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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P(MD).No. 13049 of 2019 and
W.M.P(MD).No. 9738 of 2019

T. Iyyappados : Petitioner

Vs.

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee Chengaalvaraya Naicker Maaligai,
Anna Salai, Chennai - 600 002

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

3. The State of Tamilnadu,
represented by its Inspector of Police,
East Police Station,
Virudhunagar.

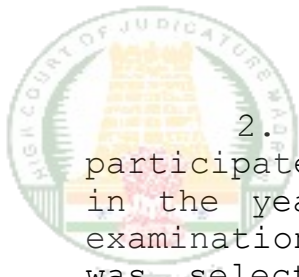
: Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India for issuing a Writ of Certiorari Mandamus to call for the records pertaining to impugned order passed by the 2nd respondent in C.No.A2(1)/10/306/2018 dated 27.11.2018 and quash the same and to give appointment to the petitioner in Reg. No.2503518 as per the provision list for the year 2017-2018.

For Petitioner	: Mr.J. Balameenakshmi for Mr.A.Muruganandha Prabhu
For Respondents	: Mr.K. Chellapandian, Additional Advocate General assisted by Mr.Aayiram K.Selvakumar, Additional Government Pleader

ORDER

This Writ Petition has been filed to call for the records pertaining to impugned order passed by the 2nd respondent in C.No.A2(1)/10/306/2018 dated 27.11.2018 and quash the same and to give appointment to the petitioner in Reg. No.2503518 as per the provision list for the year 2017-2018.



2. The writ petitioner has completed the decree and participated in the selection process to the post of Grade-II Police in the year 2018 and has attended the physical test and written examination and also participated in the oral test. The petitioner was selected for the post of Grade-II Police, but the first respondent sent a letter in his proceedings No.C.NO.A2(1)/10/306/2018, dated 27.11.2018 informed the petitioner that he was not selected the post of Grade-II Police since the petitioner involved in a criminal case.

3. According to the learned counsel for the petitioner, in the year 2013, due to personal vengeance, one Murugesan has given a complaint for the alleged offence under Section 380 of I.P.C and a case was registered by the 2nd respondent police in Crime No.234 of 2013, dated 14.05.2013. In the aforesaid criminal case in C.C.No.148 of 2013 on the file of the learned Judicial Magistrate No.II, Virudhungar, passed a Judgment by acquitting the petitioner from the aforesaid criminal case and now no criminal case is pending against the petitioner. But, the second respondent has rejected the application of the petitioner and passed the impugned order in C.NO.A2(1)/10/306/2018, dated 27.11.2018 without any justification and the said order is liable to be quashed.

4. The Additional Government Pleader appearing for the respondents relied upon the following decisions of this Court as well as the Hon'ble Supreme Court.

1. 2008 (2) MLJ 1203 (Full Bench) Manikandan Vs. Chairman, TNUSRB
2. 2014(2) CTC 337 (Larger bench) Alex Ponseelan Vs. DGP, Chennai.
3. 2015(2) SCC 377 Joginder Singh Vs. Union Territory of Chandigarh.
4. 2016(8) SCC 471 (Larger bench of Supreme Court) in Avatar Singh and Others Vs. UOI.
5. C.A. No.67 of 2018 - Union Territory of Chandigar Vs. Pradeep Kumar.
6. 2018(6) CTC 659 - State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar.

5. According to the learned Additional Advocate General, the latest Judgment of the Hon'ble Supreme Court of India in the case of **Civil Appeal No.67 of 2018, dated 08.01.2018, Union Territory, Chandigarh Administration and Others Vs. Pradeep Kumar and Another, wherein, the relevant paragraph Nos.10 , 11, 12 & 13 are extracted hereunder:**

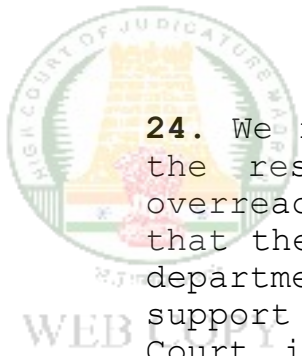
10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in *Deputy Inspector General of Police and Another v. S. Samuthiram* (2013) 1 SCC 598, in which this Court held as under:-



"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commissioner of Police, New Delhi and Another v. Mehar Singh* (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though Page No. 8 of 15 acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in *Mehar Singh* case, this Court held as under:-

"23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force."

