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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.32556 of 2019
and
W.M.P.No.32926 of 2019

R.Rajapandian

...Petitioner

vs.

1. The State of Tamilnadu,
Represented by its Principal Secreatary,
Home Department,
St.George Fort, Chennai - 9.
2. The Director General of Police/Chairman,
Tamilnadu Uniformed Services recruitment Board,
Old C.O.P. Office Campus,
Pantheon Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, by calling for the records pertaining to the impugned Top draft in Na.Ka.No.A3/9645/2017 dated 24.10.2017 issued by the 3rd respondent herein and quash the same as illegal, unconstitutional and consequently direct the 2nd respondent herein to appoint the petitioner as a Police Constable Grade II in the Tamilnadu Police Service based on the petitioner's representation, dated 11.11.2019 made to the respondents herein.

For Petitioner : Ms.S.Shahila Banu
For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader
for R1 and R3

Mr.V.Kathirvel
Special Government Pleader
for R2

O R D E R

This writ petition has been filed challenging the order passed by the 3rd respondent dated 24.10.2017 and for a consequential direction to appoint the petitioner to the post



of Police Constable Grade II in the Tamil Nadu Police Service.

2.The 2nd respondent published a notification calling for application to fill up the post of Police Constable Grade II. The petitioner submitted an application on 10.02.2017 and he was called for written test on 21.05.2017. The petitioner was also issued with an admit card on 27.07.2017 and he was directed to produce all the certificates and he was subsequently called for the physical test on 01.08.2017.

3.In the mean time, the 2nd respondent issued impugned proceedings dated 24.10.2017 and the petitioner was informed that the candidature has been rejected on the ground that he has intentionally concealed the fact that there was a criminal case pending against him at the time of submitting the application. This impugned communication has now become a subject matter of challenge in the present writ petition.

4.Ms.S.Shahila Banu, learned counsel appearing on behalf of the petitioner submitted that the impugned proceedings dated 24.10.2017 suffers from non application of mind. The learned counsel submitted that the application was submitted by the petitioner on 10.02.2017 and on that day there was no criminal case pending against the petitioner. The criminal case came to be registered against the petitioner only on 06.07.2017 in Crime No.66 of 2017. The learned counsel submitted that the petitioner was not aware about the registration of the FIR and he came to know about it only after he received the impugned proceedings dated 24.10.2017 from the 3rd respondent.

5.The learned counsel further submitted that a full fledged trial was conducted in S.C.No.75 of 2018 and the petitioner was acquitted from all charges by judgment dated 16.09.2019, on the ground that the prosecution has not placed any evidence and has not proved the case against the accused persons. The learned counsel submitted that this subsequent event must also be taken into consideration and the respondent must be directed to process the candidature of the petitioner and he must be appointed as a Police Constable Grade II.

6.Mr.V.Kathirvel, learned Special Government Pleader appearing on behalf of the 2nd respondent submitted that the 2nd respondent is very strict when it comes to candidates with criminal background who participate in the selection process for the police force. The learned counsel submitted that persons with criminal antecedents are scrutinized stringently in order to ensure that such candidates do not get into police service. The learned counsel submitted that even if the petitioner has been acquitted in the criminal case, the 2nd respondent is entitled to independently consider the suitability of the candidature of the petitioner and the law on this issue is well settled. Therefore, the learned counsel submitted that the petitioner cannot seek for an appointment



as a matter of right in cases of this nature.

7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. The impugned proceedings dated 24.10.2017 of the 3rd respondent basically suffers from non-application of mind. The 3rd respondent has proceeded as if there was a criminal case pending against the petitioner on the date with he submitted his application and the same was concealed by the petitioner and therefore, the petitioner is not entitled to be considered for having given false particulars in the application. The 3rd respondent did not take into notice the fact that the petitioner did not have any criminal case pending against him on the date on which he submitted his application. The petitioner submitted his application to the 2nd respondent on 10.02.2017. The FIR in question in Crime No.67 of 2017 was registered by the concerned police only on 06.07.2017 based on the complaint given on 05.07.2017. This registration of FIR is much after the application was submitted by the petitioner. Therefore, the petitioner cannot be found fault for concealing a criminal case on the date of submission of the application, since there was no criminal case pending against the petitioner on that date.

