

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2020

PRONOUNCED ON : 04.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.8135 OF 2020 AND
W.M.P.NOS.9665 & 9667 OF 2020

K.Balachandran

...Petitioner

-Vs-

1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.T. Lee Chengalvaraya Naicker Maaligai,
Anna Salai, Chennai 600 002.

2.The Director General of Police,
Office of the Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Vellore District, Vellore.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in connection with and culminating in his impugned communication bearing Na.Ka.No.A2(3)/171/18801/PV/2019 dated 24.03.2020, issued to the petitioner and all other connected proceedings thereto, quash the same and direct the respondents to appoint the petitioner as Grade II Police Constable in Tamil Nadu Special Police Service pertaining to the Common Recruitment 2019, together with all service benefits.

For Petitioner : Mr.Arun Anbumani

For Respondents : Mr.V.Kathirvelu, SGP for R1 & R2

: Mr.J.Pothiraj, SGP for R3

O R D E R

This writ petition has been filed to call for the records of the third respondent in connection with and culminating in his impugned communication bearing Na.Ka.No.A2(3)/171/18801/PV/2019 dated 24.03.2020, issued to the petitioner and all other connected proceedings thereto, quash the same and direct the respondents to appoint the petitioner as Grade II Police Constable in Tamil Nadu Special Police Service pertaining to the Common Recruitment 2019, together with all service benefits.

2. The case of the petitioner is that the first respondent Board issued notification in 2019, inviting applications for common recruitment to the post of Grade II Police Constable, Grade II Jail Warder and Fireman. In response to the notification, the petitioner being eligible for consideration in the recruitment, responded to the notification. Being Sportsman, the petitioner had also claimed consideration against Sports Quota, as he had been involved in the sport of Wrestling.

3. In pursuance of the notification, a selection was conducted viz., Written Examination followed by Physical Examination/Endurance Test. The petitioner participated in the Written Examination as well as the Physical Examination/Endurance Test and had come out successful and was also provisionally selected. Thereafter, his character, antecedents were subjected to verification and to be followed by medical examination. At this, the petitioner was informed vide proceedings dated 24.03.2020, then, his candidature was rejected as he was involved in a criminal case registered against him in Crime No.5 of 2019 in C.C.No.35 of 2019 and also he failed to disclose his involvement in the application form. The third respondent who passed the order, has referred to the relevant rules of the Tamil Nadu Special Police Subordinate Service and also the ruling of this Court in W.P.No.38296 of 2005 dated 28.02.2008, wherein, this Court had upheld the relevant rules cited in the rejection order. The communication dated 24.03.2020, rejecting the candidature of the petitioner is the subject matter of challenge before this Court.

4. The rejection of the third respondent is based on two reasons, one is that the petitioner has not disclosed his involvement in the criminal case in the application form and other is that the petitioner was acquitted by the Criminal Court on 13.12.2019 on the basis of "benefit of doubt" and not on merits. According to the authority, under Rule 14(b) (iv), if a person is acquitted on the basis of "benefit of doubt", he is deemed to have been convicted by the Criminal court.

5. Mr.Arun Anbumani, learned counsel for the petitioner would submit that the third respondent has not appreciated the

facts which led to the registration of FIR and the pending criminal case and the subsequent acquittal by the Criminal Court. The authority has merely recorded the factum of involvement by the petitioner in the criminal case and the subsequent acquittal on the basis of the extension of the principle of benefit of doubt, without reference to the actual facts and the circumstances of the criminal case.

6. The learned counsel would submit that firstly, the reason that the petitioner was not entitled to be appointed in police force as he has suppressed his involvement in the criminal case and not disclosed the involvement in the application form itself was contrary to the facts and records. The petitioner has truthfully declared his involvement in the criminal case in the application form with crime number and the jurisdictional police station and the status of the pending case. The learned counsel referred to the relevant portion of the application form and the disclosure by the petitioner which is infact incorporated in the affidavit itself as under:

ADDITIONAL DETAILS/ கூடுதல் விவரங்கள்

WHETHER ANY CRIMINAL CASE HAVE BEEN FILED AGAINST YOU/ உம்மீது ஏதேனும் குற்ற வழக்கு பதிவு செய்யப்பட்டுள்ளதா?

