

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14935 of 2018

and

W.M.P.Nos.17654 & 17655 of 2018

E.Manikandan

..Petitioner

vs

1.The State of Tamilnadu

Represented by its Secretary to Government
Home Department
Fort St.George, Chennai - 9.

2.The Member Secretary

The Tamilnadu Uniformed Services
Recruitment Board,
No.8 Old Commissioner of Police Office Campus
Pantheon Road, Egmore, Chennai - 8.

3.The Additional Director General cum

Director of General of Prisons
Venals Road, Egmore, Chennai - 08.

4.The Superintendent of Police

Cuddalore District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in vide proceedings in No. 3583/EW.1/2017-17 dated 17.11.2017 and quash the same and consequently directing the respondents to appoint the petitioner (Enrollment No. 0522527) as Grade II Jail Warden in Prison Department in pursuance of provisional selection order issued by the 2nd respondent.

For Petitioner

: Mr.M.Saravanakumar

For Respondents

: M/s.Narmadha Sampath
Additional Advocate General
Assisted by
Mr.D.Suriyanarayanan
Additional Government Pleader

O R D E R

The order of rejection dated 17.11.2017 in relation to the claim of the writ petitioner to appoint him to the Post of Grade II Jail Warden in Prison Department pursuant to his provisional selection is under challenge in the present writ petition.

2. In response to the Recruitment Notification issued for appointment to the Post of Grade II Police Constable, Grade II Jail Warden and Fireman, the writ petitioner had participated in the process of selection and was successful in the written examination. The writ petitioner attended Physical Test and other required tests conducted by the Selection Committee. The name of the writ petitioner was included in the provisional selection list and he was waiting for an order of appointment.

3. Surprisingly, the impugned order was issued by the respondents in proceedings dated 17.11.2017, stating that the writ petitioner had involved in Thookanampakkam P.S.Cr.No.79/2016 U/s.147, 294(b), 506(ii) r/w 4 of TNWH Act and therefore, his character and antecedent are found unsatisfactory and accordingly, the Selection Committee had taken a decision to reject the candidature of the writ petitioner.

4. The learned counsel for the writ petitioner states that undoubtedly, a criminal case was registered against the writ petitioner. However, the petitioner was acquitted and the charges against the writ petitioner in the criminal case was also not serious and he was impleaded along with many other persons in the criminal case.

5. The learned Additional Advocate General states that the writ petitioner was acquitted on benefit of doubt and further investigation of the respondents revealed that the character and conduct of the writ petitioner is not satisfactory. Thus, the committee had taken a decision to reject the selection of the writ petitioner for appointment to the Post of Grade-II Jail Warden.

6. This Court is of an opinion that verification of the character and antecedent is of paramount importance for Uniformed services. This apart, the decision in this regard by the competent Selection Committee is final and the judicial review against the decision taken by the Committee is certainly limited. If there is any malpractice or illegality in respect of the decision taken, then only, the

power of judicial review can be exercised by this Court under Article 226 of the Constitution of India.

7. In the present case on hand, it is not disputed that the writ petitioner had involved in criminal case and subsequently, acquitted. Thus, the verification of character and antecedent undertaken by the competent authorities cannot be found fault with. When the Selection Committee came to the conclusion that the character and antecedent of the writ petitioners are not satisfactory, then High Court would not entertain with such decision for the purpose of providing appointment to the writ petitioner, which may cause prejudice to the interest of the Uniformed Services.

8. The legal principles in the matter of selection had already been decided by this Court as well as by the Hon'ble Supreme Court of India in W.P.No.7606/2017 and a judgment was delivered on 21.04.2017 and the relevant paragraphs are extracted hereunder:- and the relevant paragraphs are extracted hereunder:-

"23. The submission of Mr. Lakshmi Narayanan, the learned counsel for the petitioner, that this Bench has earlier considered the case of similar facts on 08th March, 2017, we are of the opinion that all the aspects in this regard were meticulously considered with reference to the principles laid down by the Honourable Apex Court of India. We would like to quote certain paragraphs of the said Judgment to re-emphasize the views expressed by us in earlier Judgment.

"9. Thus, the matter came to be considered by a Bench of Three Judges in Avatar Singh Vs. Union of India [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [reported in 2010 (14) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in Paragraph 34 of the Judgment in Avatar Singh:

"No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects."

24. We have considered the legal aspects dealt

with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 are extracted below:

"15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the

employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

"21.If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi Versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straight forward. Be that as it may."

25.In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our firm opinion as under:

"26.we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service."

