

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2020

PRONOUNCED ON : 04.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.8284 of 2020

&

W.M.P.No.9924 of 2020

A.Balaji

...Petitioner

.Vs.

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police officer Campus,
Pantheon Road,
Chennai-8
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-4
3. The State of Tamil Nadu,
rep. by its Secretary,
Home Department,
Secretariat, Chennai-9
4. The Superintendent of Police,
Dharmapuri District,
Dharmapuri

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records in the impugned order in Na.Ka No.A3/02600/2020 dated 09.04.2020 on the file of the fourth respondent and quash the same and direct the respondents to appoint the petitioner for the post of Grade II Police Constable.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mrs.Narmadha Sampath, learned
AAG assisted by Mr.Kathirvel,
Special Government Pleader

ORDER

The matter is taken up through web hearing.

2.The writ petition is filed with the following prayer;

"To issue a Writ of Certiorarified Mandamus, to call for the records in the impugned order in Na.Ka No.A3/02600/2020 dated 09.04.2020 on the file of the fourth respondent and quash the same and direct the respondents to appoint the petitioner for the post of Grade II Police Constable."

3. The facts and circumstances necessitating the filing of the Writ Petition are briefly stated hereunder:

3.1. The first respondent Board invited applications for recruitment of Grade-II Police Constable, Jail Warder and Firemen for the year 2019. The selection process involved Written test and Physical test followed by Interview. As the petitioner appeared to have fulfilled the prescribed qualification in terms of the Notification, he had applied for consideration for appointment against the notified posts.

3.2. In response to the application of the petitioner, he was called to appear in the Written examination held on 25.08.2019 and after he was successful in the Written examination, he was also directed to attend the Physical examination and was also declared successful. The petitioner by this, had reached the final stage of selection. While so, that during Diwali time in 2018, the petitioner was booked for committing an offence of bursting crackers and a case was registered against him by Papireddypatti Police under Section 285 of IPC. According to the petitioner, an FIR was registered against two persons including the petitioner in Crime No.297 of 2018 and out of the two persons, the other person happened to be the son of a Sub-Inspector of Police and subsequently, his name came to be dropped from the FIR. According to the petitioner, since the case registered for an offence under Section 285 of IPC for bursting crackers, being a bailable offence, no arrest was made, hence, he petitioner was completely unaware of the registration of criminal case against him at the time of filling of application, while applying for appointment to the post of Police Constable Grade-II etc., in response to the Notification-2019.

3.3. Apart from the allegations of bursting of crackers during Diwali festival, there was no other allegation of any deviant conduct against the petitioner. While so, the petitioner was issued with an order dated 09.04.2020, stating that the name of the petitioner will not be considered for appointment to the post of Police Constable Grade-II, as he had

failed to disclose his involvement in the criminal case in the application form. According to the impugned order, Rule 14(b) (ii) & (iv) of Special Rules would come into operation, as per which, the petitioner who was found to be involved in the criminal case, was not entitled to be considered for the appointment. In effect, the impugned order rejected the candidature of the petitioner for suppression of the material fact of his involvement in the criminal case and withholding of the same deliberately. The order further relied on the decision of this Court rendered in W.P.No.28396 of 2005 dated 28.02.2008 on this aspect. In such circumstances, regardless of the outcome of the criminal case, his application ought to be rejected and hence it was rejected eventually. The rejection order dated 09.04.2020, is the subject matter of challenge in the present Writ Petition.

4. Mr.Raja Rajan, learned counsel appearing for the petitioner has reiterated the above facts. According to the learned counsel, non-disclosure of the information about the involvement in the criminal case by the petitioner was not intentional as the petitioner himself was not aware of the registration of the criminal case and conversion of the same to STC No.868 of 2019 on the file of the Judicial Magistrate Court, Pappireddipatti. In any event, the learned counsel would submit that the offence alleged against the petitioner is too trivial in nature, namely, bursting of crackers during Diwali time and non-disclosure of such offence per se cannot by itself disentitle the petitioner from being considered for recruitment to the Police Force.

