



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.88 of 2019

and

C.M.P (MD) .No 545 of 2019

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C.Tamil Selvan ... Appellant/Writ Petitioner
Vs.

- 1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.D.V.Sengalvarayar Maligai,
Anna Salai, Chennai-600 002.
- 2.The Director General of Police,
O/o.The Director General of Police,
Kamarajar Salai,
Chennai-600 004.
- 3.The Additional Director General of Police (Prison)
and Inspector General of Prisons,
Whannels Road, Egmore, Chennai-600 008.
- 4.The Superintendent of Police,
Dindigul District, Dindigul. ... Respondents /Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act to set aside the order dated 29.11.2018 made in W.P(MD). No.23723 of 2018 on the file of this Court.

Prayer in WP(MD) . 23723/ 2018 :

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 relating to the impugned order passed by the 4th respondent in his proceedings in C.No.A9 / 37035 / 286 / 2017 dated 15/11/2018 and to quash the same and consequently direct the respondents to consider the petitioner to the post of Jail Warden based on his marks, Qualification and preference in the common recruitment notification 2017-2018 issued by the respondent No.1.

For Appellant	: Ms.J.Anadhavalli
For Respondents	: Mr.K.Chellapandian
	Additional Advocate General
	assisted by Mr.A.K.Baskarapandian
	Special Government Pleader



JUDGMENT

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

Heard Ms.J.Anadhavalli, learned counsel appearing for the appellant and Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents.

2.This appeal has been filed by the writ petitioner challenging the order made in W.P(MD).No.23723 of 2018 dated 29.11.2018. By the said writ petition, the appellant challenged his non-selection to the post of Jail Warden on the ground that he has not disclosed his involvement in a criminal case. The learned Writ Court by the impugned order dismissed the said writ petition. It is the submission of the Ms.J.Anandhavalli, learned counsel appearing for the appellant, after referring to the model application, which was published in the year 2016 that the question asked to the candidate in the OMR application is much different from the present application for the current recruitment and even in the level of understanding of the applicant, his case ought to have been considered.

3.Heard the learned Additional Advocate General on the above submission.

4.As pointed out by the learned Full Bench, in the case of **J.Alex Ponseelan Vs., The Director General of Police** reported in **2014 2 LW 1**, which has been held that a person having criminal antecedent will not be a candidate to be fit to join police force.

5.The learned counsel appearing for the appellant placed reliance on the decision in the case of **V.Jayavarthanam Vs., the Members Secretary, Tamil Nadu Uniformed Services Recruitment Board and others** reported in **2018-1-Writ L.R 578**.

6.In our considered view, the decision of the Hon'ble Full Bench would bind us. Further more, 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** has held that in 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. The recent decision of the Hon'ble First Bench 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 very lucidly explained the legal position. At this juncture, it will be beneficial to quote the operative portion of the judgment.

"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 necessarily 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 its 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."

7.The above decision would clearly state the facts of the case. There is absolutely no ground made out by the appellant to interfere with the order passed in the writ petition.

8.Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

- 1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.D.V.Sengalvarayar Maligai,
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4.The Superintendent of Police,
Dindigul District, Dindigul.

+1cc to M/s.Special Government Pleader, SR No.100560

W.A. (MD) No.88 of 2019

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