

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2019

CORAM

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

W.P.No.33962 of 2018
and
W.M.P.No.39439 of 2018

S.Murugavel

.. Petitioner

..vs..

1. Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police,
Pantheon Road,
Egmore, Chennai - 08.

2. The Superintendent of Police,
Vellore District,
Vellore.

.. 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 2nd respondent in ref Na.Ka.No.A2(3)/500/33962/2018 dated 02.11.2018 and quash the same and consequently directing the respondents to select and appoint the petitioner as Gr.II Police Constable, Jail Warder and Fireman 2017 - 2018 in Tamil Nadu Uniformed Service Recruitment Board in Armed Force issued by the 1st respondent.

For Petitioner :Mr.K.Balaji

For Respondents :Mr.V.Kathirvelu

Special Government Pleader for R1

Mr.A.N.Thambidurai

Special Government Pleader for R2

ORDER

The order of rejection dated 02.11.2018, rejecting the candidature of the writ petitioner for appointment to the post of Gr.II Police Constable in Tamil Nadu Special Police Service, is under challenge in the present writ petition.

2. The learned counsel appearing for the writ petitioner states that the criminal case was registered in accordance with the facts and the writ petitioner is no way connected with the offences. This apart, the writ petitioner also lodged a complaint with the Police Station and against the rival group, another FIR was registered. The FIR registered by the writ petitioner is an earlier one and therefore, the FIR now registered in Crime No.214 of 2018 should not be taken against the writ petitioner for the purpose of providing an appointment to the post of Gr.II Police Constable. The fact remains that the criminal case has been registered against the writ petitioner under Sections 294 (b), 323 & 506 (i) of IPC.

3. The learned counsel for the writ petitioner states that the criminal case against the writ petitioner is registered after the completion of selection process and therefore, the same cannot be held against the writ petitioner. The writ petitioner submitted his application for appointment well before the registration of a criminal case.

4. This Court is of the considered opinion that verification of character and antecedent for selection to the post of Police Constable, which is uniformed service is of paramount importance. While verifying the character and antecedent of the candidates, if it is found that a criminal case has registered against a candidate and which is pending, the Authorities Competent are bound to consider the same and form an opinion in respect of the character and antecedent of a candidate. This apart, the dates mentioned by the writ petitioner has no relevance as far as the verification of character and antecedent is concerned. The character and antecedent can be ascertained at any time before the appointment and after the appointment also. In the event of any adverse opinion, then the Authorities Competent shall take a decision in accordance with law, within a reasonable period of time. Undoubtedly, the Authorities Competent are bound to apply their mind and if such a decision is taken on extraneous circumstances or with an ulterior motive, then only, the petitioner can challenge the rejection order and not otherwise. Thus, the verification of character and antecedent for appointment to the post of Gr.II police Constable can never be compromised. The case of the writ petitioner is rejected on the ground that a criminal case was registered against him. The said fact is not disputed though the ground of suppression of material facts need not be taken into account. The fact regarding the pendency of the criminal case alone had been taken against the writ petitioner. This Court had considered the similar issues in W.P.No.10689 of 2013 dated 12.07.2018 and the relevant paragraph is 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?"

5. Even recently, the three judges bench of the Hon'ble Supreme Court of India in the case of State of Madhya Pradesh vs Abhijit Sing Pawar reported in 2018 (6) CTC 659 held that 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 case of the candidates, the Employer can certainly take into account the job profile for which the selection is undertaken and 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. The relevant paragraphs also contemplate that verification of character and antecedent is mandatory. In the event of any adverse remarks by the reporting officer, then the same also is to be considered by the Competent Authority at the time of considering the selection of a particular candidate. Paragraph Nos.15 & 17 of the Judgment are extracted hereunder:

"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."

6. In view of the fact that the writ petitioner is facing a criminal case, this Court of the considered opinion that the order impugned is in consonance with the rules as well as the legal precedents. Thus, the writ petitioner has not established any acceptable legal grounds for the purpose of considering the relief as such sought for in the present writ petition.

7. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

Pns

To

1. Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police,
Pantheon Road,
Egmore, Chennai - 08.

2. The Superintendent of Police,
Vellore District,
Vellore.

+1 cc to Mr.Balaji, Advocate, S.R.No.32336

W.P.No.33962 of 2018

and

W.M.P.No.39439 of 2018

MG (CO)
SSM(03/05/2019).