

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 21.06.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No. 5055 of 2013****and****M.P. (MD) .Nos.1 to 3 of 2013**

I.Thangapandi

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu Police Department,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
Madurai District,
Madurai.

4.Tamil Nadu Uniformed Services Recruitment Board,
rep. By its Chairman,
807, II Floor, Anna Salai,
Chennai-600 002.

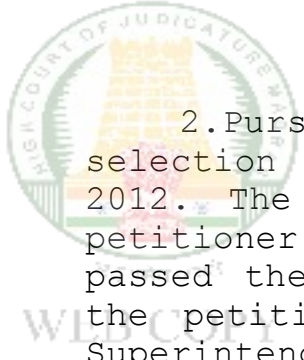
... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the impugned order of rejection passed by him in his proceedings in Na.Ka.No.B1/19500/2012 dated 24.12.2012 and quash the same and consequently direct the respondents to consider the petitioner's name for appointment to the post of Grade-II Police Constable for the year 2012 with all service benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu
For R1 to R4 : Mr.D.Muruganantham
Additional Government Pleader

ORDER

The order of rejection dated 24.12.2012 rejecting the claim of the writ petitioner for appointment to the post of Grade-II Police Constable is under challenge in the present writ petition.

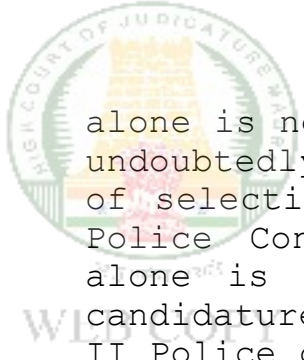


2. Pursuant to the recruitment notification issued for selection to the post of Grade-II Police Constable for the year 2012. The writ petitioner submitted his application. The writ petitioner was successful in written examination and thereafter, passed the physical verification test, endurance test etc. When the petitioner was awaiting for the order of appointment, the Superintendent of Police, Madurai District, passed the impugned order in proceedings dated 29.12.2012 rejecting the candidature of the writ petitioner on the ground that the writ petitioner had involved in a criminal case in Crime No.341 of 2008, for the offence under Section 302 IPC. The petitioner was arrayed as 4th accused in the criminal case.

3. The competent authorities while verifying the character and antecedents of the writ petitioner found that the writ petitioner was not suitable for appointment to the post of Grade-II Police Constable. The verification of character and antecedents is a mandatory procedure contemplated under Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules. Thus, the job profile viz., police force required verification of character and antecedent for the purpose of appointment. The decision of the competent authorities in this regard becomes final. In view of the fact that such verification cannot be interfered with by the Courts in a routine manner, the decision taken by verifying certain facts and circumstances by the authorities are to be respected, unless, such a decision is taken arbitrarily or on malafide grounds. Even in such cases, the person who is approaching the Court must establish and substantiate such allegation. In all other circumstances, the final opinion of the competent authorities with reference to the verification of character and antecedent became final.

4. The learned counsel for the writ petitioner states that the writ petitioner had disclosed the facts regarding the registration of the criminal case in his application through the petitioner was acquitted even before the recruitment notification. Thus, the petitioner had disclosed the fact regarding the registration of criminal case and the order of acquittal passed by the competent criminal Court of law. The Trial Court acquitted the writ petitioner giving the benefit of doubt. Subsequently, the writ petitioner preferred a revision petition before the High Court and he was acquitted honourably. The learned counsel for the petitioner states that the case of the writ petitioner is to be considered for appointment to the post of Grade-II Police Constable.

5. The order of acquittal on benefit of doubt or discharging an accused from the criminal case or acquittal honourably, all these ~~are to be considered by the competent authorities strictly with reference to the facts regarding the verification of the character and antecedents. A mere judgment of the criminal Court~~



alone is not a decisive factor. The judgment of the criminal Court undoubtedly is also to be taken into consideration for the purpose of selecting a candidate for appointment to the post of Grade-II Police Constable. However, the judgment of the criminal Court alone is not the criteria for the purpose of considering the candidature for the selection of appointment to the post of Grade-II Police constable.

