



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.03.2019

Delivered on : 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.5848 of 2017

Ananth

: Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Secretary,
Department of Home,
Prohibition and Excise,
St. Fort George,
Chennai.

2.The Additional Director General of Police (Prison),
CMDA Tower II No.1, Gandhi Irwin Road,
Egmore, Chennai.

3.The Superintendent of Prison,
Central Jail,
Trichy.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the third respondent in his proceedings No.585/ கிசி2 /2009, dated 14.07.2011 and quash the same as illegal and also direct the respondents to reinstate the petitioner into service.

For Petitioner : Mr.J.Madhu

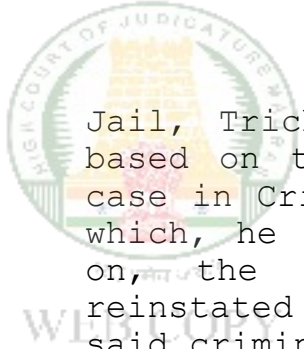
For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader

ORDER

The challenge in this Writ Petition is to the order dated 14.07.2011 of the third respondent, in and by which, the petitioner was discharged from service.

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2. The brief facts leading to the filing of the Writ Petition are as follows:

(i) The petitioner was appointed as II Grade Warden, Central



Jail, Trichy on 07.06.2006. However, during his probation period, based on the complaint given by one Vickramathiyammal @ Kutty, a case in Crime No.10 of 2007 was registered against him, pursuant to which, he was suspended from service on 06.02.2008. However, later on, the second respondent, by proceedings dated 13.07.2009, reinstated him in service without prejudice to the outcome of the said criminal case.

(ii) While so, on 06.06.2011, the third respondent passed an order of termination of probation. Challenging the same, he filed a Writ Petition bearing W.P.No.13368 of 2011, which was allowed by this Court on 13.06.2011. Based on the order, he was reinstated into service on 04.07.2011.

(iii) Again, a show cause notice was issued to the petitioner, for which, he gave a representation seeking ten days time to give explanation, which was rejected by the third respondent and thereafter, he offered his explanation on 13.07.2011. However, without considering the same, the third respondent, vide impugned proceedings dated 14.07.2011, discharged the petitioner from service. Challenging the same, the petitioner has filed the present Writ Petition.

3. The learned counsel for the petitioner would submit that the impugned order was passed on the ground that the disciplinary enquiry as well as the criminal proceedings were not completed. But, in fact, the disciplinary enquiry was completed as early as on 28.05.2011, i.e., before the order of termination of probation dated 06.06.2011, which was served on the petitioner only on 09.09.2011 and the same was also ended in favour of the petitioner. The said act of the third respondent shows that the impugned order was passed without going into the facts and without application of mind.

4. The learned counsel further submits that when the disciplinary enquiry was conducted and closed as charges not proved, the third respondent, for the same set of charges, has no locus to terminate the probation of the petitioner. Furthermore, the third respondent issued a show cause notice on 05.07.2011 and on receipt of the same, the petitioner offered his explanation on 13.07.2011 and the impugned order was passed on 14.07.2011, i.e., on the next day, which shows that the third respondent proceeded with the matter in a hasty manner and without following the rules prescribed under the Tamil Nadu State and Subordinate Service Rules.

5. Also, with regard to criminal case, the learned counsel contended that on completion of investigation, charge sheet was laid in the case registered in Crime No.10 of 2007 and the same was taken on file as C.C.No.13 of 2008 by the learned Judicial Magistrate, Musiri and seeking to quash the same, the petitioner filed CrI.O.P. (MD)No.19952 of 2014 and the same was ended in compromise, based on which, the learned Magistrate acquitted the petitioner on 10.12.2014. To sum up, the learned counsel submits that as on date,



the disciplinary proceedings as well as the criminal proceedings were ended in favour of the petitioner and as such, there is no impediment for the respondents to consider the claim of the petitioner.

6. With the above submissions, the learned counsel for the petitioner seeks to set aside the impugned order and a direction to the respondents to reinstate the petitioner into service.

7. Per contra, the learned Additional Government Pleader appearing for the respondents, through the counter-affidavit filed by the Deputy Secretary to Government, contended that while the petitioner was on probation, the third respondent received a communication about the pendency of the criminal case against the petitioner in Crime No.10 of 2007. Since the act of the petitioner amounts to violation of the Tamil Nadu Government Servants' Conduct Rules, he was placed under suspension. Thereafter, due to his prolonged suspension, on review by the second respondent, the suspension was revoked and he was reinstated into service. However, following the suspension, the third respondent initiated disciplinary action against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner. Since the petitioner has not completed the probation period of two years with a continuous period of three years from the date of joining duty, the probation was extended by six months and as the period of five years lapsed, the third respondent has passed an order terminating the probation of the petitioner with effect from 06.06.2011. The Writ Petition filed against the said order was allowed granting liberty to the respondents to pass fresh orders in accordance with law. In compliance with the said order, the third respondent reinstated him into service and thereafter, issued a show cause notice and after giving reasonable opportunity, the impugned order was passed. Thus, the contention of the petitioner that the impugned order was passed in a hasty manner deserves no consideration and the same was passed taking to account the fact that the petitioner suppressed his involvement in criminal case and violated the norms prescribed under the Tamil Nadu Government Servants' Conduct Rules and hence, he prays for dismissal of the Writ Petition.

