

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.27639 OF 2008

M.Baskaran

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Department of Prison,
Fort St.George, Madras-9.
2. The Tamil Nadu Uniformed Services,
Recruitment Board, Prison Department,
Rep. by the Director General of Police,
Madras-20.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mamdamus, directing the 2nd respondent to appoint the petitioner as Jail Warder Grade II.

For Petitioner : Mr.Manicka Sivasubramanian
For Mr.V.Raghavachari

For Respondents: Mr.A.Zakir Hussain
Govt. Advocate

O R D E R

Petitioner has come up with this Writ Petition for a direction to the 2nd respondent to appoint him as Jail Warder Grade II.

2. According to the petitioner, he applied for the post of Grade II Warder in pursuance of the Notification dated 05.01.2008 and he was also called for writing examinations on 04.05.2008. Though he has come out successful in all the subsequent tests, he was not issued any appointment order on the reasoning that a criminal case is pending against him under Section 307 IPC. It is stated by the petitioner that though the charge was dropped by the Sessions Court, Dindigul in C.C.No.142

of 2005 as early as on 02.01.2008, his case was not considered for appointment. Aggrieved by the same, the petitioner is before this Court for a suitable direction.

3. Learned Government Advocate contended that though the petitioner successfully cleared all the examinations and was also declared medically fit, on verification of his character and antecedents, pursuant to the general direction issued by the Director General of Police, it was found that the petitioner was involved in a case in Crime No.115 of 2004 for offences under Sections 147, 148, 323, 324, 326, 307 r/w Section 149 IPC and he was arrayed as All. He also contended that even though Principal Sessions Court, Dindigul acquitted all the accused from the case by giving benefit of doubt, pursuant to the involvement of the petitioner in a criminal case, he was not issued appointment order. He also referred to the Government Order issued in G.O.Ms.No.1410, Home (Pri.II) Department dated 17.10.2008 to put forth his contention that a person, who is acquitted or discharged on benefit of doubt, or due to the fact that the complainant turned hostile, shall be treated as a person involved in a criminal. Therefore, he vehemently contended that the petitioner is entitled to any relief in this Writ Petition.

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. A close attentiveness of the background of the present case unravels that the petitioner had admittedly involved in a criminal case, which was booked under serious offences of IPC and therefore, he cannot casually ask for a suitable appointment in the Prison Department, which is otherwise known as a Disciplined Force. Even though the petitioner stated that he was acquitted from the said case, a reading of the judgment of the Sessions Court, Dindigul, in S.C.No.142 of 2005 is very clear that he was exonerated on the ground that the prosecution witnesses turned hostile and therefore, the Government Order dated 17.10.2008, will come into operation against the petitioner.

6. The Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar, reported in 2018 (18) SCC 733, clearly held that despite disclosure of antecedents by a candidate, it is well within the ambit of the employer to consider the same as well as the suitability of the candidate. It was also made clear in the judgment that the employer has every right to take into account the severity of charges, nature of acquittal, etc., to suit the job profile, for which the selection is undertaken.

7. Apart from the above, the recruitment had already taken place and 12 years have gone by from the date of Writ Petition. Hence, the question of appointment at this distant point of time is not feasible. That apart, the petitioner had a criminal case against him and therefore, it is left to the discretion of the Authority to consider whether he can be appointed in the post of Warder or not and this Court cannot give a specific direction even to consider the case of the petitioner, as the petitioner has already attained overage.

8. In the result, the Writ Petition fails and the same is dismissed as devoid of merits, as the petitioner is not entitled to any relief. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
State of Tamil Nadu,
Department of Prison,
Fort St.George, Madras-9.
2. The Director General of Police,
Tamil Nadu Uniformed Services,
Recruitment Board, Prison Department,
Madras-20.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.27116

W.P.No.27639 of 2008

VM(CO)
CS/03/12/2020