6. Take a case where, a candidate is not facing any criminal case and there is no record to show that he had involved any criminal case. Even in such cases, the competent authorities are bound to verify and ascertain the character and antecedents of a person with reference to his behavior and other aspects in the society. Thus, the term character and antecedents, cannot be restricted only with reference to the criminal cases alone. The verification of the character and antecedent means the authorities competent must ascertain whether a person is capable of handling the job profile in the uniformed service. Whether a candidate is of such a character, who can be trusted upon, in view of the fact that the job profile required dealing with arms and ammunitions. Thus, the verification of character and antecedents does not mean only the criminal cases and it involves many other aspects, field verification with reference to the family and the behavior of the candidate concerned with the other people etc.

7. The learned Additional Government Pleader made a submission that the impugned order of rejection was passed prior to the order of the High court passing the order of honourable acquittal in CrI.R.C.No.652 of 2012 dated 07.12.2013. Therefore, the order passed by the High Court was issued subsequently, even in such cases, this Court is of the considered opinion that the verification of antecedents and character is the prerogative of the competent authorities, which is to be made with reference to the rules and the decisions arrived at in this regard, cannot be interfered with while exercising the powers of judicial review under Article 226 of the constitution of India. Such fact finding reports cannot be modified in a routine manner, unless there is a perversity or otherwise.

8. The legal principle regarding the selection had been well settled by this Court with reference to the judgment of the Supreme Court in W.P.No.10689 of 2013 dated 12.07.2018. This Court considered the issue decided by the Full Bench of the High Court of Madhya Pradesh in the case of **Ashutosh Pawar Vs. High Court of Madhya Pradesh and Ors.**, reported in **2018(1) CTC 353** and paragraphs 6 and 7 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 ~~petitioner~~ was rejected although he was acquitted by granting benefit of doubt. The Court held as under:-



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

<https://hcservices.ecourts.gov.in/Files/> Eligibility 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 Three Judges Bench of the Hon'ble Supreme Court of India in the case of **State of Madhya Pradesh and Ors., Vs. Abhijit Singh Pawar** reported in **2018(6) CTC 659**, dealt with the Armed Services, wherein His Lordship Justice. Uday Umesh Lalith, while speaking for the Three Judges Bench made an observation as under:

"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.

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

10.The Three Judges Bench of the Hon'ble Supreme Court considered all the earlier judgments of the Supreme Court in the matter of selection and the procedures viz., Mehar Singh(supra), the Bench came to the conclusion 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".

11.The Supreme Court held that the authority competent/employer is empowered to verify the character and antecedents by taking into account all these factors therefore, mere acquittal in a criminal case honourably or on benefit of doubt alone is not the criteria for the purpose of ascertaining and concluding the character and antecedent of a person. Even in a case where there is no criminal, it is possible that the authorities may reject the candidature on the ground of unsatisfactory character and antecedents. All these things are possible and is to be done strictly with reference to the fact findings made by the authorities competent. This being the legal principles elaborately considered, this Court is of the considered opinion that at this length of time, this Court cannot grant the relief of appointment to the writ petitioner more specifically to the post of Grade-II Police Constable. Moreover, the selection was of the year 2012 and now the selected candidates were appointed and completed the training. Under these circumstances, this Court is not inclined to grant the relief as such sought for in the present writ petition as there is no infirmity as such in the order of rejection which is impugned in the present writ petition.

12.In view of the above, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Secretary, State of Tamil Nadu,
Home Department, Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu Police Department,
Mylapore, Chennai-600 004.

3.The Superintendent of Police,
Madurai District, Madurai.

4.The Chairman, Tamil Nadu Uniformed Services Recruitment Board,
807, II Floor, Anna Salai,
Chennai-600 002.

+1cc to the Special Government Pleader in SR.70946

W.P. (MD) No.5055 of 2013

and

M.P. (MD) .Nos.1 to 3 of 2013

21.06.2019

_PBK (19.07.2019) 7P : 6C