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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.3069 of 2015
and
M.P. (MD) Nos.1 & 2 of 2015

M.Sankar

... Petitioner

Vs

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

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.m2(1)-43147-2013 dated 11.02.2014 passed by the respondent and to quash the same as illegal and unconstitutional and consequently direct the respondent to appoint the petitioner in the Tamil Nadu Special Youth Police Force-2013-2014.

For Petitioner : Mr.S.Moorthy

For Respondent : Mr.S.Dhayalan
Government Advocate

ORDER

The order of rejection dated 11.02.2014 rejecting the claim of the writ petitioner for appointment to the post of Grade-II, Police Constable, is under challenged in the present writ petition. The writ petitioner submitted his application pursuant to the recruitment notification issued for selection and appointment to the post of Grade-II, Police Constable.

2.The petitioner participated in the process of selection. He was successful in the written examinations. The petitioner participated in the physical verification test and the endurance test. At the time of verification of character, it was found that a criminal case was registered against the writ petitioner in Crime No.108/2012 under Sections 147, 294(b), 323 of Cr.P.C., on the file of the Raddiayapatti Police Station. The writ petitioner was arrayed as a third accused in the criminal case. Therefore, the authorities competent arrived at an conclusion that the character



and antecedents of the writ petitioner was not satisfactory and accordingly rejected the candidature of the writ petitioner for selection to the post of Police Constable Grade-II. Challenging the same, this writ petition is filed.

3. The learned counsel for the writ petitioner states that the impugned order of rejection was issued by the respondent without considering the legal grounds and therefore, the same is liable to be set aside. This apart, it is stated that the criminal case was ended with an order of acquittal. In view of the fact that the writ petitioner was acquitted in a criminal case, he is entitled to be appointed in the post of Police Constable Grade-II.

4. The learned Government Advocate appearing for the respondents disputed that the contentions raised by the writ petitioner by stating that the writ petitioner was acquitted in the criminal case only on the ground of benefit of doubt and there was no witness to support the case of the prosecution accordingly, the benefit of doubt was extended to the writ petitioner by the competent Criminal Court. This apart, the authorities competent on verification of the character and antecedents of the writ petitioner made a finding that it was not satisfactory, thus the writ petition is liable to be rejected.

5. The Hon'ble Supreme Court on several occasions dealt with the legal principles regarding the selection of uniformed services. The Full Bench of the Hon'ble High Court of Madhya Pradesh, considered all these aspects elaborately in the case of **Ashutosh Pawar Vs. High Court of and another** reported in **2018 (1) CTC 353**. The relevant paragraphs of the Hon'ble Full Bench Judgment and the answers settled in respect of the queries raised 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"

<https://hcservices.ecourts.gov.in/hcservices/> 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."

9. Even, recently the Hon'ble Supreme Court in the case of **State of Madhya Pradesh and others Vs Abhijit Singh Pawar** in the decision reported in **2018 (6) CTC 659** held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"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 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."

6. The Hon'ble Apex Court held that even after disclosure is made by a candidate regarding the registration of a criminal case or the details of the criminal case, the employer would be well within his right to consider his antecedents and suitability of the candidate. While so, 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.

7. In respect of the present case, there is nothing on record to state that the decision taken by the competent authorities are arbitrarily on malafide grounds. The decision on the question of suitability is to be accepted unless, the said decision is perverse or the petitioner is able to establish that such a decision is taken on malafide intention or extraneous considerations.

8. This being the legal factum, this Court is of the considered opinion that the legal principles regarding the selection, more specifically the uniformed services are settled by the constitutional Courts as stated supra. Under these circumstances, the decision rendered by the writ petitioner dated 26.03.2013 passed in W.P.(MD) No.474 of 2013 has no binding effect and this Court is bound to follow the judgment of the Hon'ble Apex Court of India as



well as the legal principles settled in this regard.

9. Accordingly, the order impugned is not infirm and this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

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

+1 CC to M/s.MOORTHY, Advocate in SR-69034

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.69262

W.P. (MD) No. 3069 of 2015

and

M.P. (MD) Nos. 1 & 2 of 2015

14.06.2019

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PK/10.07.2019 : 5P/4C