

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.09.2020	Pronounced on: 09.10.2020
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THE HONOURABLE MR. JUSTICE **V.PARTHIBAN**

W.P.No.9552 of 2020
and W.M.P.Nos.11664 to 11667 of 2020

M. Srithar,
S/o. M. Mani

... Petitioner

Vs.

1. Tamil Nadu Uniformed Services,
Recruitment Board,
Rep. by its Secretary,
Old Commissioner of Police office Campus,
Egmore, Chennai – 600 008.

2. The Superintendent of Police,
Office of the Superintendent of Police,
Nagapattinam District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, or issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in Na.Ka.No.F1/5482/2019 dated 13.03.2020 and to quash the same and consequently directions have to be issued to the respondents to appoint the petitioner to the post of Grade II Constable pursuant to the notification issued by the respondent on 06.03.2019 in the light of the order passed by the learned Judicial

Magistrate II, Nagapattinam on 17.03.2016.

For Petitioner : Mr.N. Balamuralikrishnan

For Respondents : Mr.V.Kathirvelu,
Special Government Pleader

ORDER

This Writ Petition has been filed, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in Na.Ka.No.F1/5482/2019 dated 13.03.2020 and to quash the same and consequently direct the respondents to appoint the petitioner to the post of Grade II Constable pursuant to the notification issued by the respondent on 06.03.2019 in the light of the order passed by the learned Judicial Magistrate II, Nagapattinam on 17.03.2016.

2. The case of the petitioner is that he is an Engineering Graduate (B.E.). Pursuant to the notification issued by the first respondent Board on 06.03.2019 calling for eligible candidates from the open market to fill up the post of Grade II Police Constable in Armed Reserve, Jail

Service and Fire Service, the petitioner applied for consideration. The Board notified 8538 vacancies in various categories as indicated above. According to the petitioner he was successful in the written examination and was called upon to attend physical endurance test, which was held on 09.11.2019. Thereafter, a certificate verification was held on 20.11.2019, the petitioner attended the certificate verification and was awaiting the final result of selected candidates to be published.

3. At the time of certificate verification, the petitioner was directed to fill the self declaration form wherein some of the questions were in relation to, whether the petitioner was involved in any criminal case in the past or it is pending. According to the petitioner that though he was involved in a criminal case in Crime No.45 of 2015, which ended in acquittal as early as on 17.03.2016, he could not remember the consequences and other details of the criminal case. Therefore, on a bonafide impression that he did not know about the pendency of criminal case against him, he did not mention about the same in the questionnaire.

4. While so, the second respondent intimated the petitioner on 13.03.2020 informing him that his candidature was rejected on the basis of wrong declaration by him in the self declaration form. The rejection order stated that the petitioner was involved in a criminal case and even if he was acquitted on the basis of benefit of doubt or the prime witnesses became hostile, it was considered only as conviction and further, non-disclosing of his involvement in the criminal case in the past by itself was a disqualification from being considered for appointment. The said rejection order dated 13.03.2020 is the subject matter of challenge in the present writ petition.

5. Mr.N.Balamuralikrishnan, learned counsel for the petitioner would submit that three years before the date of Notification of the selection, the petitioner was acquitted by the Criminal Court by judgment dated 17.03.2016 in C.C.No.218 of 2015 on the file of the Judicial Magistrate Court No.2, Mayiladuthurai. The petitioner was booked for the offence under Sections 147, 294(b), 352 and 506 (ii) of I.P.C. The learned

counsel would submit that the petitioner was falsely implicated in the criminal case as second accused. According to the learned counsel, the case against the petitioner was that he along with five others had entered into a scuffle with the complainant and caused simple injury and threatened him with dire consequences and used criminal force against the complainant. Though the charges invited four sections of IPC, nevertheless if the same is appreciated properly with reference to the facts as found in the judgment of the Criminal Court, it could be seen that a simple scuffle, between the petitioner and others with the complainant had landed the petitioner in the criminal net.

6. In any case, the learned counsel would submit that ultimately the criminal Court in its judgment dated 17.03.2016 had concluded categorically that all the prosecution witnesses P.W.1 to P.W 6 had turned hostile including P.W.1 who was the complainant himself on whose complaint the criminal case was registered and tried. In the absence of any evidence in support of the charges, the Criminal Court rightly acquitted the petitioner along with others.