CRIME NUMBER/YEAR/ குற்ற எண் .ஆண்டு	STATE/UNION TERRITORY/ மாநிலம் பூனியன் பிரதேசம்	DISTRICT/CITY நகரம்	POLICE STATION காவல் நிலையம்	CURRENT STATUS OF THE CASE/ வழக்கின் தற்போதைய நிலை
05/2019	TAMIL NADU	CHENNAI	EGMORE	PENDING TRIAL

The learned counsel would therefore submit that the third respondent has obviously not applied his mind when a decision was taken to reject the candidature of the petitioner.

7. As regards the second aspect of the objection, as disclosed in the impugned order, once again, the third respondent failed to consider the the circumstances which led to the registration of the criminal case and the ultimate acquittal of the petitioner. In this regard, the learned counsel would submit that the petitioner while he was serving as Home Guard at Katpadi Police Station, one Manimegalai who was a Trainee Sub-Inspector attached to the said police station, has fallen in love with the petitioner and she expressed her desire and intention to marry him and in that context, she had become very close to the petitioner and his family members during the dalliance. The said Manimegalai by misusing her relationship with the petitioner, had borrowed money from the family members of the petitioner under the pretext of discharging her debts.

After some time, the said Manimegalai was transferred to Chennai and the petitioner started noticing difference in her reaction and conduct towards him.

8. Thereafter, the petitioner came to know that the said Manimegalai was already a married women and also she has a child from the wedlock. When the petitioner questioned about her devious conduct towards him, maliciously concealing her subsisting marriage and a child born from the wedlock, she being a police personnel and seemingly offended, foisted a false case as if the petitioner attempted to assault her, which led to the registration of the case charging the petitioner for offences under Sections 294 (b), 323 and 506 (ii) of IPC r/w with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. When the criminal trial was set in motion, the petitioner participated in the criminal trial and ultimately by the judgment of the Criminal Court dated 13.12.2019, the petitioner was acquitted.

9. The learned counsel for the petitioner has taken this Court to the discussion and the ultimate conclusion by the Criminal Court and submitted that though the word "benefit of doubt" was used, but, it was a clear case of acquittal on merits as the learned Magistrate had pointedly concluded that it was a false case foisted on him. In fact, the learned counsel has succinctly nut shelled the findings of the learned Magistrate in the affidavit which is extracted hereunder:

"1. That the case of the complainant vis-a-vis the petitioner abusing the de-facto complainant with filthy words, hitting her with his hand and threatening her are all doubtful.

2. That there is a doubt as to whether at all such an incident as alleged would have happened.

3. That a typed complaint given in short time raises doubts.

4. That the signatures of the so-called witnesses were not obtained in the Observation Mahazar. That the Observation Mahazar and Rough Sketch were prepared in their presence raises doubts.

5. That no general public were examined as witnesses.

6. That P.W2 did not speak about the petitioner committing any offence.

7. That the case of the prosecution cannot be believed only on the basis of the uncorroborated evidence of P.W.1."

The learned counsel would submit that with reference to the above findings, the petitioner could not have said to be acquitted merely on the basis of "benefit of doubt".

10. The learned counsel would further submit that the petitioner's mother had lodged a complaint before the jurisdictional police for fraud and cheating against the said Manimegalai as the said Manimegalai had taken huge amount by misusing the relationship with the petitioner and his family members. The Inspector of Police concerned, conducted the investigation into the complaint and found that the complaint against the said Manimegalai was true and concluded that the said Manimegalai had cheated the petitioner and his family members by concealing her earlier marriage and also the fact of child born from the marriage and had developed illegitimate relationship with the petitioner and cheated him. The Inspector also concluded that when she was questioned about her conduct, she retaliated by filing a false case against the petitioner. In fact, the report of the Inspector of Police dated 03.10.2019, is also enclosed in the typedset of documents.

11. The learned counsel would therefore submit that in the circumstances as explained above, the learned Magistrate has rightly acquitted the petitioner on merits. But, unfortunately, the third respondent who is under a legal obligation to take into consideration all the relevant materials, facts and circumstances, has simply discharged his authority by rejecting the candidature of the petitioner only on the basis of factum of pending criminal case and the subsequent acquittal of the petitioner by the Criminal Court on the basis of "benefit of doubt".

12. The learned counsel would submit that when an authority is vested with the power of assessing the suitability of the candidate, notwithstanding the disclosure of involvement of criminal case or the criminal case ending in acquittal, he is supposed to be guided by the thorough consideration of all the materials and circumstances and it is not open to him to simply reject the candidature by reducing the power of discretion vested in him to a meaningless discharge of official responsibility.

