

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
20.09.2019	27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2977 of 2019

Kaviyarasu

...Appellant/ Petitioner

Vs.

1. The Director General of Police,
Tamil Nadu Circle,
Chennai - 4.

2. The Member Secretary
Tamil Nadu Uniform Service
Recruitment Board,
No.807, P.T.Lee Chengalvaraya
Naicker Maligai,
Anna Salai, Chennai - 2.

...Respondents/Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent Act against the orders, dated 22.08.2017 made in W.P.No.21989 of 2017 on the file of this Court.

W.P.No.21989 of 2017:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 22.07.2017 in accordance with law by appointing the petitioner as grade-II constable in Reg.No.0804772 Dharmapuri to secure the ends of justice.

For Appellant : Mr.R.Sankarasubbu

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Govt. Pleader

J U D G M E N T

(The judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This In-House appeal is preferred against the order passed in W.P.No.21989 of 2017, dated 22.8.2017 dismissing the

writ petition instituted by the appellant.

2. The case of the writ petitioner is as follows:

The Writ petitioner, pursuant to the notification appeared for recruitment to the post of Grade-II Constable, participated in the written examination, held on 22.8.2012 and he passed the said examination. The writ petitioner, being a successful candidate in the writ examination got selected for appointment to the post of Grade-II Constable and was waiting for appointment order. At that point of time, petitioner was implicated in a criminal case in Crime No.16 of 2011 on the file of the Inspector of Police, Morappur Police station, Morappur under Sections 147, 427 and 323 of I.P.C. According to the petitioner, he moved this Court by filing Clr.O.P.No.20191 of 2013 and the same was allowed. As on the date of filing the writ petition, there is no F.I.R. pending against the writ petitioner. Therefore, he prayed for mandamus, directing the respondents to consider his representation, dated 22.7.2017 to appoint the writ petitioner to the post of Grade II Police Constable.

3. The learned Judge relied on the judgment of the Larger Bench of Three Judges of the Hon'ble Supreme Court in the case of AVTAR SINGH VS. UNION OF INDIA REPORTED IN 2016 (8) SCC 471.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, appearing for the respondents and perused the materials available on record.

5. The appellant has filed the writ petition in W.P.No.21989 of 2017 praying for Writ of Mandamus, to consider petitioner's representation, dated 22.7.2017 and pass orders in accordance with law, by appointing the petitioner as Grade II Police Constable. Pursuant to the notification issued by the respondent for recruitment to the post of Grade II Police Constable during the year 2012, the appellant participated in the written examination. After passing the written examination and physical fitness, the respondent department received a report from the department regarding appellant's personal verification including his character and conduct as per the recruitment rules. In the aforesaid report, it was found that the appellant involved in a criminal case in Cr.No.16 of 2011 registered under Sections 147, 427 and 323 of I.P.C. on the file of Morappur Police Station. Based on the aforesaid report, the selection of the appellant was rejected by the respondent for the reason that the appellant willfully suppressed the material fact in column No.15 of the application.

6. The Writ Court considering the various decisions of the Hon'ble Supreme Court, held that (I) involvement in the criminal case itself is a disqualification, (II) It all depends upon the nature of selection, (III) It all depends upon the nature of involvement in a criminal case, (IV) It depends upon the status of employment and considering the decision of the Hon'ble Supreme Court in the case of Jainendra Singh Vs. State of U.P. reported in 2012 (8) SCC 748 wherein the case was referred to Larger Bench of the Hon'ble Supreme Court. The matter came to be considered in the case of Avatar Singh and others Vs. Union of India reported in (2016) 8 SCC 471 (Larger Bench of Supreme Court), in paragraph 34, the Honourable Larger Bench of Supreme Court held as under:

"34. 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."

Further, in paragraph 38 of the said judgment, the Hon'ble Supreme Court settled the following principles:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal

had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but

not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

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

7. Following the principles laid down by the Larger Bench of the Hon'ble Supreme Court, the learned Judge recorded a finding that, ''it is not enough that the criminal case against the writ petitioner was quashed, but verification of antecedents is also an important criteria for selection, more specifically for recruitment in the uniformed service and the F.I.R. was quashed only on 15.2.2017, after a lapse of about five years''.

8. The learned counsel appearing for the appellant would submit that the appellant was charged on the false allegation of petty quarrel registered in Cr.No.16 of 2011 under Sec.147, 427 and 323 of I.P.C. and no charge sheet was filed within a period 6 months time. Thereafter, the writ petitioner challenged the aforesaid Cr.No.16 of 2011 before this Court in CrI.O.P.No.20191 of 2013 and the same was allowed on 15.2.2017. Hence, the writ petitioner/appellant is eligible for appointment to the post of Grade II Police Constable, as per notification.

