

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-03-2019

CORAM

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

W.P.No.24898 of 2018

S.Hemanathan

.. Petitioner

- Vs. -

1. The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-4.

2. The Superintendent of Police,
Thiruvallur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order passed by him in Na.Ka.No.A2/6421/2017 dated 14.5.2018 and quash the same and direct the respondents to appoint the petitioner as Grade II Police Constable and send him for training and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkata Ramani,
Senior Counsel for
Mr.M.Muthappan.

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader.

ORDER

The order of rejection dated 14.5.2018, rejecting the claim of the writ petitioner for selection to the post of Grade II Police Constable in the Tamil Nadu Police Service, is under challenge in the present writ petition.

2. Pursuant to the Recruitment Notification, issued by the Competent Authority, for appointment to the post of Grade II Police Constable in the Tamil Nadu Special Police Battalion, the

writ petitioner submitted an application to participate in the process of selection.

3. The writ petitioner was successful in the written examination and allowed to participate in the physical efficiency test and secured the required cut off marks and further participated in the other required tests and also the medical test.

4. One of the requirements under the Rules are that the Competent Authority has to verify the character and the antecedents of the candidates for the purpose of including their names in the Final Select List.

5. Verification of character and antecedents were undertaken in respect of the case of the writ petitioner and a criminal case was registered against the writ petitioner in Crime No.85 of 2015 on the file of Arambakkam Police Station, Thiruvallur District for the offences punishable under Sections 147, 148, 294(b), 352, 324, 506 (ii) IPC read with Section 149 IPC. The writ petitioner was arrayed as an accused No.8 and a charge sheet has been filed before the Criminal Court of Law.

6. The learned Senior Counsel, appearing on behalf of the writ petitioner, states that the criminal case registered against the writ petitioner was quashed by the High Court in Criminal Original Petition No.22451 of 2017 dated 25.10.2017.

7. In view of the fact that the criminal case itself was quashed, the writ petitioner is entitled to be considered for selection to the post Grade II Police Constable, as there was no trial or a final order in the criminal case.

8. The learned Senior Counsel for the writ petitioner further relied on the judgment of this Court in the case of Sivanesan vs. Superintendent of Police, Tiruvannamalai District [decided on 26.2.2013 in WP No.177 of 2013] and the relevant paragraphs 17, 18 are extracted hereunder:-

"17. If these two judgments are taken note of, then reliance placed on by the respondent in Manikandan's case cannot have any direct relevance to the case on hand. On the other hand, the petitioner was honest and had disclosed the pendency of the criminal case. Since the very FIR itself has been quashed by this court, it cannot be said that he was involved in the criminal case, which case is admittedly a false one filed at the instance of one Murugesan, who remained absent when in the criminal original petition

notice was ordered. It must also be true that Arachelvi's sister-in-law was the Sub Inspector of Police, who was instrumental in registering the case against the petitioner. For no fault on the part of the petitioner, he cannot be punished when he was not involved in any criminal case. After all, in the present case what was happened was the love marriage between one Sudhakar and Arachelvi and that the two of them were major. It was said to have been converted into a criminal case at the instance of some aggrieved relatives of the girl.

18. Further, it will not be out of place to refer to a judgment of the Supreme Court in *Lata Singh v. State of U.P.*, reported in (2006) 5 SCC 475, wherein the Supreme Court had considered the case of inter-caste marriage of couples and false cases being lodged by the police and the duty of the police to take stern actions against persons who are committing crimes against such couples and in paragraphs 14 to 18, the Supreme Court had observed as follows :

"14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

15. We are of the opinion that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above), the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment,

threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of "honour" killings of such persons who undergo inter-

caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

(Emphasis added)

In the present case, the Arni police instead of helping the couples, who got married, had not only filed a false case against the husband, but also against his friends who helped them to get married."

9. The similar facts and circumstances were considered by this Court and directions were issued to appoint the candidate. Thus, the present writ petition is also to be allowed.

10. The learned Special Government Pleader, appearing on behalf of the respondents, relying on the counter statement, contended that during the process of police verification, it is found that previously an FIR was registered in Crime No.85 of 2015 against the writ petitioner under Sections 147, 148, 294 (b), 352, 324, 506 (ii) IPC read with Section 149 IPC on the file of the Aarambakkam Police Station, Thiruvallur District.

11. Thus, the conduct and character was found not satisfactory for appointment to the post of Grade II Police Constable. It is further stated that "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 not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment [G.O.Ms.No.101, Home (Police IX) Department, dated 30.1.2003]" and which was amended in Tamil Nadu Special Police Subordinate Service Rules in para-14(b).

