

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.15383 of 2013

S.Mohan

... Petitioner

Vs

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
P.T. Lee,
Chengalvaraya Naicker Building
No.807, 2nd Floor,
Anna Salai,
Chennai - 600 002.

2. The Superintendent of Police,
Nagapattinam District - 611 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the entire records passed by the 2nd respondent in connection with the impugned order passed in Na.Ka.En.F1/9000/2012, dated 07.12.2012 and quash the same and consequently direct the respondents to appoint the petitioner as Grade II Police Constable.

For Petitioner : Mr.K.Sasindran
for Mr.P.Parthiban

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

(This case has been heard through video conferencing)

This writ petition has been filed to quash the impugned order passed in Na.Ka.En.F1/9000/2012, dated 07.12.2012 by the 2nd respondent and for a consequential direction to the respondents to appoint the petitioner as Grade II Police Constable.

2. The case of the petitioner is that he applied for the post of Police Constable Grade II and on successful completion of written examination and physical test, his name appeared in

the provisional select list. That being so, after completion of medical examination and on the basis of the antecedents of the petitioner, which came out at the time of police verification, impugned order was passed by the 2nd respondent rejecting his candidature on the ground that the petitioner was implicated in two criminal cases. In one of the criminal case, which ended in imposition of punishment of Rs.100/- as fine for the offence under section 160 IPC, insofar as the other case, the same ended in acquittal. It is the grievance of the petitioner that while submitting his application for the aforesaid post, there were no criminal cases against him. It is further averment of the petitioner that Rule 14(b) of the Tamil Nadu Special Police Subordinate Services Rules does not stand attracted to the case of the petitioner, as one case ended in acquittal and in the other case, punishment awarded was for a minor offence. The respondents, without taking into consideration the above factors, have passed the impugned order, which is wholly unsustainable. Hence, the present writ petition has been filed with the prayer as above.

3. Learned counsel for the petitioner though admitted that the petitioner was implicated in two criminal cases, however, one ended in acquittal and in the other, the petitioner was inflicted with a minor punishment. It is the further contention of the learned counsel for the petitioner that as on the date of applying for the post, the petitioner was not involved in any criminal case and, therefore, he had no occasion to disclose any details about his antecedents in the application. In support of his contentions, learned counsel drew the attention of this Court to various decisions of this Court as well as the Hon'ble Apex Court, more particularly, the decision of the Hon'ble Apex Court in Avatar Singh vs. Union of India & Ors. (2016 (8) SCC 471) wherein it has been held as under :-

38.4 In case there is suppression or false information or involvement in a criminal case where conviction or acquittal had already been recorded before filing of the application / verification form and such fact later comes to knowledge of employer any of the following recourse appropriate to the case may be adopted.

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous / serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee.

(Emphasis Supplied)

4. It is the further submission of the learned counsel that persons with similar background have been considered and appointed, who were similarly placed like the petitioner and, therefore, the matter be remanded back to the respondents with a direction to consider the case of the petitioner within a reasonable time frame fixed by this Court.

5. Learned Special Government Pleader appearing for the respondents vehemently opposed the contention of the learned counsel for the petitioner. It is the submission of the learned Special Government Pleader that the recruitment is for the uniformed service, which is a disciplined force where unblemished character and conduct is expected from candidates. However, the petitioner having been involved in two criminal offences, though minor in nature in one case or he be acquitted of the offence in the other case would not cleanse his antecedents to have his name considered for recruitment to a disciplined force. It is the further submission of the learned Special Government Pleader that the Courts have time and again held that the persons recruited to the disciplined force should be of impeccable character and it is for the appointing authority to decide as to the suitability of the persons to the said post and the reliance placed on the decision of the Apex Court in Avtar Singh's case would in no way further the case of the petitioner as the power is vested with the appointing authority to consider the case of the persons with antecedents and arriving at their suitability for the appointment. Therefore, it is submitted that this Court may not interfere with the order impugned herein.

6. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

7. It is an admitted fact that during the course of personal verification, it reveals that the petitioner was involved in two criminal cases, prior to the submission of application for the post of Police Constable - Grade II. The said fact has not been concealed by the petitioner also.

8. It is true that the petitioner was imposed with a fine of Rs.100/- in one criminal case i.e., Crime No.150 of 2006 for the offence under Section 160 IPC and in another case in Crime No.92 of 2008 he was acquitted although the said crime was registered for various offences. The acquittal recorded by the trial court is an acquittal simpliciter and not with any strings attached. At the time of applying for the post, the petitioner has not suppressed any material about pendency of any criminal case against him. The offences against the petitioner being not so serious in nature, mere involvement in a criminal case may not be put against the petitioner to deny him the opportunity of appointment. Though the respondents are vested with powers to verify the antecedents of the person, who is to be recruited, however, as held by the Hon'ble Supreme Court in Avtar Singh's case (supra), even where acquittal had already been recorded in a case involving moral turpitude or offence of heinous / serious nature, the employer is clothed with the power to consider all the relevant facts and then take appropriate decision as to the continuance of the employee.

9. In the case on hand, on the date of application, there being no criminal case pending against the petitioner and his involvement is later in point of time, it is for the respondents to take a holistic view of the entire scenario keeping in mind the punishment suffered as also the acquittal of the petitioner in another case before rejecting the candidature of the petitioner. Mere involvement in a criminal case should not be put against the person, who has applied, as such a view would have far reaching repercussions, as persons, who have ill-feelings against anyone, who is desirous of applying for appointment in the disciplined force, may falsely implicate the said person for the purpose of curtailing his appointment. Therefore, it is for the respondents to separate the wheat from the chaff, while selecting persons for the disciplined force and not reject the candidature outright without applying their mind to the materials relating to appointment of an individual. Therefore, in the above backdrop, this Court is of the view that the matter requires reconsideration by the respondent on the above lines and, therefore, it is necessary that the matter be remanded back to the respondents for reconsideration afresh.

10. For the reasons aforesaid, the impugned order dated 07.12.2012 in Na.Ka.En.F1/9000/2012 passed by the 2nd respondent is set aside and the matter is remanded back to the 2nd respondent for fresh consideration. The 2nd respondent shall consider the case of the petitioner afresh in the light of the

decision in Avatar Singh's case (supra) and arrive at a decision on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this judgment.

11. The writ petition is allowed with the above observations and directions. However, there shall be no order as to costs.

-Sd/-

Assistant Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Chairman,
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P.T. Lee,
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Anna Salai,
Chennai - 600 002.

2. The Superintendent of Police,
Nagapattinam District - 611 001

+1 cc to Government Pleader sr36304

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