7. The learned counsel would submit that the second respondent, who passed the order of rejection has not appreciated the circumstances and the facts which led to the registering of FIR against the petitioner and also the acquittal of the petitioner by the Criminal Court vide in judgment dated 17.03.2016. Merely because, the acquittal had been recorded by the criminal court on the basis of prosecution witnesses turning hostile, the Authority cannot conclude that the acquittal was not a proper acquittal. According to the learned counsel, the authority, who has passed the impugned order, mechanically relied on the rule position, as the order apparently did not disclose whether there was any fair or proper consideration of all the circumstances, which led to the registration of FIR, filing of the criminal case and ultimately acquittal of the petitioner. Therefore, he would submit that the impugned order of rejection of the petitioner's candidature is liable to be set aside.

8. Notice was ordered and Mr.V.Kathirvelu, learned Special Governance Pleader entered appearance and a counter affidavit has been

filed. The averments contained in the affidavit are nothing but the repetition of the substance of the objection as found in the impugned order for rejecting the candidature of the petitioner. Mr.V. Kathirvelu, learned Special Government Pleader would submit that the facts of involvement of the petitioner in the criminal case and the subsequent acquittal are not in dispute at all. Therefore, the authority, has taken proper action in rejecting the candidature of the petitioner in accordance with the rule position and also this Court's order in a batch of writ petitions in W.P.No.38296 etc., of 2005 dated 28.02.2008.

9. He would further submit that the petitioner being involved in serious offence of using criminal force was not entitled to be considered for appointment in the Police Force. He would submit that the candidates, who are seeking recruitment in the Police Force, need to exhibit conduct and discipline of higher degree. He would also submit that mere acquittal in the criminal case on the basis of all the prosecution witnesses turning hostile cannot be construed as acquittal on merits. As per Rule 14(b) of Special Rules, any acquittal on the basis of witnesses turning hostile would

be considered as conviction and the said Rule being upheld by this Court, the contention on behalf of the petitioner that acquittal of the petitioner ought to have been taken into consideration by the authority is without merits. Therefore, the authority passed the order rejecting the candidature of the petitioner in terms of the Rule position and also the decisions of this Court rendered in such matters. Therefore, the writ petition is without any merits and liable to be dismissed.

10. This Court has considered the submissions of Mr.N. Balamuralikrishnan, learned counsel for the petitioner and Mr. V. Kathirvelu, learned Special Government Pleader for the respondents and also perused the materials placed on record.

11. There are two limbs of objections as disclosed in the impugned order dated 13.03.2020 passed by the second respondent. The first limb is the involvement of the petitioner in the criminal case wherein, the petitioner was charged for offences under Sections 147, 294(b), 352, 506(ii) of I.P.C., which admittedly ended in acquittal vide criminal court's

judgment dated 17.03.2016. The authority cannot be found fault with, atleast to the extent that as per the rule position, acquittal on the basis of prosecution witnesses turning hostile is not an acquittal on merits, but it is construed as one of conviction in terms of Rule 14(b) of Special Rules for Tamil Nadu Police Subordinate Service, which Rule has been upheld by this Court.

12. However, while considering the acquittal vis-a-vis the criminal offences charged against the petitioner, it is incumbent upon the authority to see whether the petitioner was involved in a serious crime and unfit to be recruited to the Police Force for all times to come. As the facts of the criminal case would disclose, a minor scuffle between the petitioner and others on one side and complainant on the other side resulted in the registration of the criminal case, which was tried by the Jurisdictional Criminal Court. For whatever reasons, the criminal case ultimately ended in a acquittal by judgment dated 17.03.2016 in C.C.NO. 218 of 2015. The authority while considering the said acquittal as one of conviction ought to have also taken into consideration the nature of offences alleged against

the petitioner. When the authorities vested with the discretionary power to assess the suitability of the candidates, such exercise must be free from the vice of stereotyped application of mind, reflecting callous, inflexibility regardless of the facts and the circumstances of the case.

