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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.33 of 2019

and

C.M.P(MD) .No.150 of 2019

- 1.The State of Tamil Nadu,
rep., by its Secretary to Government,
Home Department,
Fort St. George, Chennai-9.
- 2.The Additional Director General of Police cum
Director General of Prisons,
Venals Road, Egmore, Chennai-8.
- 3.The Superintendent of Police,
Madurai District. ... Appellants/Respondents 1,3, 4

Vs.

- 1.Ragul Prasath ...Respondent/Petitioner
- 2.The Member Secretary,
The Tamil Nadu Uniformed Services Recruitment Board,
No.8, Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai-8. ... Respondent/2nd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act to set aside the order dated 11.01.2018 made in W.P(MD). No.22464 of 2017 on the file of this Court.

Prayer in WP(MD) . 22464/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd respondent in No.3583/EW.1/2017-4 dated 23.11.2017 and quash the same and consequently directing the respondents to appoint the petitioner (Enrollment No.2406584) as Jail Warden in pursuance of provisional selection list.



For Appellants : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader
For Respondents : Mr.N.S.Karthikeyan (for R1)
Mr.A.Muthukaruppan
Additional Government Pleader(for R2)

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JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.K.Chellapandian, learned Additional Advocate General appearing for the appellants, Mr.M.S.Karthikeyan, learned counsel appearing for the first respondent and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the second respondent.

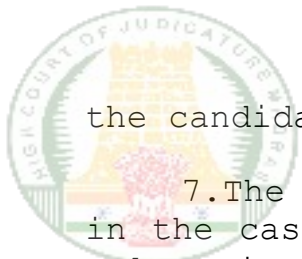
2.This appeal by the State is directed against the order made in W.P(MD).No.22464 of 2017 dated 11.01.2018. The first respondent/writ petitioner challenged the order passed by the second appellant, dated 23.11.2017 intimating that the first respondent herein cannot be selected as Jail Warden on the ground that he was involved in a criminal case, which came to light pursuant to Police verification as reported by the concerned Officer by report, dated 16.09.2016.

3.It is the case of the first respondent/writ petitioner that on the day, when he filed an application, he was not involved in a criminal case. Therefore, the question of non-disclosure will not arise. Further, it is submitted that the first respondent/writ petitioner had no knowledge that the criminal case has been registered against him and he was neither arrested nor remanded to judicial or Police custody.

4.The learned Writ Court had allowed the writ petition following the decision of the Hon'ble Supreme Court in **Avtar Singh Vs., Union of India and others** reported in **2016 (8) SCC 471**.

5.In our considered view, we have reserved as regards observations made therein, because, the decision made in the case of **Union Territory, Chandigarh Administration and others Vs., Pradeep Kumar and another** in **Civil Appeal No.67 of 2018** which was rendered by the Hon'ble Supreme Court on 08.01.2018 just prior to passing the impugned order.

6.In the said decision the Hon'ble Supreme Court has pointed out that even if the candidate is acquitted honourably still the employer has a right to consider the antecedent of the candidate and



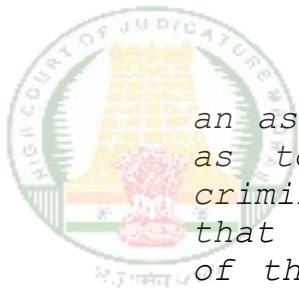
the candidate cannot compel the employer to appoint him.

7.The recent decision of the Hon'ble First Bench of this Court in the case of **C.Surendhar Vs., The Director General of Police and others** in **W.A.No.3877 of 2019, dated 13.11.2019** had taken note of all the earlier decision and the points and allowed the appeal filed by the appellant therein and granted liberty to the Appointing Authority to assess the candidature of the appellant.

8.The operative portion of the judgment reads as follows:

"33.The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is "involvement". The word "involvement", therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether "he was involved in a criminal case or not."

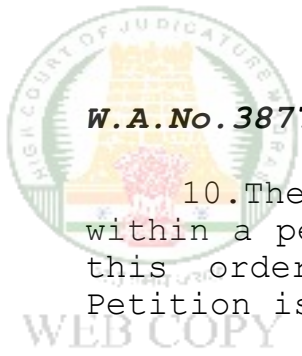
34.The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in ceratin circumstances, as explained by the Apex Court in the case of M.Manohar Reddy and another Vs. ,Union of India and others, reported in (2013) 3 SCC 99. whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that



an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person was involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appellant did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35.We, accordingly, allow the appeal and set aside the impugned judgment dated 27.04.2019 as well as the impugned order dated 08.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today."

9.In our considered view, a direction which has been issued by the Hon'ble First Bench would be appropriate direction that should be issued in this writ appeal as well. Considering the fact that the first respondent/writ petitioner has applied for recruitment to Tamil Nadu Uniformed Services for the post of Jail Warden, the Writ Appeal is **partly allowed** and the order and direction issued by the Writ Court directing selection and appointment of the first respondent/writ petitioner, is set aside and instead the appellants are directed to consider the contentions raised by the first respondent/writ petitioner that he had no knowledge of the criminal case registered against him and he was neither arrested nor remanded to Police or Judicial custody, we leave it open to the Appointment Authority to take note of the submission and assess the candidature of the first respondent/writ petitioner bearing in mind the observations made by the **Hon'ble First Bench** in the case of **C.Surendhar Vs., The Director General of Police and other in**



W.A.No.3877 of 2019 dated 13.11.2019.

10.The above direction shall be complied with by the appellants within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

rmk

To
The Member Secretary,
The Tamil Nadu Uniformed Services Recruitment Board,
No.8, Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai-8.

+1 CC to M/s.GP (SR-100577[F] dated 22/11/2019)

+1 CC to M/s.V.MUTHUKAMATCHI, Advocate (SR-100657[F] dated 22/11/2019)

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21.11.2019

_KK/SAR/06.12.2019/5P-4C/