5. According to the learned counsel for the petitioner, the impugned order of the fourth respondent suffers from non-application of mind, as the authority failed to consider the nature of the offence alleged against the petitioner and irrespective of the outcome of the criminal proceedings, there cannot be any blanket bar on the suitability of the petitioner from being considered for recruitment in the Police Force. Therefore, the learned counsel would submit that the rejection of candidature of the petitioner summarily on the premise that he was involved in the alleged criminal offence under Section 285 of IPC, cannot stand the test of proper judicial scrutiny. The discretion vested in the authority in assessing the suitability of the candidate has not been exercised fairly and properly and therefore, the impugned order is liable to be interfered with.

6. On behalf of the respondents, Mr.Kadirvel, Special Government Pleader entered appearance. A counter affidavit has been filed elaborating the reasons for rejecting the candidature

of the petitioner in line with what is stated in the impugned order.

7. Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the respondents would strongly oppose the Writ Petitioner questioning the rejection of his candidature, contending that there was deliberate suppression of material fact and information by the petitioner of his involvement in the criminal case, in not disclosing the same in the application form submitted by him to the Board. By such conduct alone, the petitioner became disentitled to be recruited to the Police Force. She would submit that when a person like the petitioner who can said to be involved in suppression of important material information, particularly, his involvement in the criminal case, his suitability to be appointed in the Police Force becomes a big question mark. She would submit that as the petitioner was facing trial in STC No.868 of 2019 before the learned Judicial Magistrate, Pappireddypatti, the petitioner feigning ignorance, that he being unaware of the proceedings and hence not disclosing the information in the application form is too naive to be believed as a credible explanation and the averment of the petitioner to that effect was made up only for the purpose of the case. The learned Additional Advocate General would further submit that unlike other civil services recruitment to the police force is based on stringent norms conforming to the highest standards of discipline and conduct. In such consideration, when the petitioner applied for the recruitment ought to have realized in the first place that non-disclosure of his involvement in the criminal case, whatever be the nature of the offence, in the application form was a serious lapse on his part. The respondents cannot over look the lapse simply on the ground that the alleged offence against the petitioner was not serious in nature. What is material and important in the consideration of the authority is the concealment of information and not the nature of offence alleged against the candidate. Therefore, she would emphatically impress upon this Court, that no matter the nature of offence alleged against the petitioner, this Court ought to take into consideration the conduct of the petitioner in suppressing and non-disclosing of the material information to the Recruitment Board, in order to gain appointment in the Police Force. Such conduct per se would make the petitioner ill-suited for the recruitment to the uniformed services. According to the learned Additional Advocate General, the Courts have held that non-disclosure of material information of involvement in criminal case by itself will operate as a dis-qualification for consideration of the candidate concerned. To sum up, the learned Additional Advocate General would implore this Court not to be guided merely by the nature of the offence alleged against the petitioner, but to be guided more on the conduct of the

petitioner misleading the Recruitment Board. She also added that in the application form itself, it is clearly mentioned that any information furnished through Online application is found to be false/incorrect, the candidature will not be considered even after appearing in the Written examination. The petitioner is presumed to have known the condition, and had not furnished the information as it required, thereby rendered himself unsuitable for the subject recruitment.

8. This Court, bestowed upon itself its anxious consideration to the submissions put forth by the learned counsel for the petitioner and Ms.Narmadha Sampath, learned Additional Advocate General for the respondents, more for the reasons that the issue under judicial scrutiny has been quite often engaging the attention of this Court and the Hon'ble Supreme Court of India, from time to time. In such circumstances, this Court is bound to consider the judicial precedents on the subject matter which unravelled the contentious positions adopted by the parties, viz., candidates versus recruitment agencies.

9. The essence of the controversy in this Writ Petition is whether the non-disclosure of the information by the petitioner regarding his involvement in the criminal case, in the facts and circumstances of the case, can be the sole reason for rejecting the candidature of the petitioner? And consequently, the discretion vested in the authority, whether was exercised by him on legally acceptable terms or not?, particularly, affecting the fundamental right of the petitioner, is a matter of important judicious consideration and therefore, the same calls for critical examination by this Court, with reference to contextual facts and judicial principles enunciated on the subject matter of the controversy.

