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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.34 of 2019
and C.M.P (MD) .No.151 of 2019

M.Mathan

... Petitioner/Appellant

Vs.

1.The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
(Old Office Complex of
Commissioner of Police),
Pantheon Road, Egmore, Chennai-600 008.

2.The Director General of Police of
Tamil Nadu,
Office of the Director General of Police
of Tamil Nadu,
Kamarajar Salai,
Mylapore, Chennai-600 004.

3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act to set aside the order dated 26.11.2018 made in W.P(MD). No.23380 of 2018 on the file of this Court.

Prayer in WP(MD). 23380/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order Na.Ka.No.A4/137/2018 dated 06.11.2018 passed by the 3rd respondent and quash the same and consequently, direct the respondents to appoint the petitioner as GR.II Police Constable (AR) based on the selection list published by the Tamil Nadu Uniformed Services Recruitment Board with effect from the date on which other candidates selected in the said selection list have been appointed and grant all the service and monetary benefits within a time limit.



For Appellant : Mr.B.Saravanan
For Respondents : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader

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JUDGMENT

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

This appeal by the writ petitioner directed against the order made in W.P(MD).No.23380 of 2018 dated 26.11.2018. The short question falls for consideration is, the appellant/writ petitioner, who was acquitted in a criminal case on benefit of doubt, would be entitled to appoint as Group-II Constable for the selection conducted by the Tamil Nadu Uniformed Service Board. The learned counsel for the appellant strenuously contended that the prosecution could not prove the charge against the appellant and twelve other accused, who were involved in the criminal case and acquitted on account of benefit of doubt. Further more, it is submitted that the overt act against the appellant does not show any grave nature of the offence. Without considering these, the respondents had rejected the appellant's candidature. The learned writ Court by the impugned order dismissed the writ petition noting the factual position that the appellant was involved in a criminal case. Aggrieved by the same, the present appeal has been filed.

2.We have heard Mr.B.Saravanan, learned counsel appearing for the appellant, Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents.

3.The question to be decided as to whether the Court can examine as to what establish effect of acquittal on benefit of doubt on the appellant, who has applied for selection to the Tamil Nadu Uniformed Service. The Hon'ble Supreme Court in the case of **Union Territory, Chandigarh Administration and others Vs., Pradeep Kumar and another** in **Civil Appeal No.67 of 2018** dated **08.01.2018** had observed as to what is the nature of job performed by the persons in the police force.

4.The operative portion of the judgment is 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."

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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 certain 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."

5. Further in the said decision the Hon'ble Supreme Court noted yet another decision made in the case of **State of Madhya Pradesh and others Vs., Parvez Kahan** reported in (2015) 2 SCC 591, wherein following the earlier decision, it was held that in a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate.

6. Considering all these factors as well as the facts of the present case, we are of the firm view that the order passed by the writ petition perfectly valid. In the result, this Writ Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
(Old Office Complex of
Commissioner of Police),
Pantheon Road, Egmore, Chennai-600 008.
2. The Director General of Police of
Tamil Nadu,
Office of the Director General of Police
of Tamil Nadu,
Kamarajar Salai,
Mylapore, Chennai-600 004.



3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

+1cc to M/s.B.SARAVANAN, ADVOCATE, SR NO.100433
+1CC TO M/S.SPL GOVERNMENT PLEADER SR NO.100547

W.A. (MD) No.34 of 2019
21.11.2019

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