13. The learned counsel would submit that the Hon'ble Supreme Court of India has laid down clear principles as to what the authorities should follow in such matters in the case of Avtar Singh Vs. Union of India, reported in 2016 (8) SCC 471. The learned counsel would also refer to the recent Division Bench judgment of this Court, rendered on the subject matter, reported in 2019 (6) CTC 465. He would also refer to two decisions of this Court dated 02.06.2020 and 06.10.2020 in W.P.No.17530 of 2019 and W.P.No.10788 of 2020. This Court, in similar circumstances, has commented on the authority for summary rejection of candidature of the candidates without delving or analyzing into the facts and circumstances of each case on the

basis of the legal principles laid down by the Hon'ble Supreme Court of India and followed by many Courts over the years. Therefore, the learned counsel would submit that the impugned order is liable to be set aside as being illegal and void.

14. After notice, Mr.V.Kathirvelu, learned Special Government Pleader entered appearance for the first and second respondents and Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the third respondent. A detailed counter affidavit has been filed by the third respondent. In the counter affidavit, it is stated that as per G.O. Ms.No.101, Home (Police X) Department, dated 30.01.2003, rule 14(b), "no person who is a candidate for selection to the post of Grade II Police Constable should be eligible for appointment to the service by direct recruitment unless he satisfies that his character and antecedents are such as to qualify him for such service and 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 person involved in a criminal case".

15. In the counter affidavit, it is also stated that as to how the Hon'ble Supreme Court has laid importance for higher standard of conduct and integrity for recruitment to the police service. When the petitioner was admittedly involved in a criminal case and charged under three sections of Indian Penal Code, he is not entitled to be considered for appointment in the police force. The learned Special Government Pleaders would reiterate the averments contained in the counter affidavit. According to them, the very fact that the petitioner was involved in a criminal case by itself is a material fact to be taken into consideration and only on that consideration, the petitioner's candidature came to be rightly rejected. When the rules provide for such basis for the rejection, the third respondent has acted within the framework stipulated in the rules. Therefore, it is submitted that no interference is called for from this Court.

16. This Court has considered the submissions of the learned counsel for the petitioner and the learned Special Government Pleaders for the respondents and perused the pleadings, records and the relevant citations relied on. The entire issue projected in this writ petition hinges on the simple legal issue as to whether the third respondent who passed the impugned order, has applied his mind at all or not, particularly, with reference to the legal principles laid down by the Hon'ble Supreme Court of India in the case of Avtar Singh Vs. Union of India which was relied on by the learned counsel for the petitioner. Following the Hon'ble Supreme Court's decision, the Division Bench of this Court has recently passed an order on 13.11.2019, in the case of Surendhar Vs. Director General of Police and also two other

latest decisions by this Court on similar facts and circumstances of the case.

17. From the impugned order what is evident is complete absence of application of mind on the part of the third respondent. If only the third respondent has taken a cursory look at the Criminal Court's judgment, he would have perforce come to a conclusion that the criminal case against the petitioner had no basis at all and the learned Magistrate has rightly acquitted him of the charges. Unfortunately, the third respondent was guided by the cliched and mechanical expressions, one may find in almost of all Criminal Court judgments that ultimate conclusion (acquittal) being proceeded with expressions "benefit of doubt".

18. When an authority is vested with an important responsibility of assessing the suitability of candidates in recruitment to public service, such authority is bound to act fairly and reasonably. Merely because a candidate was involved in a criminal case by itself would not be a bar to his consideration for eventual appointment. It is incumbent upon the authority to take note of the nature of the offence alleged against the candidate and also the various circumstances which formed the basis of the registration of the criminal case and the final acquittal. If the authorities are to merely go by the expression which have become a routine part of every Criminal Court judgments, one does not require any application of mind at all towards the assessment of suitability of candidate and the concept of discretion vested in the authority for the exercise becomes inane and purposeless.

19. In this case, as rightly contended by the learned counsel for the petitioner, the very fact that the third respondent has recorded in the impugned order that the petitioner had failed to disclose his involvement in the criminal case in the application form, was contrary to the record as demonstrated in the affidavit itself and it was not disputed by the respondents in the counter affidavit, the non-application of mind by the third respondent is writ large in the impugned action. Mere recording of the fact of acquittal of the petitioner on the basis of "benefit of doubt", without any reference to the facts and the nature of offence and to the basis of the acquittal, would only fortify the conclusion of this Court that the impugned order on the face of it, cannot be countenanced either in law or on facts. Even otherwise, the impugned order is contrary to the law laid down and declared by the Hon'ble Supreme Court and also followed in the various orders, particularly, the recent Division Bench order of this Court and also two other decisions.