12. The fact regarding the amendments were intimated to the writ petitioner in office endorsement dated 14.5.2018 for the non-appointment to the post of Grade II Police Constable. The writ petitioner filed a writ petition in WP No.265 of 2018 to consider his representation dated 6.11.2017 and the said writ petition is pending as of now.

13. It is further contended that the order of quashing the FIR No.85 of 2015 was based on the compromise between the parties concerned and therefore, the writ petitioner was not appointed to the post of Grade II Police Constable.

14. It is relevant to extract the order passed by this Court in Criminal OP No.22451 of 2017 dated 25.10.2017 and the relevant paragraphs 4, 5 and 6 are extracted as under:-

"4. Today, the petitioners as well as the 2nd respondent/defacto complainant are personally present before this Court and also have been identified. An affidavit of the 2nd respondent/defacto complainant dated 25.10.2017 is also filed to the effect that she has no objection to quash the proceedings in Cr.No.85 of 2015 on the file of the Inspector of Police, F-3, Arambakkam Police Station, Thiruvallur District.

5. Recording the same, the proceedings in Cr.No.85 of 2015 on the file of the Inspector of Police, F-3, Arambakkam Police Station, Thiruvallur District is quashed. The Criminal Original Petition is allowed.

6. The Memorandum of Compromise dated 10.09.2017 between the petitioners and the 2nd respondent/defacto complainant and the affidavit filed by the 2nd respondent/defacto complainant dated 25.10.2017 shall form part of the order."

15. The criminal case registered against the writ petitioner was quashed based on the fact that the de facto complainant compromised the issues with the accused persons and there was no objection from the Inspector of Police.

16. Taking note of the compromise between all the parties, the First Information Report registered against the writ petitioner was quashed. The question arises whether such an order will extend protection for a candidate for the purpose of seeking selection to the post of Grade II Police Constable.

17. This Court considered the legal principles in the matter of selection, more specifically, to the post of Grade II Police Constable in WP No.10689 of 2013 dated 12.7.2018. The Judgement of the Hon'ble Supreme Court has been relied. The relevant paragraphs 6 and 7 are extracted hereunder:-

"6. 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?

7. 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 as of 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 Corpn. 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?"

18. Even recently, the Three Judges Bench of the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Abhijit Singh Pawar [2018 (6) CTC 659] held as follows:-

"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."

19. The legal principles in this regard are that irrespective of the fact, whether the candidate, who is aspiring to secure the post of Police Constable Grade II, which is an Uniformed Service, has involved in the criminal case or not. Whether he was acquitted or discharged or the proceedings itself is quashed or not the competent authority is empowered to verify the character and antecedents.

20. Beyond this, it is for the Authorities Competent to ensure that the suitability of the candidate for appointment to the post of Grade II Police Constable. Even in case where there is no criminal case registered against the writ petitioner, then also the authority competent is entitled to find out the suitability by verifying the character and antecedent of the writ petitioner. If the character and antecedent, on verification, is not satisfactory, then also the competent authority, by recording the reasons, is empowered to reject the candidature of the writ petitioner.

21. The only requirement, in this regard, is an application of mind on the part of the competent authority as well as to verify the character and antecedent of the writ petitioner.

22. This being the principles to be followed, the High Court cannot interfere with the process of selection, more specifically, regarding the verification of character and antecedents of the candidates, who all are to be appointed in the Uniformed Services.

23. The Selection Committee is the best person to certify the good conduct or otherwise of the candidates, who all are participated in the process of selection. However, the High Court cannot interfere or undertake such an exercise of clarifying the conduct of a candidate contrary to the decision taken by the Selecting Authorities. Only in the event of any discrepancies or malpractices or certain mala fides are established, then alone the High Court can interfere with the process of selection. The Judicial Review in the matter of selection is undoubtedly limited.

24. Under these circumstances, the fact remains that the criminal case was quashed based on the compromise entered into between the de facto complainant, accused persons as well as the Inspector of Police, who registered the complaint.

25. Based on the compromise arrived, the High Court quashed the criminal case proceedings. This would not help the writ petitioner to secure an employment to the post of Grade II Police Constable as the competent authority, who verified the character and antecedent, came to the conclusion that the writ petitioner is not suitable for appointment to the post of Grade II Police Constable.

26. This being the factum, this Court has no hesitation in coming to the conclusion that the writ petitioner has not established any acceptable ground for the purpose of considering the relief, as such, sought for in the present writ petition.

27. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Svn
To

सत्यमेव जयते Sub Assistant Registrar

1. The Director General of Police,
Tamil Nadu, Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
2. The Superintendent of Police,
Thiruvallur District.

+1 cc to Mr.M.Muthappan, Advocate, S.R.No.28303

WP No.24898 of 2018

NMI (CO)
SSM(22/04/2019)