8. I have considered the rival contentions made on either side and perused the materials available on record.

9. Before venturing into the facts of the case, it is relevant to extract Paragraph Nos.9 and 10 of the counter-affidavit, which are as under:

"9. With regard to the averments contained in grounds (a) and (b) of the affidavit, it is submitted that the petitioner joined duty on 07.06.2006 and he has to complete the probation period of two years i.e. on 06.06.2008. But, in the meanwhile, a case in Crime



No.10/2007 under sections 498(A), 313 of IPC and section 4 of Dowry Prohibition Act was registered against him in view of the complaint given by a girl, viz., Kutty @ Vikramadithyammal, D/o.Gopal, for his promise to marry her and trying to marry another girl and his suppression of fact to the higher officials, i.e., the Superintendent of Prisons, Central Prison, Trichy, under whose control the petitioner was serving. Therefore, the orders issued by the third respondent herein for termination of probation of the petitioner by his proceedings No.585/SJA/2009 dated 14.07.2011 is in order and not against the principles of natural justice.

10. With regard to averments contained in grounds (c), (d) and (e) of the affidavit, it is submitted that the third respondent herein, i.e., the Superintendent of Prisons, Central Prison, Trichy who is appointing authority for the post of Grade II Warder held by the petitioner, has to pass orders for declaration of probation which is mandatory for the post as prescribed in the Special Rules for the Tamil Nadu Jail Subordinate Services. Since the individual has not completed the probation period of two years within a continuous period of three years from the date of joining duty and involved in a criminal case in between, the petitioner was placed under suspension by the third respondent and departmental action was initiated against the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, orders have not been issued by the third respondent herein declaring the probation of the petitioner in the post of Grade II Warder so as to comply with the Special Rules for the Tamil Nadu Jail Subordinate Services."

10. From the above, it is crystal clear that the petitioner was appointed in the year 2006 and in between his probation period, i.e., in 2007, a criminal case came to be registered against him in Crime No.10 of 2007, but, he has failed to inform the same to his superior officer, under whom, he was working at the relevant point of time. Though the said criminal case ended in acquittal, for the post which the petitioner held, one should not involve in any kind of criminal antecedents. Mere involvement in criminal case would disentitle the petitioner to claim for reinstatement.

11. The issue with regard to the involvement in criminal cases and suppression of the same by the police personnel was elaborately dealt with by this Court on an earlier occasion in W.P. [MD]Nos.712 of 2019, etc., batch cases, decided on 13.03.2019. The relevant paragraphs read thus:

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21. On overall analysis of the facts and circumstances of each case, it is seen that the



reason for rejection is more or less similar in nature, to say shortly, involvement in criminal case and the antecedents.

22. It is pertinent to note that the suppression of a material fact to be a vitiating factor. The failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case.

23. It is also to be noted that when the failure of a person to disclose his involvement in a criminal case when the application form is filled up, is fatal, his subsequent disclosure will not cure the defect and the same would give right to the appointing authority to reject his candidature on the ground of suppression and antecedents.

24. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force.

25. The issue at hand was elaborately dealt with by the Hon'ble Supreme Court very recently in State (UT of Chandigarh) v. Pradeep Kumar reported in 2018(1) SCC 797. The relevant paragraphs of the said judgment read thus:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is



shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

14.....

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

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17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

26. The above decision of the Hon'ble Apex Court cleared the cloud of suspicion on the issue raised herein.

27. Therefore, applying the ratio laid down in State (UT of Chandigarh) v. Pradeep Kumar reported in 2018 (1) SCC 797, if the facts of the present cases are analysed, this Court has no hesitation to hold that the decision taken by the concerned authorities in rejecting the candidature of the petitioners was in any way actuated by *mala fides* or suffered on any other ground. The decision on the question of suitability of the candidates, in my considered view, was absolutely correct and did not call for any interference."



therein is involvement in criminal case and antecedents. Thus, applying the ratio laid down in the above cases to the case on hand, if the facts of the present case is analysed, this Court is of the considered view that the impugned order need not be set aside, for the reason, in police force, the antecedents of the person is one of the most eligible criteria to be considered. In this case, the petitioner was involved in criminal antecedent during his probation period and though he was acquitted in the said criminal case subsequently, the factum of involvement in criminal case was originally suppressed by him during the relevant point of time and hence, the third respondent, considering his character and antecedents, has rightly passed the impugned order discharging him from service. Therefore, in line with the order dated 13.03.2019 in W.P.(MD)Nos.712 of 2019 etc., batch, this Writ Petition is also dismissed. No costs.

SD
ASSISTANT REGISTRAR (T AND P)

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SUB ASSISTANT REGISTRAR (CS)

SML

To

- 1.The Secretary,
Government of Tamil Nadu, Department of Home,
Prohibition and Excise, St. Fort George,
Chennai.
- 2.The Additional Director General of Police (Prison),
CMDA Tower II No.1, Gandhi Irwin Road,
Egmore, Chennai.
- 3.The Superintendent of Prison,
Central Jail, Trichy.

1CC TO MR. J. MADHU, ADVOCATE SR 58179
1CC TO THE SPL GOVT PLEADER SR 58343

Order made in
W.P.[MD]No.5848 of 2017
Delivered on: 01.04.2019

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