20. In Avtar Singh's case, the Hon'ble Supreme Court has summed up various legal principles to be adopted in anticipation

of various contingencies that may arise for consideration by the authority in paragraph Nos.34, 35, 38.4.1, 38.5 and 38.6 of the judgment that may be relevant for the case on hand. The said paragraphs are extracted hereunder:

"34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material" information presupposes that what is suppressed is a "matter" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case."

21. In the above paragraphs, the Hon'ble Supreme Court has ultimately held that in the course of character and antecedents verification, which was an important evaluation for assessing suitability and yet it should be based on the objective criteria on due consideration of all relevant aspects. Even in case of conviction against the offence of criminal nature, the authority is not divested of his discretion to assess the suitability of

the candidate. The Hon'ble Supreme Court went on to hold that even if there was a non disclosure of pendency of criminal case, unless the same was found to be material, such non disclosure cannot be held against the candidate.

22. In the case of C.Surendhar Vs. Director General of Police, reported in 2019 (6) CTC 465, the learned Judges of this Court have observed in paragraph Nos.33, 34 and 35 as under:

"33. The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is "involvement". The word "involvement", therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether "he was involved in a criminal case or not".

34. The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of M.Manohar Reddy and another v. Union of India and others, reported in (2013) 3 SCC 99. Whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement

would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person was involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appellant did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. We, accordingly, allow the appeal and set aside the impugned judgment dated 27.4.2019 as well as the impugned order dated 8.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today."

23. The learned Division Bench has held that there has to be a proper assessment of suitability of the candidate. Though such assessment may involve bit of subjectivity, but, such assessment must receive objective consideration on the basis of the materials available. The learned Division Bench has referred to several decisions of the Hon'ble Supreme Court over the years and held as above. This Court, in similar circumstances, after analysing the Criminal Court's judgment therein, had come to the conclusion that the acquittal was a clear acquittal on merits and set aside the rejection order by the authority on the ground that there was no proper application of mind while rejecting the candidature of the petitioner therein. The paragraph Nos. 17 to 25 of the judgment in W.P.No.17530 of 2019 dated 02.06.2020, are extracted hereunder:

"17.This Court perused the judgment of the criminal Court carefully and finds that there were four independent witnesses alone, apart from official witnesses, who deposed before the criminal Court. The four witnesses were the complainant himself, his son and his two daughters-in-law. Apart from these four independent witnesses, there was no

other independent witness at all to support the case of the prosecution. Even the evidence of these witnesses was found to be extremely untrustworthy and contradictory in view of the close relationship of the witnesses with the complainant. In the said circumstances, the criminal Court had rightly held that there was no worthwhile evidence at all to hold the petitioner guilty of the offences charged against him and ultimately and rightly acquitted the petitioner. On the whole, there cannot be any doubt in coming to the conclusion that the acquittal of the petitioner is to be considered as one of honourable acquittal, as his involvement in the criminal case was not even remotely established.

18. In the backdrop of the above clean acquittal of the petitioner, this Court has to necessarily take a call as to whether the first respondent, who passed the impugned order, has considered in proper perspective the basis on which the judgment of the acquittal was handed out to the petitioner by the criminal Court.

19. From the impugned order this Court is unable to see any examination of the authority with reference to the judgment of the criminal Court. The authority though has cited the legal principles from the case laws and the rule position, nevertheless, has not chosen to apply either the legal principle or the Rule position on the factual matrix of the present case. Unfortunately, the authority though right in his demonstration of the Rules and the legal principles, yet, has not appreciated the fact that the provisions and the legal principles cannot operate uniformly across the Board and the same have to be operated and applied on the set of facts and circumstances of each case.

20. As far as the case on hand is concerned, the petitioner, though involved in a criminal case, it was ultimately found by the criminal Court that there was no evidence at all against the petitioner and in which event he is entitled to be considered as per Explanation (2) to Rule 13 of the Special Rules for TNPSS, which is quoted by the first respondent himself. A mere perusal of the judgment of the criminal Court would clearly show that it is a clean and complete acquittal, but unfortunately nothing is reflected in the impugned order that the authority has analysed the criminal Court judgment

at all.