10. At the out set, this Court in the general perspective of things, is in agreement with the submission of the learned Additional Advocate General that suppression of material fact particularly, the fact of involvement in a criminal case is a serious lapse which cannot be ignored or overlooked, more in the matter of recruitment to the uniformed services, where the bench mark for discipline and integrity expected of the potential recruitees is of higher quotient. Nonetheless non-disclosure of involvement in a criminal case can operate as a bar against the candidates from being recruited to the police force under all circumstances across the spectrum, regardless of the nature of involvement and the alleged offence, needs to be addressed with reference to the facts of this case and with reference to the judicial principles laid down by the Hon'ble Supreme Court of India and our High Court. Several decisions have been rendered in the past both by this Court and also by the Hon'ble

Supreme Court of India on this aspect. But in order to grapple with the issue incisively in respect of the case on hand, it is imperative to refer to one all encompassing decision of the Hon'ble Supreme Court of India reported in (2016) 8 SCC 471 (Avatar Singh Vs. Union of India and others). In the said decision, the Hon'ble Supreme Court had an occasion to consider various contingencies that may arise for consideration of the candidates involved in criminal case and the related issues like the honourable acquittal, non-disclosure of involvement in a criminal case etc. After thoroughly analyzing all the possible situations that may confront the authorities concerned in assessing the suitability of the candidates involved in criminal case, the Hon'ble Supreme Court has ultimately ruled as under in paragraphs 29 to 39:

"29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding

acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

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 that 'matters' 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.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of

special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling 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.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

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.

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.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9 In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

11. Now coming to the decision relied on by the authority in rejecting the candidature of the petitioner, i.e. W.P.No.28396 of 2005, dated 28.02.2008, which decision was rendered by a Full Bench of this Court constituted for resolving the conflicting views by different Benches holding the field then. The terms of the Reference before the Full Bench were as follows:

i) Whether the acquittal or discharge of a person in a criminal case on benefit of doubt would amount to a stigma on the life of a person so as to make him ineligible as per Rule 14(b), Explanation-1 of the Tamil Nadu Special police Subordinate Rules?

ii) Whether the non-disclosure of involvement in a criminal case, which has ultimately ended in acquittal, but in some cases disclosed after acquittal, can be a ground for disqualifying the persons concerned from entering into the Government service?"

12. The Full Bench, on consideration of the above terms of Reference, had answered as follows:

(a) that by virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified; and

(b) that the failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case."

13. The matter strangely did not rest there. It appears even after the decision of the Full Bench rendered in 2008, this Court passed several orders by various Judges not in line with the views expressed by the Full Bench, but instead adopted the legal principles laid by the Hon'ble Supreme Court of India on the subject matter. In order to resolve the fluid state of legal uncertainty, notwithstanding the Full Bench's dictum, in 2013, a larger Bench came to be constituted comprising 5 learned Judges. The following questions were framed for consideration by the larger Bench.

(i) Whether the law laid down by the Full Bench of this Court in *Manikandan vs. Chairman, T.N.Uniformed Services Recruitment Board - 2008* (2) CTC 97 holds the field or it needs to be over-ruled?

(ii) Whether Rule 14(b)(iv) together with Explanations 1 and 2 attached thereto of the Tamil Nadu Special Police Subordinate Service Rules, 1978 is constitutionally valid?"

14. The larger Bench appears to have upheld the decision of the Full Bench by its decision dated 27.02.2014 by majority 4:1. This is as far as our High Court is concerned. Interestingly, a learned single Judge of this Court, felt that he was not bound by the decision of the larger Bench, but was persuaded and bound by the principles laid down by the Hon'ble Supreme Court of India, in particular in the matter of "*Jainendra Singh vs. State of U.P. and others*" reported in 2012 (3) LLN 497 (SC). More interestingly, even the Hon'ble Supreme Court, it appears was confronted with divergent views of the Benches comprising two learned Judges. In that circumstances, several issues were referred to, concerning to the subject matter, to a larger Bench, comprising three learned Judges. Ultimately, the Hon'ble Supreme Court of India has rendered a detailed judgment in *Avtar Singh's case* (cited supra), laying

down the legal principles to be followed on various aspects of the issues, covering a broader and exhaustive canvass.

