
Chennai 600 004.
3. The Chairman Member Secretary and
Director General of Police,
Uniformed Services Recruitment Board,
Anna Salai,
Chennai 600 008.
4. Additional Commissioner of Police,
Traffic Head Quarters,
Veppery,
Chennai 600 007.

+1cc to Government Pleader sr.42510

W.P.No.13090 & 13095 of 2019

W.M.P.Nos.13221,13224,13314,13232 of 2019

nr 28/06/2019