21.No doubt, as per the decision of the Honourable Supreme Court of India in Avtar Singh case, which is holding the field, the power and discretion is vested in the authority concerned to assess the suitability of the candidate in cases where the candidates were involved in criminal cases and were acquitted, nevertheless, the discretion so exercised is not beyond the judicial review of this Court. After all, any decision of the authority is always subjected to judicial review if the same is put to challenge on legitimate grounds. There may be situation that the authority may feel that his decision is right and not to be faulted with, but such decision may also be subjected to interference, when dispassionate consideration is the underlying principle adopted by the Courts by judging the merits and demerits of the respective claims, sans officious predilection.

22. In substance, this Court finds that the discretion, which is delegated to the employer, as per the decision of the Honourable Supreme Court of India, has been exercised more dutifully and less objectively and in such view of the matter, this Court finds it imperative to intervene in the impugned order passed by the first respondent.

23.Further, factually this Court finds that the petitioner is only 28 years old, as per his indication in the affidavit and he must have been in his teen at the time when the alleged criminal offence took place in 2009. Even assuming that the petitioner was involved in a scuffle, which led to the framing of criminal charges against him, a solitary act of aberration in the conduct of the petitioner, at the time of his impressionable age with susceptible mind, cannot result in dubbing the person of criminality for all times to come. Although this Court is conscious of the fact that the recruitment is to the disciplined Police Force, yet, even if the standards of discipline are of higher degree, an incident happened during the immature teenage times, where understandably impulsive instincts and youthful brashness overwhelmed reasons and composure, need not be held against the petitioner and deprive him of his right to seek public appointment permanently. In such circumstances, the authority, who is to exercise his

discretion in considering such cases is expected to display due empathy and larger understanding, before being subjectively satisfied of his decision.

24. In the upshot of the above narrative and discussion, this Court is of the view that this case falls under an exceptional class, where despite the involvement in the criminal case and subsequent acquittal by the criminal Court, the petitioner is still entitled to be considered. This is because, this Court, after thoroughly going through the criminal Court judgment, finds that there was absolutely no evidence at all against the petitioner and therefore, it must be considered as per Explanation (2) to Rule 13(b) of Special Rules that the petitioner was not involved in a criminal case at all. Having found thus, this Court has to necessarily conclude that the impugned order passed by the first respondent cannot be upheld, as the authority has not properly and correctly examined the judgment of the criminal Court. It appears that the authority has perfunctorily applied the judicial principle and rejected the claim of the petitioner, which according to this Court is liable to be reviewed in favour of the petitioner herein.

25. In these circumstances, this Court is constrained to quash the impugned proceedings of the first respondent in C.No.A3/3440/2013, dated 21.08.2018, as improper and invalid and accordingly it is quashed and consequently, the respondents are directed to consider the claim of the petitioner for appointment to the post of Grade-II Police Constable in any existing vacancy or in future vacancy, in case the petitioner's selection in his category falls within the meritorious zone."

24. In one other recent decision of this Court in W.P.No.10788 of 2020 dated 06.10.2020, yet again this Court has reminded the authority has to how they should discharge the discretion vested in them. In this decision, this Court has inextenso extracted the decision of the Hon'ble Supreme Court in Avtar Singh's case and also the observation of the learned Division Bench of this Court referred to above and finally, held as under in paragraph Nos. 23,24,25 and 26:

"23. The above decision is a pointer to the authorities of the importance of the discretionary power vested in them and the exercise of such power in matters like the present one.

24. In cases of this nature, when the discretion is vested with the authorities, they are expected to adopt circumstantial flexibility and cannot meaninglessly take refuge under the Rule position and reject all cases by painting every candidate with same brush, who was involved in the criminal case or failed to disclose the same in the application form. Such exhibition of pedantic-application of mind would amount to apathetic surrendering of the discretion, so vested, to the inanimate letters of the rule, giving a go by to the spirit of the rule which was essentially brought into existence to address the complex and variegated claims of the candidates concerned, falling within the purview of the Rule.

