

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 34763 of 2018
and WMP.No.40306 of 2018

T.Velusamy

...Petitioner

Vs

1. The Chairman,
Tamilnadu Uniformed Services Recruitment
Board, Old COP Campus,
Pantheon Road,
Egmore, Chennai - 600 008.
 2. The Superintendent of Police,
Dharmapuri District,
Dharmapuri.
 3. The Inspector of Police,
Kadathur Police Station,
Dharmapuri District - 635 303
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.A3/2626/2018 dated 02.11.2018 on the file of the 2nd respondent, quash the same and direct the 2nd respondent to place the petitioner's name in an appropriate place in the select list of "Grade II Police Constable", Grade II Jail Warder and Fireman for the year 2017-18" along with his batch mates who were went for training on 01.12.2108 and award his consequential benefits.

For Petitioner : Mr.P.Bakiyaraj

For Respondents : Mr.V.Kadhirvelu,
Spl. G.P for R1

Mr. A.N.Thambidurai,
Spl. G.P. For R2, R3.

ORDER

The order of rejection dated 02.11.2018, rejecting the candidature of the writ petitioner for appointment to the post of Grade II Police Constable, Grade II Jail Warder and Fireman, is under challenge in the present writ petition.

2. The petitioner states that he participated in the process of selection for the post of Grade II Police Constable. The petitioner was successful in the written examination and appeared for physical verification test. The certificate verification was completed and the writ petitioner was awaiting for the order of appointment. Under those circumstances, the second respondent issued the impugned order in proceedings dated 02.11.2018 stating that during the verification of character and antecedent, it was found that a criminal case was registered against the writ petitioner in Cr.No.41/2018 under Sections 341, 294(b), 323, 109 of the Indian Penal Code and Section 3(1) of the Prevention of Damage to Public Property Act, 1984. The petitioner was arrayed as the second accused in the criminal case. Thus, the competent authorities arrived at a conclusion that the writ petitioner is not suitable for appointment to the post of Grade II Police Constable in the Tamil Nadu Police Service.

3. The learned counsel for the writ petitioner states that the petitioner has not suppressed any material facts in his application. In fact, the writ petitioner has stated that the criminal case was registered against him and, therefore, he must be appointed to the post on the selection already made in his favour.

4. The writ petitioner further made an attempt to elaborate the facts and circumstances of the criminal case and stated that he is no way connected with the criminal charges. Thus, the case of the writ petitioner is to be considered as he has not made any false representation in respect of registration of criminal case.

5. In respect of the legal principles regarding the selection with reference to the Rules, the Full Bench of the Madhya Pradesh High Court answered the questions raised. The Madhya Pradesh High Court, full Bench considered the Hon'ble Supreme Court judgments in the case of Ashutosh Pawar Vs. High Court of Madhya Pradesh & Another 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?"

6. Even this Court, has considered the judgment of the Hon'ble Supreme Court in the case of W.P.No.7606 of 2017 dated 21.04.2017 and the relevant paragraphs are extracted hereunder:-

"23.The submission of Mr. Lakshmi Narayanan, the learned counsel for the petitioner, that this Bench has earlier considered the case of similar facts on 08th March, 2017, we are of the opinion that all the aspects in this regard were meticulously considered with reference to the principles laid down by the Honourable Apex Court of India. We would like to quote certain paragraphs of the said Judgment to re-emphasize the views expressed by us in earlier Judgment.

"9.Thus, the matter came to be considered by a Bench of Three Judges in Avatar Singh Vs. Union of India [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [reported in 2010 (14) SCC 103] and State of West Bengal Vs. S.K.Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in Paragraph 34 of the Judgment in Avatar Singh:

"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."

24.We have considered the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 are extracted below:

"15.When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of

evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

"21.If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of

the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi Versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straight forward. Be that as it may."

25. In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our firm opinion as under:

"26.we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service.""

7. 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."

8. Thus, the legal principles regarding the selection, more specifically, to the uniformed services are already settled by the Courts, and in the present case, admittedly, criminal case was registered against the writ petitioner and, therefore, the authorities came to the conclusion that the writ petitioner is not suitable for appointment to the post of Grade II Police Constable. This being the decision of the competent authorities, this Court cannot interfere with the decision as the decision is supported with the reasons which are acceptable.

9. In view of the above, the writ petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

mp/ssm

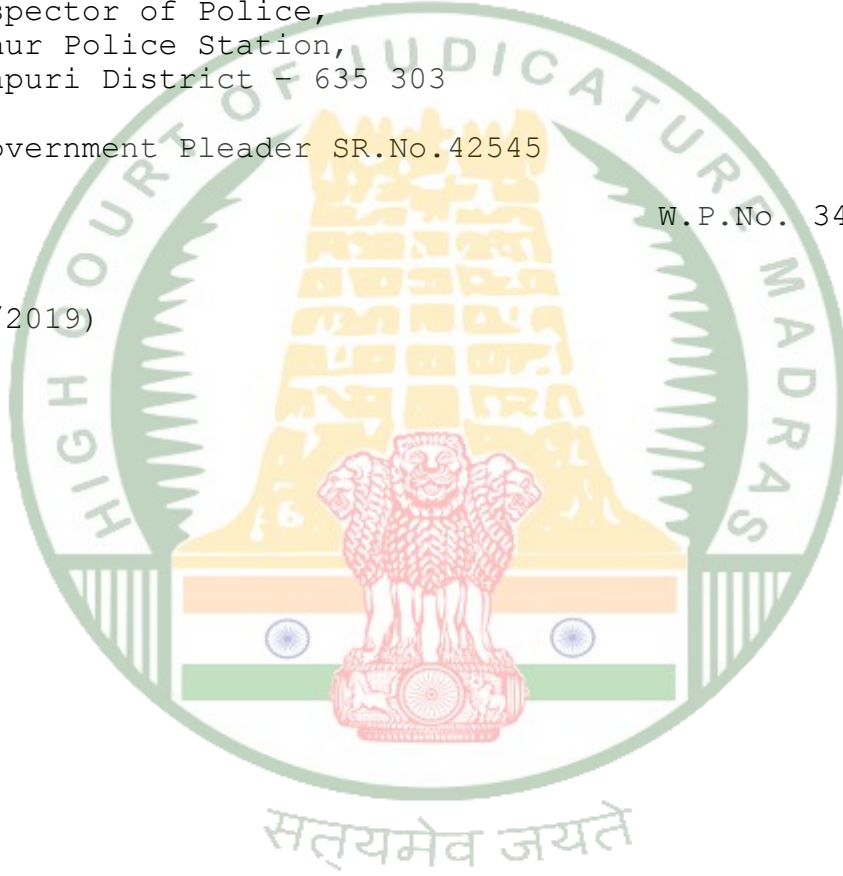
To:-

1. The Chairman,
Tamilnadu Uniformed Services Recruitment
Board, Old COP Campus,
Pantheon Road,
Egmore, Chennai - 600 008.
2. The Superintendent of Police,
Dharmapuri District,
Dharmapuri.
3. The Inspector of Police,
Kadathur Police Station,
Dharmapuri District - 635 303

+1cc to Government Pleader SR.No.42545

W.P.No. 34763 of 2018

MK (CO)
GMY (26/06/2019)



WEB COPY