



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

WEB COPY

CORAM:

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

W.P.(MD).No.3735 of 2014

and

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

N.Sonai Muthu

... Petitioner

-Vs-

1.The District Collector,
Sivagangai District, Sivagangai.

2.The District Employment Officer,
District Employment Office,
Sivagangai District, Sivagangai.

3.The Tahsildar,
Thirupuvanam Taluk,
Thirupuvanam,
Sivagangai District.

4.Saravanan

... Respondents

Prayer: Writ 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 passed by the 3rd respondent in his proceedings in Na.Ka.No.A1/860/2007, dated 15.09.2012 and quash the same as illegal and consequently direct the 1st and 3rd respondents to consider the petitioner candidature to the post of Village Assistant in the 3rd respondent taluk without referring the pendency of FIR in Crime No.9/13, on the file of the Inspector of Police, All Women Police Station, Manamadurai within the time that may be stipulated by this Court.

For Petitioner : Mr.P.Andiraj

For Respondents : Mr.S.Dhayalan
Government Advocate
(for R1 to R3)



ORDER

The order of appointment appointing the fourth respondent as Village Assistant, is under challenge in the present writ petition.

WEB COPY

2.The writ petitioner states that the third respondent called for a list of eligible candidates for appointment to the post of Village Assistant and the name of the writ petitioner was also sponsored and he participated in the interview held on 26.07.2012. The petitioner states that he was successful in the interview and awaiting for the orders of the appointment. Surprisingly, the fourth respondent was appointed, depriving the writ petitioner from getting appointment. The writ petitioner himself has stated that he sought for the reasons for rejection from the respondents under the RTI Act and came to understand that a criminal case was registered against the writ petitioner in Crime No.9 of 2012, dated 09.08.2012, on the file of the Inspector of Police, All Women Police Station, Manamadurai and in view of the fact that a criminal case was registered against the writ petitioner, his name was not considered. The criminal case was registered under Section 294(b), 417, 420 and 506(ii) of IPC.

3.The learned counsel appearing on behalf of the writ petitioner states that the criminal case was in connection with certain family affairs and is in no way connected with any other public affairs. It is pertinent to note that once a criminal case is registered by the competent police station, the offence is only against the State and not against the individuals. That is the reason why, the State became transfer to the criminal case. Thus, the very claim of the writ petitioner that the criminal case is only in relation to certain private affairs, cannot be accepted and further the appointment to be provided is to a public post. In view of the fact that the appointment is to the public post, the writ petitioner cannot seek any exemption by stating that the criminal case registered on account of certain private affairs, cannot be a bar for appointment to the public post, namely, the Village Assistant.

4.The learned Government Advocate appearing on behalf of the respondents 1 to 3 states that on account of the fact that the writ petitioner was arrayed as an accused in the criminal case, his case was not considered for appointment to the post of Village Assistant. Thus, there is no irregularity in respect of the order of appointment issued in favour of the fourth respondent.

5.The three Judges Bench of the Hon'ble Supreme Court of India, in the case of State of Madhyapradesh and others Vs. V.Abhijit Singh Pawar reported in 2018 6 CTC 659 in paragraph No.15 and 17 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 Apex Court in umpteen number of cases 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 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.Thus, it is made clear that well within the powers, the employers have to verify character and antecedents of the employees who are selected and to be appointed. While verifying the character and antecedents, the authorities competent are empowered to consider the pendency of the criminal case or even the order of acquittal granted by the competent criminal Court of law. Such a decision taken regarding the suitability of a candidate for appointment by



the competent authorities cannot be interfered with by the High Court in a routine manner. When the writ petitioner in this case was facing a criminal case, when the process of selection was conducted and the authorities competent who rejected the candidature of the petitioner on the ground he was not suitable for appointment to the post of Village Assistant and the said decision cannot be now interfered with. This apart, the fourth respondent was appointed in service about five years back. Under the circumstances, the writ petitioner is not entitled for any relief as such sought for in the present writ petition.

8. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS)

sjj

To

1. The District Collector,
Sivagangai District, Sivagangai.

2. The District Employment Officer,
District Employment Office,
Sivagangai District, Sivagangai.

3. The Tahsildar,
Thirupuvanam Taluk,
Thirupuvanam,
Sivagangai District.

+1 CC to M/s.M.S. JEYAKARTHIK, Advocate (SR-82377[F] dated 20/08/2019)

+1 CC to M/s.SPL GP (SR-82458[F] dated 20/08/2019)

W.P. (MD) .No.3735 of 2014
19.08.2019

KK/SAR/04.09.2019/4P-6C/