

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.21019 of 2019

P.Arivazhagan

...Petitioner

Vs.

1.Government of Tamil Nadu,
Rep by Principal Secretary to Government,
Home (Police) Department,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai - 600 004.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the first respondent to consider and pass orders on the representation dated 25.06.2016 of the petitioner regarding grant of relaxation of Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules within a limited time frame.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner is a holder of B.A. Degree in English Literature and he had applied for consideration of his candidature, in response to the Notification issued by Tamil Nadu Uniformed Services Recruitment Board, for appointment to the post of Police Constable Grade II for the year 2012. According to him, he had come out successful in all stages of selection. However his claim for appointment was rejected on the ground of involvement in the Criminal case. According to him, the criminal case ended in acquittal, vide judgment of the Criminal Court dated 24.11.2012. Thereafter, the petitioner has approached this Court in W.P.No.4936 of 2014. This Court directed to consider his representation dated 10.06.2013 and pass orders on merits, in line with the order passed by the Hon'ble Apex Court in Civil Appeal No.1430 of 2007, dated

17.03.2011 (Commissioner of Police & others Vs. Sandeep Kumar), within a period of four weeks from the date of receipt of copy of the order. Thereafter, an order was passed by the second respondent, dated 23.03.2016, rejecting the request of the petitioner, wherein the second respondent has given detailed reason as under:

"8)Moreover, the above candidate was acquitted from the criminal case as the complainant turned hostile and only on the ground of benefit of doubt.

9)Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rule provides as follows:

"(iv)that he has not involved in any criminal case before Police verification

Explanation (1):A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile shall be treated as a person involved in a criminal case.

Explanation (2):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 a 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."

10)Rule 14(b)(iv) of the said Rules was challenged before the Hon'ble High Court. The matter was referred to the Full Bench of the Hon'ble High Court in Manikandan and others vs. the Chairman, TNUSRB case. In the said Manikandan's case, the Full Bench of the High Court of Madras in its order dated 28.02.2008 has upheld the validity of the said Rule.

11)Again, the validity of rule 14(b) of the Tamil Nadu Special Police Subordinate Service together with explanations of the said Rules and the law laid down in Manikandan's case was challenged and the matter was referred to the Larger Bench of the Madras High Court consisting of 5 Hon'ble Judges of the High Court in J.Alex Ponselan vs. DGP and Others case. In this reference, the Larger Bench of the Madras High Court, on 27.02.2014 has held as follows:

"21.I, therefore, answer the Reference in the following:

(i)The decision rendered by the Full Bench of this Court in Manikandan's case, reported in 2008

(2) CTC 97, is a good law.

(ii) Rule 14(b)(iv) together with Explanations 1 and 2 of the Tamil Nadu Special Police Subordinate Service Rules is intra vires of the Constitution, as has already been held by the Full Bench in the Manikandan's case and by the learned single Judge in Veramani's case.

12. Further, against the order dated 20.12.2013, made in W.P.No.11442/2013, filed by J.Vetrivelan, which was referred to by the Hon'ble High Court in W.P.No.4935/2014, the Hon'ble First Bench of the High Court has granted interim stay on 19.06.2014 in M.P.No.1/2014 in W.A.No.739/2014, filed by the DGP and Others.

13. Therefore, as per Rule 14(b) of the said Rules which is in force as on date and also in view of the reason that the facts of the Sandeep Kumar case and the case of the petitioner is on different footing, the representation of the writ petitioner cannot be considered and he is not eligible for appointment to the post of Gr.II PC as per the rules in force as upheld by the Hon'ble Court in a catena of decisions as referred to above.

14. Further, in the application form col.29, he has declared on 26.04.2012 that no criminal case was pending against him and this also makes him ineligible vide decisions of the Hon'ble Apex Court referred in para 7 above.

15. As per rule 14(b) of the Special Rules for the Tamil Nadu special Police Subordinate Service which is in force as on date and in view of the reason that the facts of the Sandeep Kumar's case and the petitioner case are on different footing, and due to the fact of suppression of information in the application form, his request is not feasible for consideration.

16. The petition is informed accordingly."

2. Although the claim of the petitioner was rejected, very strangely the petitioner has come up only with the prayer of writ of mandamus, seeking relaxation of Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules.

3.This Court is unable to appreciate as to how in the face of such clear rejection, the petitioner can seek for relaxation of the Rule. In every case if the Rule is to be relaxed, then there will not be any sanctity attached to the Rules at all. When the petitioner participated in the selection, he was bound by the Rules governing such selection and when his candidature was rejected on the basis of the governing Rules, it is not open to the petitioner to seek for relaxation of the rules.

4.Once the second respondent has found that the acquittal of the petitioner was on the basis of benefit of doubt, the petitioner has lost his right to be considered for appointment in Police Service, notwithstanding the so called acquittal by the criminal Court.

5.This Court does not see any infirmity in the order passed by the second respondent. In any case, this Court does not find any merit at all in the prayer seeking for issue of mandamus for relaxing the Rules. In any event, it is not open to the Court to grant such direction for relaxation of the Rules in order to suit the convenience of one individual candidate, who participated in the selection from the open market. In the said circumstances, this Court finds that the writ petition is devoid of merits and therefore, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrm/msk
To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai - 600 004.

+1cc to M/s.M.Ravi, Advocate Sr.63290

W.P.No.21019 of 2019

cp[co]
srg 05/09/2019