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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.3365 of 2014

and

M.P. (MD) .No.1 of 2014

and

W.M.P. (MD) .No.456 of 2016 and 16727 of 2017

Mohamed Kalith

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai.

2.The Chairman,
Tamil Nadu Uniform Service,
Recruitment Board,
Annasalai, Chennai.

3.The Superintendent of Police,
Tirunelveli District.

... Respondents

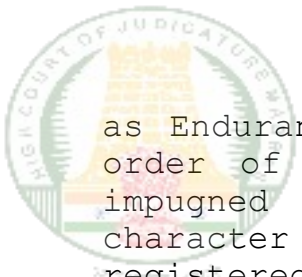
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in ந.க.எண்.அ4/51408/2013 dated 17.02.2014 of the 2nd respondent and to quash the same and consequently direct the respondents to appoint the petitioner in Tamil Nadu Special Police for the year of 2013-2014.

For Petitioner : Mr.G.Thalaimutharasu
For R1 to R3 : Mr.S.Dhayalan
Government Advocate

ORDER

The order of rejection dated 17.02.2014 rejecting the claim of the writ petitioner for appointment to the post of Tamil Nadu Special Police Youth Brigade, is under challenge in the present writ petition.

2.The learned counsel appearing for the writ petitioner states that pursuant to the recruitment notification issued, the writ petitioner has participated in the process of selection for appointment to the post of Tamil Nadu Special Police Youth Brigade. The writ petitioner was successful in the written examination and thereafter, participated in the Physical Verification Test as well



as Endurance Test. However, the petitioner was not issued with an order of appointment. Subsequently, the petitioner had received impugned order stating that during the verification of the character and antecedents, it was found that a criminal case was registered against the writ petitioner in Chockampatti Police Station, Thirunelveli District, in Crime No.63 of 2012 for the offences under Sections 294(b) and 323 IPC. Subsequently, the case was disposed of on 13.06.2013 and the petitioner was acquitted on the ground of benefit of doubt.

3.The learned counsel for the writ petitioner states that the offences against the writ petitioner was not serious in nature and further, he was acquitted from the criminal charges. Thus, the petitioner is entitled for appointment to the post of Tamil Nadu Special Police Youth Brigade.

4.The petitioner contended that at the time of issuing notification, there was no criminal case. In this regard, the learned Government Advocate appearing on behalf of the respondents produced a copy of the application form submitted by the writ petitioner to the respondents. The application form No.04475, which was filled by the writ petitioner reveals that he had suppressed the fact regarding the pendency of a criminal case or otherwise. Even in case where, an order of acquittal was passed, a candidate must submit the details in the application, therefore, not furnishing the details regarding the criminal case in the application form amounts to suppression of fact. Even beyond this, this Court is of the considered opinion that verification of character and antecedents is an independent endeavor of the competent authority. Even in the absence of any criminal case, the character and antecedents can be verified by the competent authorities for the purpose of selecting a candidate. Thus, the subjective satisfaction of the competent authorities are essential for the purpose of final selection and appointment. In the present case on hand, the case of the writ petitioner was rejected on the ground that he has suppressed the material facts in the application and further, the character and antecedents was not satisfactory.

5.With reference to the facts and circumstances of the present case on hand, it is relevant to cite the judgment of the Full Bench of the Madhya Pradesh High Court, in the case of **Ashutosh Pawar Vs. High Court of Madhya Pradesh and Ors.**, reported in **2018(1) CTC 353**, the Full Bench of Madhya Pradesh High Court elaborately adjudicated, all these issues with reference to the judgments of the Supreme Court including Avtar Singh's case and answered the issues in a detailed manner and the relevant paragraphs are extracted hereunder:

"6. On the other hand, another Division Bench in Roop Narayan Sahu (supra) was examining the case of appointment to the post of Constable. The candidature of the petitioner therein was rejected although he was acquitted by granting benefit of doubt. The Court held as under:-



