

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.04.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.30823 of 2018
and
WMP.No.35963 of 2018

J.Velusamy

...Petitioner

Vs

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai - 600 024.
2. The Commissioner of Police,
Salem City, Salem.
3. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai, Chennai - 600 008.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent dated 01.11.2018 made in Na.Ka.No.A6/41/779/2018 and to quash the same and consequently direct the respondents to appoint the petitioner for the post of Grade-II Police Constable under the selection process of Grade-II Police Constable (Men, Women and Transgender), Grade-II Jail Warden (Men and Women) and Fire man for the 2017-2018 forthwith.

For Petitioner : Mr.N.Anand

For Respondents : Mr.A.N.Thambidurai

Spl.Govt.Pleader for R1 & R2

Mr.V.Kadhirvelu, Spl Govt. Pleader
for R3

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O R D E R

The order of rejection dated 01.11.2018, rejecting the claim of the writ petitioner for selection to the post of Grade-II Police Constable, is under challenge in the present writ petition.

2. The writ petitioner participated in the process of selection for appointment to the post of Grade-II Police Constable and was successful in the written examination. The writ petitioner participated in the physical eligibility test and endurance test and completed all the tests and he was selected. When the writ petitioner is awaiting for order of appointment, he received an impugned order dated 01.11.2018, stating that, the writ petitioner was not selected on account of the fact that, a criminal case was registered against him in Suramangalam Police Station in Crime No.553 of 2015, under Section 147,148,294(b),323,324 & 506(ii) of IPC.

3. The writ petitioner was acquitted on extending benefit of doubt and therefore, the Competent Authorities arrived a conclusion that, the writ petitioner is not suitable for the appointment to the post of Grade-II Police Constable. Challenging the said order, the present writ petition has filed.

4. The learned counsel for the writ petitioner states that, the writ petitioner has not suppressed any material fact in the application submitted pursuant to the recruitment notification. The writ petitioner was successful in the written examination as well as in the physical verification test. In view of the fact that, the writ petitioner was acquitted in the criminal case, he is entitled to be selected and appointed in the post of Grade-II Police Constable.

5. The learned Special Government Pleader appearing on behalf of the respondent made a submission that, the character and antecedent of the candidates were verified by the Competent Authorities, with reference to the Rules in force. On verification, the Competent Authorities came to the conclusion that, the character and antecedent of the writ petitioner is not satisfactory and accordingly, issued the impugned order. Thus, the impugned order is in consonance with the special Rules in force.

6. Undoubtedly, the writ petitioner had disclosed the registration of the criminal case in his application. However, his case was not considered on account of the fact that he was acquitted only on the basis of benefit of doubt and on verification his character and antecedent are not satisfactory to the Competent Authorities.

7. In this regard, it is useful to extract the counter, which states as follows:-

"15. It is further submitted that according to Rule 13(b) & (e) of Tamilnadu Subordinate Services

Rules a person appointed for the post of Grade II Police Constable should not have involved in any criminal offence and should have good character and antecedents. Further in the Explanation to the said Rule it has been specifically stipulated that even the person acquitted from the criminal offence on benefit of doubt or due to hostile depositions before court of law, it has to be construed that the individual is involved in the criminal offence.

16. It is further submitted that the Full Bench of Honourable High Court of Madras in their orders dated 28.02.2008 in WP 38289/2005 etc., filed by Manikandan and others - Versus - Director General of Police, have observed as follows:-

"12. The impugned Rule creates a classification of persons who were not involved in criminal cases and persons, who were involved in criminal cases. The object of creating such a classification is to ensure that only those persons whose character and antecedents were beyond any shadow of doubt alone, are permitted entry into the police service of the State. The rule is only a reflection of the intention of the Government to maintain purity of administration. The Rule merely provides a check post or a filter point, to ensure that only those, who had a clean record of personal life, are admitted into the system. That the existing system has already come under heavy dose of criticism cannot be swept under the carpet. Therefore, as an employer, the Government is entitled to prescribe, especially in a disciplined force like the Police Force, such a restriction at the entry level. There cannot be a dispute about the proposition that an employer has the right to prescribe any qualifications for appointment to a post. If that be so, an employer has a concomitant right even to prescribe disqualifications when it comes to appointment to a post. The prescription that Ceaser's wife should be above suspicion, cannot be said to be faulty at least in this regard"

17. It is further submitted that induction such candidates in the disciplined police force, which is the law enforcing machinery, will certainly spoil the image and reputation of the police force and hence the plea of the petitioner is liable to be dismissed."

8. 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?"

9. Even recently, the three judges Bench of the Hon'ble Supreme Court of India, in clear terms held that, the decision of the selecting authorities are final, with reference to the verification of character and antecedent. Such decisions can be interfered with only if the decisions are tainted with malafides or in violation of the recruitment Rules in force. The three judges Bench of the Hon'ble Supreme Court of India, in the case of State of Madhya Pradesh & others Vs. Abhijit Singh Pawar, reported in 2018 SCC OnLine SC 2555 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."

10. The Apex Court held that, the employers are bound to take in to the account of job profile for which the selection is undertaken the severity of 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.

11. In the present lis on hand, the acquittal was on the ground of benefit of doubt. This apart, the nature of the criminal charges framed against the writ petitioner was undoubtedly serious. Under these circumstances, the decision arrived by the competent selection committee is not infirm and certainly, in consonance with the legal principles settled by the Hon'ble Supreme Court of India. Thus, the writ petitioner has not established any acceptable grounds for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai - 600 024.
2. The Commissioner of Police,
Salem City, Salem.
3. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai, Chennai - 600 008.

+lcc to Mr.N.Anand, Advocate sr.42755
+lcc to Government Pleader sr.42548

W.P.No.30823 of 2018

nr 01/07/2019