9. Per contra, the learned Special Government Pleader appearing for the respondents would draw the attention of this court that the respondents department had issued a notification

for recruitment to the post of Grade II Police Constable in the year 2012. The appellant appeared in the written examination and also physical fitness. During the personal verification as per the notification and rules, it came to the notice of the department that the appellant involved in a criminal case registered in Cr.No.16 of 2011 under Sec.147, 427 and 323 of I.P.C. on the file of Morappur Police Station. In Clause 15 of the application, there is a specific column which reads as follows:

'Have you ever been concerned in any Criminal case as defendant.'

The answer by the appellant in the aforesaid column says, 'NO'. Thus, the appellant suppressed the material fact in the application submitted for appointment to the post of Grade II Police Constable. Therefore, as per rules, the appellant is disqualified for the post of Grade II Police Constable for the aforesaid academic year.

10. According to the appellant, in Avatar Singh case (supra), in paragraph 30 clause (4) (a) held as follows:

'In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.'

Therefore, in the light of the aforesaid judgment of the Hon'ble Supreme Court, the order passed by the learned Judge is liable to be set aside and seeks direction to the respondents to consider his representation, dated 22.07.2017.

11. On perusal of the charges registered in Cr.No.16 of 2011 under Sec.147, 427 and 323 of I.P.C. which was challenged before this Court in Crl.O.P.No.20191 of 2013, this Court while disposing of the aforesaid Crl.O.P. by order, dated 15.2.2017 observed as follows:

"3. Learned Additional Public Prosecutor appearing for the first respondent submits that already a report under Section 468 Cr.P.C. had been submitted before the learned Judicial Magistrate No.II, Harur.

4. In view of the submissions made by the learned Additional Public Prosecutor, this Criminal Original Petition is closed. Consequently, connected miscellaneous petition is also closed.'

12. Following the judgment of the Hon'ble Supreme Court in the case of Deputy Inspector General of Police and another Vs. S.Samuthiram reported in 2013 (1) SCC 598, held as follows:

''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 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . 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.''

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

''23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in

future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and 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 correlation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur 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.''

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

'13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post.

From the observations of this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.''

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

'15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) CrPC, the law declared by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], specially in paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and 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.

16. The reliance placed by Mr Dave, learned Amicus Curiae on the decision of this Court in Mohd. Imran [Mohd. Imran v. State of

Maharashtra, Civil Appeal No. 10571 of 2018, order dated 12-10-2018 (SC)] is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of the said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an autorickshaw which was following the autorickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohd. Imran [Mohd. Imran v. State of Maharashtra, Civil Appeal No. 10571 of 2018, order dated 12-10-2018 (SC)] thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] and Pradeep Kumar [UT, Chandigarh Admn. v. Pradeep Kumar, (2018) 1 SCC 797 : (2018) 1 SCC (Cri) 504 : (2018) 1 SCC (L&S) 149]

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge [Abhijit Singh Pawar v. State of M.P., WP No. 9412 of 2013, order dated 31-7-2014 (MP)] as well as by the Division Bench [State of M.P. v. Abhijit Singh Pawar, 2015 SCC OnLine MP 7517] and dismiss Writ Petition No. 9412 of 2013 preferred by the respondent. No costs.'

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

''(3) As per Government Rule No.101 sub (Police 9) Department, dated 30.12.2003 and Tamil Nadu Special Police Subordinate Service Rule No.14(b) for appointment to the post of Police Constable Grade II, he should not be involved in any criminal case and his antecedent conduct and character should be satisfactory. Further, as per explanation No.1 of Tamil Nadu Special Police Subordinate Service Rule No.14(b), a person acquitted on benefit of doubt or discharged in a criminal case due to the fact that the complainant turned hostile, he can be considered as person involved in criminal case. Hon'ble Chennai High Court in the judgment issued in W.P.No.38296/2005 dated 28.02.2008, on 28.02.2008, it was ordered that if the applicant while completing his form had concealed his involvement in criminal case or criminal case is pending against him, the appointing authority considering the fact that he concealed the fact, inspite of result of the criminal case in any manner, his appointment can be rejected.''