"14. Thus, the decision taken by the Department was not mechanical, but it was a conscious decision after taking into consideration the facts and circumstances of the case in proper perspective. Further, if a candidate is to be recruited to the Police service, he must be worthy confidence of an utmost rectitude and must have impeccable character and integrity. The persons having criminal antecedents, would not fall within the ambit of the said category. Even if he is acquitted or discharged, it cannot be presumed that he can be completely exonerated. [See: State of Madhya Pradesh and others vs. Parvez Khan, MANU/SC/1093/2014 : (2015) 2 SCC 591]"

7. The appointment to the post of Civil Judge, Class-II is governed by the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (in short "the Rules of 1994"). Rule 7 is a clause pertaining to eligibility. Sub-clause (d) of the said Rules provides that no person shall be eligible for appointment by direct recruitment unless he has good character and is of sound health and free from any bodily defect, which renders him unfit for such appointment. Rule 9 of the Rules of 1994 gives finality to the decision of the High Court as to the eligibility or otherwise of a candidate for admission to the examination whereas Rule 10 provides that the High Court shall forward to the Government a list of selected candidates in order of merit for recruitment. The Sub-rule (2) of the Rule 10 contemplates that the candidate will be considered for appointment to the available vacancies subject to the provisions of the Rules of 1994 and M.P. Civil Services (General Conditions of Service) Rules, 1961 (in short "the Rules of 1961"). The relevant Rules of the Rules of 1994, read as under:-

"7. Eligibility.- No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3(1) unless-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.

xxx xxx xxx

9. Finality of High Court's decision about the eligibility of a candidate. - The decision of the High Court as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

10. List of the candidates recommended by the High Court.- (1) The High Court shall forward to the



Government a list arranged in order of merit of the candidates selected for recruitment by the High Court. The list shall be published for general information.

(2) Subject to the provisions of these rules and the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 the candidates will be considered for appointment to the available vacancies, in the order in which their names appear in the list."

6. After the Full Bench judgment of the Madhya Pradesh High Court, the Three Judges Bench of the Hon'ble Supreme Court of India also had an occasion to deal with the issue in the case of **State of Madhya Pradesh and Ors., Vs. Abhijit Singh Pawar** reported in **2018 (6) CTC 659**, the relevant paragraphs 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 Code of Criminal Procedure, 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."

7. The Hon'ble Apex Court held in unequivocal terms 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 employer



can certainly taken 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".

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8. Thus, the Courts cannot interfere in respect of the findings of the competent authority regarding the verification of the character and antecedents. Thus, it is the prerogative of the selection authority to conduct an enquiry and find out the character and antecedents. Such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. If the High Court started interfere with these decisions by forming an opinion based on the statement of the candidates, it would be dangerous and such a course is certainly impermissible. Selections are to be made in accordance with the procedures. Verification of character and antecedents is a specialized area where the competent authority has to conduct a field enquiry as well as to identify certain facts and circumstances regarding the candidate, who has been previously selected. The High Court cannot form an opinion in this regard, based on the affidavit or the statement submitted before the Court. The character and antecedents is an complicated issue, where the human mind is unpredictable. Human minds are travelling in a different circumstances in a different manner. Thus, it is for the experts in the field to ascertain the character and antecedents of a person, more specifically, the suitability of a person for appointment to the post in uniformed services. The personnel in the uniformed force are to be disciplined. Thus, such verification is imminent and important. This being the factors to be considered, while conducting the process of selection, this Court is of the considered opinion that the suppression of fact being one factor. The assessment of the competent authority in relation to the antecedents and character is of paramount important as the authority come to the conclusion that the writ petitioner is not falling within the category of satisfactory and accordingly, the order of rejection passed is in conformity with the settled legal principles of law and in consonance with the established procedures followed for the purpose of ascertaining the character and antecedents.

9. This being the factum, the writ petitioner has not established any acceptable grounds for the purpose of interfering with the impugned order of rejection. Thus, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //



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Mylapore, Chennai.

2.The Chairman,
Tamil Nadu Uniform Service,
Recruitment Board,
Annasalai, Chennai.

3.The Superintendent of Police,
Tirunelveli District.

+1CC TO MR.G.THALAIMUTHARASU, Advocate Sr. No.72388
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.72203

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NSN (CO)
TR (24.07.2019) 6P 6C