9. The next issue that has to be taken into consideration is the effect of such criminal proceedings in considering the petitioner as a candidate for selection to the post of Police Constable Grade II. In the present case, it is seen that one Boominathan had attacked one Sathish with knife and a complaint was given by his wife against Boominathan. The concerned person died and an FIR came to be registered in Crime No.66 of 2017 for the offence under Section 302 of IPC. During the course of same incident, after the attack was made by the Boominathan, the accused persons including the petitioner is said to have questioned him and attacked him. A complaint came to be registered in Crime No.67 of 2017 on the same day against the accused persons and the petitioner was shown as A3 and and FIR was registered for the offences under Sections 147, 294(b), 324 and 307 of IPC.

10. A final report was filed in this case and the case went up for trial in SC No.75 of 2018 and Assistant Sessions Court, Mudukulathur, by judgment dated 16.09.2019, acquitted all the accused persons on the ground that the prosecution failed to prove the case and that there was absolutely no evidence against the accused persons. Thus, the petitioner was acquitted from all the charges. This fact was also brought to the notice of the respondents by the petitioner.

11. The important question that requires consideration is whether the petitioner is entitled to be considered for selection to the post of Police Constable Grade II by virtue



of acquittal from the criminal case.

12. It will be relevant to rely upon some judgments in this regard. The most important judgment that should be taken into consideration is the judgment of the Hon'ble Supreme Court in the case of Avatar Singh vs. Union of India and others reported in (2016) 8 SCC 471. The Hon'ble Supreme Court after taking into consideration the entire law on the point has given detailed guidelines as to how the candidature of a person must be considered by the employer in cases of this nature. The relevant portions of the judgment is extracted hereunder:

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourse 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.



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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.

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13. The next judgment that can be relied upon by this Court is in the case of Union Territory, Chandigarh Administration and Others vs. Pradeep Kumar and Another reported in (2018) 1 SCC 797. In this judgment, the earlier judgment in Avatar Singh vs. Union of India and others was taken into consideration. The relevant portions of the judgment is extracted hereunder:

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 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.

14. The next judgment that can be taken into consideration is the judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar reported in (2018) 18 SCC 733. Even in this judgment, the judgment of the Hon'ble Supreme Court in Avatar Singh vs. Union of India and others was taken into consideration. The relevant portions in the judgment is extracted hereunder:

13. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

14. 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



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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.

15.The Hon'ble Division Bench of this Court in the case of V.Jayavarthanam vs. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board, Chennai and others reported in 2018-5-L.W.150, also throws light with regard to the manner in which the candidature must be considered in cases of this nature. The relevant portions of the judgment is extracted hereunder:

12.1. From the complete reading of the judgment of the Supreme Court, nobody can conclude that just because a case happened to be registered against a particular person, he is having a criminal background. The Supreme Court has given a beautiful guideline balancing the interests of both sides, by asking the authorities to look into the circumstances to find out whether the candidate is completely exonerated in the case. If this guideline is adopted, in this case, the only conclusion is that the petitioner has been completely exonerated from the case and therefore, he is entitled to be considered for the post of Grade II Police Constable.

16.It is clear from all the above judgments that an acquittal in criminal case does not automatically entitle the candidate for appointment to the post. It will be open to the employer to consider the antecedents and examine whether the candidate is suitable for appointment to the post. It is also clear that a candidate to be recruited to the police service must have impeccable character and integrity. Of course, the employer has to take into consideration, the entire background of the candidate and see if he has been exonerated completely from the criminal case and whether any moral turpitude is involved on the part of the candidate.

17.In the facts of the present case, the impugned order passed by the 3rd respondent requires interference and accordingly the same is quashed. The petitioner is directed to make a fresh representation to the 2nd respondent along with a copy of the judgment in S.C.No.75 of 2019 and a copy of the



order in this writ petition, within a period of two weeks from the date of receipt of copy of this order. The 2nd respondent is directed to consider the representation in line with the judgments referred supra and the findings given by this Court and pass appropriate orders within a period of four weeks thereafter. If the 2nd respondent finds the candidature of the petitioner to be suitable, appointment orders shall be issued, if the petitioner has satisfied all the other requirements.

18. In the result, this writ petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The State of Tamilnadu,
Represented by its Principal Secreatary,
Home Department,
St.George Fort, Chennai - 9.
2. The Director General of Police/Chairman,
Tamilnadu Uniformed Services recruitment Board,
Old C.O.P. Office Campus,
Pantheon Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.N.Murugesan, Advocate, S.R.No. 102881
+1cc to the Government Pleader, S.R.No. 103676

W.P.No.32556 of 2019
and W.M.P.No.32926 of 2019

RSI (CO)
GN(17/12/2019)