25. Coming back to the case on hand, the petitioner herein has admittedly cleared all the stages of selection and has also been provisionally selected, which facts are not in dispute. The objection for her appointment is only on the stated grounds, which have been dealt with by this Court in the above paragraphs. For a simple quarrel in the family, which is common in our social settings i.e., mother-in-law, sisters-in-law on one side versus daughter-in-law might have attracted the mischief of two provisions 294(b) and 323 of I.P.C., but considering the involvement of the petitioner in a family squabble and branding the petitioner as a candidate of criminal antecedents and hence not fit for the appointment in the police force is a apologetic display of pretentious sanctimony of officious disposition. In such circumstances, the involvement of the petitioner in the criminal case and the conviction perforce cannot operate as a blanket bar under the rule and the petitioner be denied of the appointment. The petitioner's aspiration to become a member of the police force cannot be nipped at the budding stage of her blossoming life by holding on to so called criminal antecedents against her and disqualifying her for a life time. If such action is upheld, it would amount to McCarthyism to have a full play in infringing the fundamental right of aspiring young people who seek employment in public service. Therefore, the authorities need to have a larger understanding of the future of the candidates and also need to exhibit judicious application of mind in segregating the deserving cases from undeserving ones so that the sublime purpose and the noble ends of justice is

better served. The art of being wise is the art of knowing what to over look, as the saying goes and the authorities would be looked upon with deferential esteem, if they act wisely in these matters, towards advancing the cause of good public administration.

26. In the above circumstances, this Court has no hesitation in allowing the writ petition and hence the impugned order in Na.Ka.No.F1/5482/2019 dated 13.03.2020 is hereby set aside and the second respondent is directed to process the candidature of the petitioner and if she is otherwise fit for appointment to the post to which she has applied, grant her appointment on the basis of her selection in pursuance of the notification issued by the Uniformed Service Board in 2019. The second respondent is directed to pass appropriate orders within a period of four(4) weeks from the date of receipt of a copy of this order."

25. The above decisions have dealt with as how to discharge the discretionary power by the authority while making objective assessment vis-a-vis dealing with such claims as in the present case. Merely by exhibiting rule oriented pedantic approach time and again by the authority in rejecting the candidatures of the candidates who are involved in criminal cases and being acquitted on the basis of "benefit of doubt", without appreciating the nature of offence and the facts which led to acquittal etc., tantamounts to relegating the spirit of the rule to the back burner and enforcing the inanimate letter of the rule in negation of the fundamental rights of the candidate. Such approach in the considered opinion of this Court would invariably result in undermining procedural fairness and denial of objective consideration towards the claim of the candidates who seek appointment in Police Service or Public Service.

26. To hold every person involved in a criminal case as a criminal across the spectrum, regardless of the nature of offence charged, is a sordid reflection of a warped understanding of the jaded administration, branding someone a criminal and barring him from seeking public employment for his life time, even if the offences were trivial in nature, amounted to integrating "Mccarthyism" into the decision making process in the police administration.

27. As far as the case on hand is concerned, the selection of the petitioner is not disputed by the respondents. The only objection against the ultimate appointment is what they have stated in the impugned order. This Court is of the considered view that the reasons set forth in the impugned order cannot be

countenanced both in law and on facts. Since the authority failed to appreciate the circumstances and the facts which led to the acquittal of the petitioner, this Court has undertaken the said exercise and finds that ultimately, the petitioner was acquitted of the charges on merits. Moreover, this Court has also taken into consideration how the petitioner was maliciously prosecuted by his former friend which fact was also recorded by the Inspector of Police in his report which is referred to supra. Unfortunately, the third respondent has not appreciated the crucial factors for consideration while deciding the suitability of the petitioner in terms of the law laid by the Courts.

28. In the above circumstances, the impugned order in Na.Ka.No.A2(3)/171/18801/PV/2019 dated 24.03.2020, is hereby set aside. The third respondent is directed to process the candidature of the petitioner and if he is found otherwise fit for appointment to the post to which the petitioner is eligible, grant him appointment on the basis of his selection in pursuance of the notification of the first respondent Board in 2019. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

29. In view of the above, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.T. Lee Chengalvaraya Naicker Maaligai,
Anna Salai, Chennai 600 002.

2.The Director General of Police,
Office of the Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Vellore District, Vellore.

+2cc to Mr.Arun Anbumani, Advocate, S.R.No.39012
+1cc to the Government Pleader, S.R.No.39334

W.P.No.8135 of 2020 and
W.M.P.Nos.9665 & 9667 of 2020

EV (CO)
KKV/06/01/2020



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