13. As far as the case on hand is concerned, the authority sticking to Rule 14 is one aspect of the matter, which as stated above, cannot be called into question. Nevertheless, by giving a colour of conviction to such acquittal, on the basis of the above rule, it is imperative that a decision is taken after judicious exercise of the power of discretion with reference to the law laid down by the Hon'ble Supreme Court of India on this aspect.

14. The Hon'ble Supreme Court of India by its all-encompassing decision in the matter of *Avtar Singh*, has enunciated detailed legal principles to be followed in such matters. For better appreciation, paragraphs 29 to 38.11 of the Hon'ble Supreme Court decision are extracted hereunder:

“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.”

15. The above ruling of the Hon'ble Supreme Court would be a strong reminder and a legal mandate to the authorities as to how they are to reconcile various contingencies that may arise for their consideration. The Hon'ble Supreme Court of India, as held above in one of the paragraphs, that even in a matter of conviction, if it is trivial in nature, it is for the authority to ignore the same and proceed further for consideration. The Hon'ble Supreme Court has further held that even if a candidate involved in a criminal case and if such involvement was not disclosed and if the disclosure of the criminal offence otherwise would not have been material as criminal offence itself was trivial in nature, the non-disclosure of such

involvement can be ignored and overlooked.

16. The above ruling of the Hon'ble Supreme Court ought to have been considered by the authority particularly with reference to the second limb of objection, wherein, the authority has held that the petitioner failed to disclose the involvement in the criminal case before the recruitment.

17. Further, a learned Single Judge of this Court in the case of ***M.Vijaya Baskar Vs. The Superintendent of Police, Dharmapuri*** [reported in 2013 SCC Online Mad 1053] in similar situation has held in paragraphs 24 to 27 as under:

“24. The question, whether a person, who was acquitted of criminal charges prior to commencement of the selection process, was considered by this Court in W.P.No.2100 of 2008 (Navaneethakrishnan V. The Secretary to Government), decided on 12.02.2013 and this Court was pleased to lay down, that when a person is acquitted of criminal charges prior to the selection process had commenced, it cannot be said that any criminal case is pending against the person or he is involved in any criminal case.

25. The stands of the State Government as noticed above was, that the petitioners were admittedly involved in the

criminal case, therefore, are not entitled to challenge the impugned orders passed in consonance with the Rule 14 read with the explanation added thereto, which was upheld by the Hon'ble Full Bench of this Court.

26. Learned Additional Government Pleader vehemently contended, that this Court held the amended Rule 14(b) of the Special Rules for Tamil Nadu Police Subordinate Services Rules, to be a valid piece of legislation, therefore action taken under Rule 14(b) does not call for any interference by this Court in exercise of writ jurisdiction.

27. On consideration, I find force in the contention raised by the learned counsel for the petitioners. It would be seen, that in all these case, the petitioners were acquitted in criminal cases much before commencement of process of selection. Acquittal in criminal cases means, that the charges framed against the accused itself were bad, therefore, it cannot be said, that persons were involved in any criminal case. Therefore, Rules 14(b) can only be interpreted to mean, that in cases, which are pending at the time of selection, and end in acquittal by giving benefit of doubt, then a person can be denied the right of appointment by considering him to be involved in criminal cases, but not in a case, where much before the start of selection process, the person is acquitted, even by giving benefit of doubt. ”

18. The above decision of the learned Single Judge of this Court is a pointer to the police administration, that notwithstanding the Rule 14(b), if a person is acquitted much prior to the recruitment process, in

which a candidate concerned has participated, failing to disclose the information of his involvement in the criminal case would not attract Section 14(b). If the said decision of this Court and the decision of the Hon'ble Supreme Court in the case of *Avtar Singh* to be taken and applied together, this Court has to come to a necessary conclusion that firstly non-disclosure of involvement in the criminal case in a case where, the candidate was acquitted prior to the recruitment would not attract Section 14(b) of the Special Rules for the Tamil Nadu Police Sub-ordinate Service. Secondly, even if the said rule is applicable, ultimately disclosure of the same would not have made any material difference, with reference to the nature of the offence alleged against the candidate, such non-disclosure ought to be ignored. Thirdly, even if a conviction is recorded, ultimately, the authority within the domain of his discretion is under a legal obligation to exercise the power of the discretion fairly and judiciously, duly applying the principle of circumstantial flexibility. As a corollary, the authority cannot perfunctorily take refuge under the rigors of the rule, oblivious to the spirit and the objective of the foundational basis for introduction of the rule.