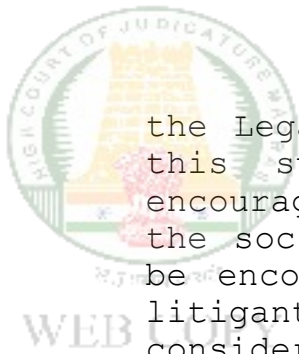


24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* AIR 1964 SC 787 this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "*honourable acquittal*" was considered by this Court in *S. Samuthiram* (2013) 1 SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "*honourable acquittal*", "*acquitted of blame*" and "*fully exonerated*" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "*honourably acquitted*". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

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33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of



the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

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35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand." The same principle was reiterated in *State of Madhya Pradesh and Others v. Parvez Khan* (2015) 2 SCC 591.

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in *Avtar Singh v. Union of India and Others* (2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (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."

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.

6. He further relied upon the Judgment in **2018(6) CTC 659, State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar**, wherein, the relevant paragraph Nos.15, 16 & 17 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 & 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 election 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.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in *Mohameed Imran* (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In Para 5 of said decision, this Court had found that the only allegation against the Appellant therein was that he was travelling in an Auto-rickshaw which was following the Auto-ricksaw in which the prime accused, who was charged under Section 376 of I.P.C, was travelling with the Prosecutrix in question and that all the accused were acquitted as the Prosecutrix did not support the allegation. The decision in *Mohameed Imran* (supra), thus, turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in *Mehar Singh* (supra), *Parvez Khan* (supra) and *Pradeep Kumar* (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned Authorities is 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 2012 preferred by the Respondent. No Costs".

7. From the aforesaid Judgments of the Hon'ble Supreme Court of India, before issuing appointment order, the employer has every right to consider the antecedents of the candidates. Now, pursuant to the direction of this Court, the learned Additional Advocate General has submitted a letter, dated 22.06.2019 before this Court. In which, paragraph Nos. 3 & 4 are extracted below:

"(3). In this connection, it is submitted that, at present, the above said candidate was involved in Pandalkudi P.S., Cr. No.171 of 2014 under Section 41(1)(a) Cr.P.C on 15.11.2014 at 04.00 hrs he was taken custody for Preventive Arrest and the same was action dropped by the Sub-Inspector of Police, Pandalkudi P.S. After completion of enquiry, he was released on the same day.

(4). The Inspector of Police, Virudhunagar East Police Station and the Inspector of Police, Virudhunagar Rural Police Station had stated in their reports, dated 13.06.2019 that no criminal case is registered against Tr.T. Iyyappadoss. The Inspectors of Police, Special Branch, Virudhunagar submitted a report, dated 16.06.2019 that Tr.T. Iyyappadoss is not involved in any civil and criminal cases and does not belong to any communal and prohibited organizations".

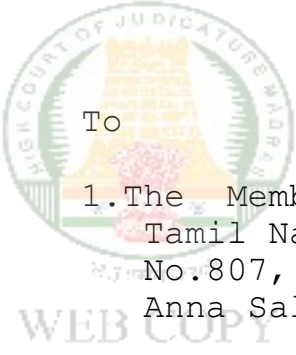
8. Therefore, taking note of the facts and circumstances of the case, it is clearly revealed that there is no criminal case pending against the petitioner and he has not involved in any civil or criminal case. Therefore, this Court has no hesitation to set aside the impugned order, dated 27.11.2018 in C.No.A22(1)/10/306/2018 and the matter is remanded back to the second respondent to consider the matter afresh. The 2nd respondent/Superintendent of Police, Virudhunagar District, Virudhunagar is directed to re-consider the appointment order of the petitioner and to pass appropriate orders in accordance with law, as early as possible, within a period of three (3) weeks, from the date of receipt of copy of the order.

9. With the above directions, the Writ Petition stands disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /



To

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee Chengaalvaraya Naicker Maaligai,
Anna Salai, Chennai - 600 002

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

3. The State of Tamilnadu,
represented by its Inspector of Police,
East Police Station,
Virudhunagar.

+1 CC to M/s.J.BALAMEENAKSHI, Advocate
(SR-71217[F] dated 25/06/2019)

WP(MD).No. 13049 of 2019
24.06.2019

ES/16.07.2019/8P/5C