9.The Hon'ble Supreme Court of India in the case of UNION TERRITORY, CHANDIGARH ADMINISTRATION Vs.Pradeep Kumar and another in Civil Appeal No.67 of 2018 dated 8th March, 2018, also dealt with the point regarding the criminal case history and the right of appointment and the relevant paragraphs 9, 10, 11, 12, 13, 17 are extracted hereunder:-

"9. On 23.06.2010, the Inspector General of

police, UT Chandigarh issued Standing Order No.44 of 2010 laying down the guidelines to consider cases of candidates selected in Chandigarh Police on having found involvement in criminal cases in the past. This standing order deals with the cases of candidates before issuance of appointment and after issuance of appointment and joining. Relevant portion of the said Guidelines reads as under:- "GUIDELINES

(A) CASES BEFORE ISSUE OF APPOINTMENT

a) The candidature will be cancelled in case the candidate does not disclose the fact of his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the attestation form and the fact is subsequently found out from any verification report Page No. 6 of 15 received from the District authorities or for any other source.

(b) If a candidate has disclosed his involvement and/or arrest in criminal cases(s), complaint case(s), preventive proceedings etc. the case will be referred to the Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal.

....."

In Guideline 2(A)(b), it is prescribed that if a candidate has disclosed his involvement in some criminal case in the attestation form then such case will be referred to Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal. In the present case, in all the cases of respondents, the aforesaid situation arises. On noticing the acquittal of the candidates, the cases of respondents were referred to Screening Committee. The Screening Committee carefully examined the cases of the respondents and the reasonings for their acquittal and the candidature of the respondents were rejected finding them not suitable.

10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person Page No. 7 of 15 is

acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598, in which this Court held as under:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though Page No. 8 of 15 acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in Mehar Singh case, this 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 extent 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 Page No. 9 of 15 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 v. 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.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram* (2013) 1 SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were

initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

.....

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be Page No. 10 of 15 treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

.....

35. The police force is a disciplined force.

It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he 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 because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

The same principle was reiterated in State of Madhya Pradesh and Others v. Parvez Khan (2015) 2 SCC 591.

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in Avtar Singh v. Union of India and Others (2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (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."

13. It is thus well settled that an 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 character and antecedents and examine, whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan 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 repose in it and must examine the candidate with utmost character.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

10. In view of the legal principles settled by the Hon'ble High Court as well as the Apex Court, the decision taken by the competent authorities, rejecting the claim of the writ petitioner for appointment to the Post of Grade II Jail Warden is in consonance with the rules of the legal principles and there is no infirmity as such.

11. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS iii)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government

Home Department

Fort St.George, Chennai - 9.

2.The Member Secretary

The Tamilnadu Uniformed Services

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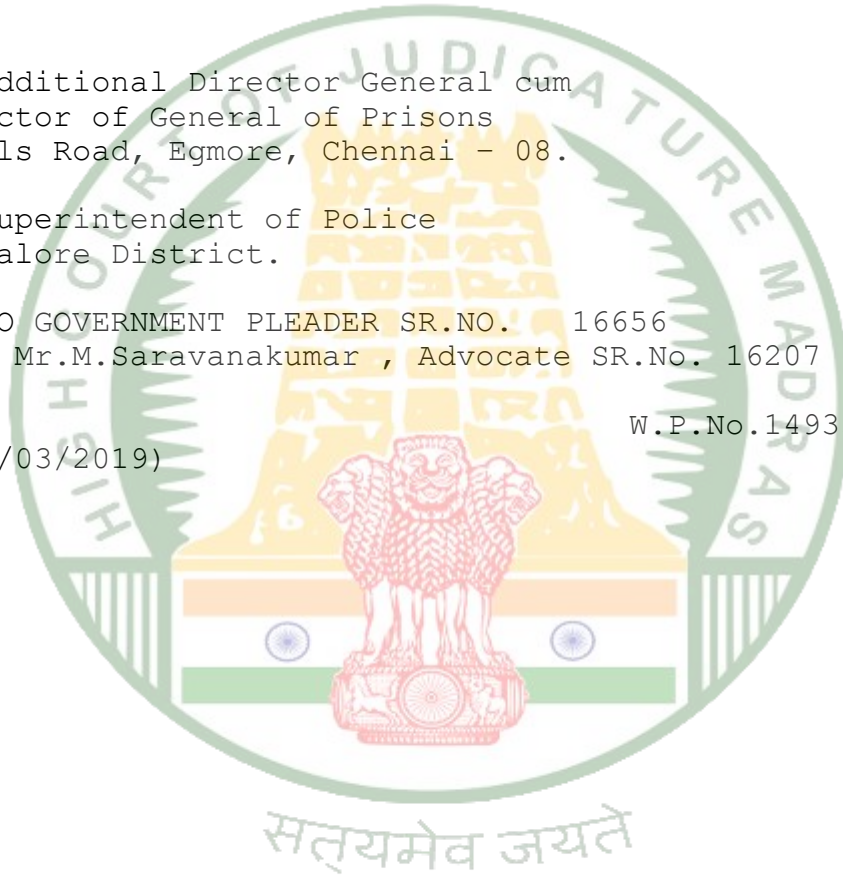
Cuddalore District.

+1 CC TO GOVERNMENT PLEADER SR.NO. 16656

+1cc to Mr.M.Saravanakumar , Advocate SR.No. 16207

W.P.No.14935 of 2018

A.SK(22/03/2019)



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