17. Therefore, the respondent department rejected his selection, based on unsatisfactory character and antecedents of the appellant as stated in the aforesaid proceedings. The appellant/writ petitioner made a representation on 22.7.2017 informing that CrI.O.P.No.20191 of 2013 was allowed on 15.2.2017. Further, in addition to the aforesaid fact, the respondent rejected the selection of the writ petitioner/appellant by stating the reason that the appellant suppressed his involvement in criminal case pending against him in the application. The writ petitioner/appellant challenged the criminal case registered against him in Cr.No.16 of 2011 under Sec.147, 427 and 323 of I.P.C. before this Court in CrI.O.P.No.20191 of 2013. It was not quashed as stated by the appellant, but it was closed by recording the statement of Additional Public Prosecutor. Thereafter only, the writ petitioner/appellant made a representation to the respondent on 22.7.2017 for considering appointment to the appellant after a lapse of five years. Hence, the writ petition is liable to be dismissed on the ground of delay and laches also.

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

case pending against him in the application. Therefore, in the light of the decision of the Hon'ble Supreme Court in Pradeep Kumar case (supra), a candidate recruited to the Police Service must be impeccable character and integrity and a person having criminal antecedents will not fit in this category. Even though the candidate is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case. The decision of the authority must be taken as final unless it is malafide against the respondent. Therefore, the respondent department passed the final order on 8.1.2013, rejecting the selection of the appellant on the ground that the appellant concealed the material fact. The appellant has not challenged the decision of the respondent authority by attributing any malafide against the respondent authority. Further, recruitment for the post of Grade II Police Constable was held during the year 2012, but the appellant, after a long lapse of time that too after order passed by the respondent rejecting the selection of the appellant, has filed the writ petition. Therefore, the writ petition is liable to be rejected on the ground of laches also. Thus, we have no hesitation to reject the arguments advanced by the learned counsel appearing for the appellant. The writ appeal is devoid of merit and the same is liable to be dismissed.

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

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

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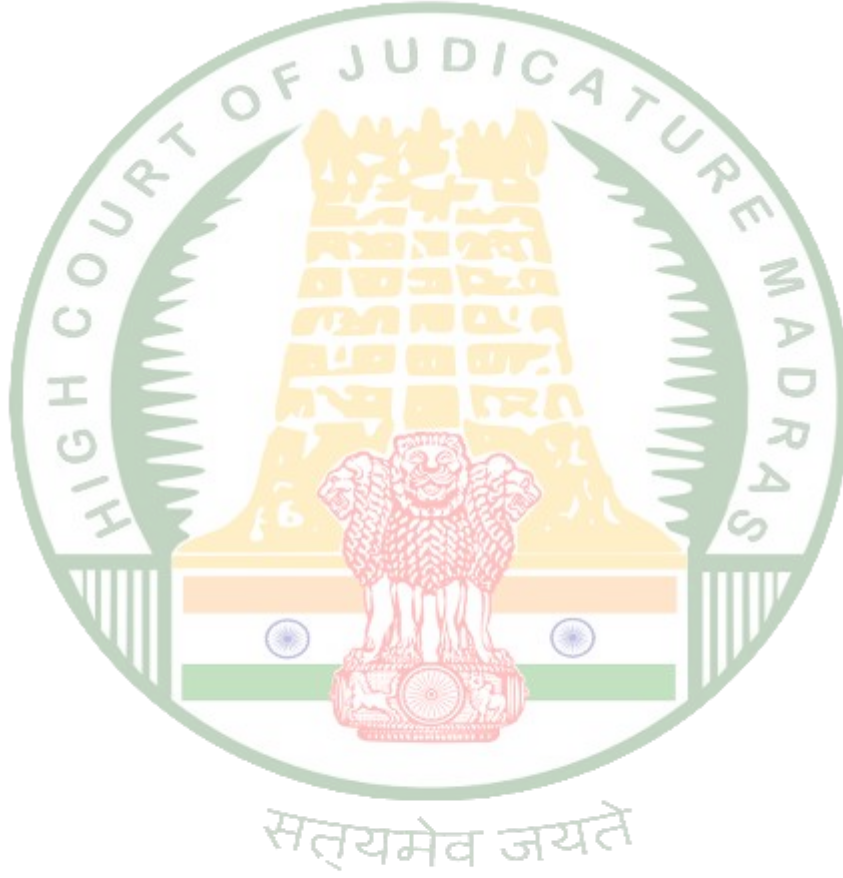
To

1. The Director General of Police,
Tamil Nadu Circle, Chennai - 4.
2. The Member Secretary
Tamil Nadu Uniform Service Recruitment Board,
No.807, P.T.Lee Chengalvaraya
Naicker Maligai, Anna Salai, Chennai - 2.

+1cc to Mr.R.Sankarasubbu, Advocate, SR.No.82946
+1cc to the Govt.Pleader, Vide Sr.No.83663

W.A.No.2977 of 2019

Kak(18/10/2019)



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