15. In the conspectus of the above development, this Court, has to examine, within the frame work of the principles evolved by the Hon'ble Supreme Court, as extracted supra, the validity of the discretion exercised by the authority concerned in rejecting the candidature of the petitioner on the ground of non-disclosure of the information of his involvement in the criminal case. The law laid down on this aspect is clear on two issues as could be seen from the above extracted Hon'ble Supreme Court's decision. Firstly, the discretion vested in the authority to assess the suitability of the candidates in cases where the candidates are found involved in criminal cases, is preserved and protected. Secondly, how that discretion ought to be exercised has also been outlined in the above judgment in case of variegated nature of involvement in criminal offences from a petty offence to heinous crime across the spectrum of the criminal law. Therefore, it is the duty of this Court to evaluate in consonance with the established principles of judicial review of administrative action, as to whether the discretion exercised by the authority in this case, is fair and proper or the rejection by the authority is a reflection of pedantic and perfunctory application of mind. When a decision is vested on the authority to assess the suitability of the candidates for appointment to the uniformed services, exercise of such discretion has to be extremely circumspect and wholesome, particularly when the nature of the offence alleged against the petitioner herein was trivial and no criminality in the strict sense, could be attached to the offence even if the said offence is established before the Criminal Court. If mere registration of FIR on the stated offence can operate as an embargo against the petitioner for appointment to the uniformed service, the discretion to assess the suitability by the competent authority loses its legal or administrative significance.

16. Once, admittedly, the competent authority is clothed with the ultimate responsibility of assessing the suitability of the candidates, when such responsibility is discharged in a particular manner to the detriment of the candidates, the onus shifts on this Court to review the decision taken by the authority, on the touchstone of fair play and good conscience. So much so this Court, while undertaking such review of the impugned action of the fourth respondent, primarily finds that the impugned decision is the result of callous and apathetic application of the Rule as mentioned in the impugned order in so far as the case on hand is concerned. Sticking to the rigours of the letter of the Rule than to the spirit of the Regulation

for which it was intended and enacted is a poor reflection of tunnel vision of officious disposition.

17. This Court is conscious of, of course, the objective of the relevant Rule is intended to weed out the elements with criminal antecedents, involved in serious criminal offences, to protect the Police Force from infiltration of such creepy elements. The intention apart, in the matter of implementation of the Rule in the given situation, the authority expected to act wisely and judiciously. The authority cannot blindfold himself and implement the Rule unmindful of the fact situation, allowing the vice of arbitrariness to take precedence in the decision making process, exposing the eventual decision to judicial interference. The authority notwithstanding the Rule, is empowered to assess the suitability of the candidate concerned, in a given situation, in furtherance of the spirit of the Rule and such discretion cannot be discharged uniformly across the Board, although the Rules are meant to be applied uniformly to all persons, but the uniformity requirement in the decision making process of the authority is meant to be applied in homogeneous circumstances and not in respect of dissimilar situations across the spectrum as reasoned by the Hon'ble Supreme Court in the "Avtar Singh's case (cited supra). It will be a travesty of justice if the authority who is invested with the power of deciding the suitability of the candidates embarks upon painting all the candidates with the same brush. Such exercise of power with mindless uniformity would only lead to miscarriage of justice. The discretion so vested under the Rule and the leverage provided would then become inane and pointless.

18. In the above circumstances, coming to the case on hand, the poor petitioner herein is charged for the offence of bursting of crackers during Diwali as admitted by the authority in the impugned order. No other offence has been pointed out against the petitioner. Section 285 of IPC, under which the petitioner has been charged, reads as under:

"285. Negligent conduct with respect to fire or combustible matter.—Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six

months, or with fine which may extend to one thousand rupees, or with both."

19. The broad contours of the above Section may appear to be having criminal element, nevertheless this Court cannot shut its eyes to the facts of this case which attracted the mischief of the above provision. Mere bursting of crackers by an individual that too during festival time, can be termed as a criminal offence at all, is for the competent Court to decide. However, for the purpose of the issues on hand, can the incident land the petitioner in an irretrievable situation, wherein he is debarred from seeking a recruitment to the Police Force by applying the so-called strict standards of discipline and high degree of integrity. In this regard, the submissions made by the learned Additional Advocate General may look attractive, apparently though. But the said submission pales into insignificance, when the facts of this case are juxtaposed to the application of the Rule with the fossilized mind set of the jaded authority. It looks like, the Recruitment Board is only looking for candidates conforming to the Victorian standards of conduct and discipline. Such utopian expectation is a matter of pretentious and wishful idealism, divorced from mundane pragmatism. Bursting of crackers is an integral part of the Diwali festival, having its roots to a hoary and hallowed civilization unique to this land, and is celebrated by all age groups across the nation with great fervour and ardour. If display of festive mood and exhilaration during the celebration would amount to attracting disqualification in the understanding of the authority, it only exposes his hollowness and in that view of the matter, the rejection, is nothing but a caricaturing of fair play in administrative action.

20. In fact, as averred by the petitioner in his affidavit, along with him, one another person was involved in bursting of crackers, who happened to be a son of a Sub Inspector of Police and no case was registered against him. This was not specifically disputed by the respondents. In the counter affidavit, it is stated that they did not find any material against that person and therefore, his name was deleted in the FIR. Even otherwise, this Court is unable to comprehend as to how the authority can come to such appalling conclusion against the petitioner, which, in the opinion of this Court, runs contrary to the principles of objectivity to be followed as laid down in Avatar Singh's case (cited supra). The Hon'ble Supreme Court has given ample latitude to the authorities in the judgment, delineating the factors to be considered by the authorities in dealing with varied nature of cases, particularly in paragraph Nos.31, 35 and 38.4.1.

21. The Hon'ble Supreme Court has succinctly observed in paragraph 37 in the above referred decision, that McCarthyism ought not to be adopted by the authority in the exercise of the power. Therefore, the suppression per se is not to be treated as a criminal intent to withhold information and authorities are expected to draw a significant line as to when the suppression is material and when the same is immaterial in the larger perspective of things, as outlined by the Hon'ble Supreme Court of India. The authority is not expected to be very officious and wooden in his approach when fundamental right of the petitioner is involved in seeking an opportunity of employment in public service. Adopting unwanted sanctimonious approach in the present consideration, in the opinion of this Court, is nothing but a display of poor sagacity by the officialdom. Therefore, as reasoned by the Hon'ble Supreme Court of India, there has to be a proper reconciliation of various factors without being pigeonholed into a stereo-typed and cliched discharge of the discretion. On the other hand, exercise of power, in the given circumstances, reflecting larger understanding of the contemporary contextual social-mores would enhance the prestige of the good governance, in securing the ends of its objectivity.

22. Even recently, a Division Bench of this Court dealt with a similar issue in the matter of 'C.Surendhar versus The Director General of Police, Chennai and others' in its judgment dated 13.11.2019 in W.A.No.13.11.2019 and its observations as found in paragraphs 33 and 34 are a value addition to the principles to be governed in such situation, which reads 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 its 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."

23. In the conspectus of the above discussion and narrative, this Court has no hesitation in allowing the Writ Petition. The impugned order of the fourth respondent in Na.ka.No.A3/02600/2020 dated 09.04.2020 is hereby set aside and the respondents are directed to consider the claim of the petitioner for his appointment to the post of Grade-II Police

Constable, Jail Warder and Fireman in the appropriate post as per his rank and eligibility without reference to the involvement of the petitioner in the criminal case as indicated in the impugned proceedings, if he is otherwise fit in all other respects. The authorities are directed to pass appropriate orders in compliance with the above direction within a period of eight weeks from the date of receipt of a copy of this order.

24. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police officer Campus,
Pantheon Road, Chennai-8
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-4
3. The State of Tamil Nadu,
rep. by its Secretary,
Home Department,
Secretariat, Chennai-9
4. The Superintendent of Police,
Dharmapuri District, Dharmapuri.

+1cc to the Government Pleader, Sr.No.29104

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W.P.No.8284 of 2020

spd (co)

rr ii (01/10/2020)