19. In the light of the above consideration, the rejection by the authority on the basis of the relevant clauses of the notification and the rule position did not meet the legal requirement of fair play and good conscience in the discharge of the discretion so vested. Mere discharge of the discretion routinely with a wooden mind set would only result in travesty of good administrative function and abdication of onerous responsibility conferred on the authority.

20. In consideration of the above narrative, this Court has no hesitation in allowing the writ petition and therefore, the impugned order dated 13.03.2020 in Na.Ka.No.F1/5482/2019 is hereby set aside and the second respondent is directed to revisit his order dated 13.03.3030 and re-appreciate the circumstances under which the petitioner was involved in the criminal case and the nature of the criminal offence alleged against him together with reference to the above observations and the decision of this Court cited above and also with reference to the decision of the Hon'ble Supreme Court of India in the case of *Avathar Singh* and the spirit of the

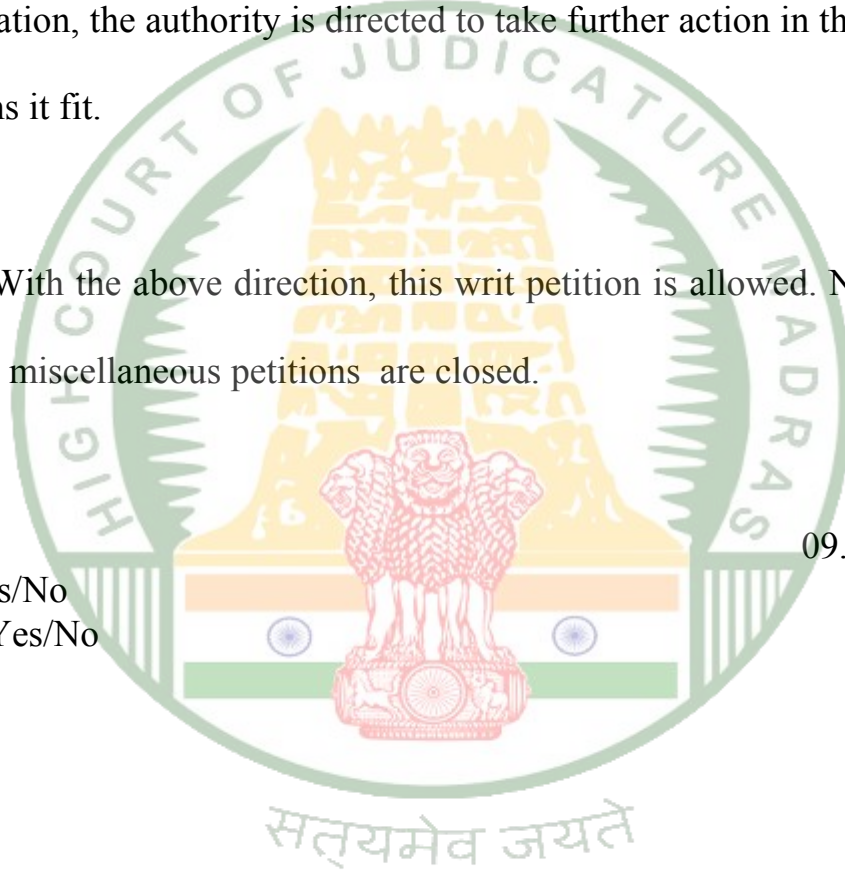
rules and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

21. In case the petitioner is found to be eligible on such reconsideration, the authority is directed to take further action in the matter as he deems it fit.

With the above direction, this writ petition is allowed. No costs.
Connected miscellaneous petitions are closed.

09.10.2020

Index : Yes/No
Internet : Yes/No
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To

1. The Secretary,
Tamil Nadu Uniformed Services,
Recruitment Board,
Old Commissioner of Police office Campus,
Egmore, Chennai – 600 008.
2. The Superintendent of Police,
Office of the Superintendent of Police,
Nagapattinam District.

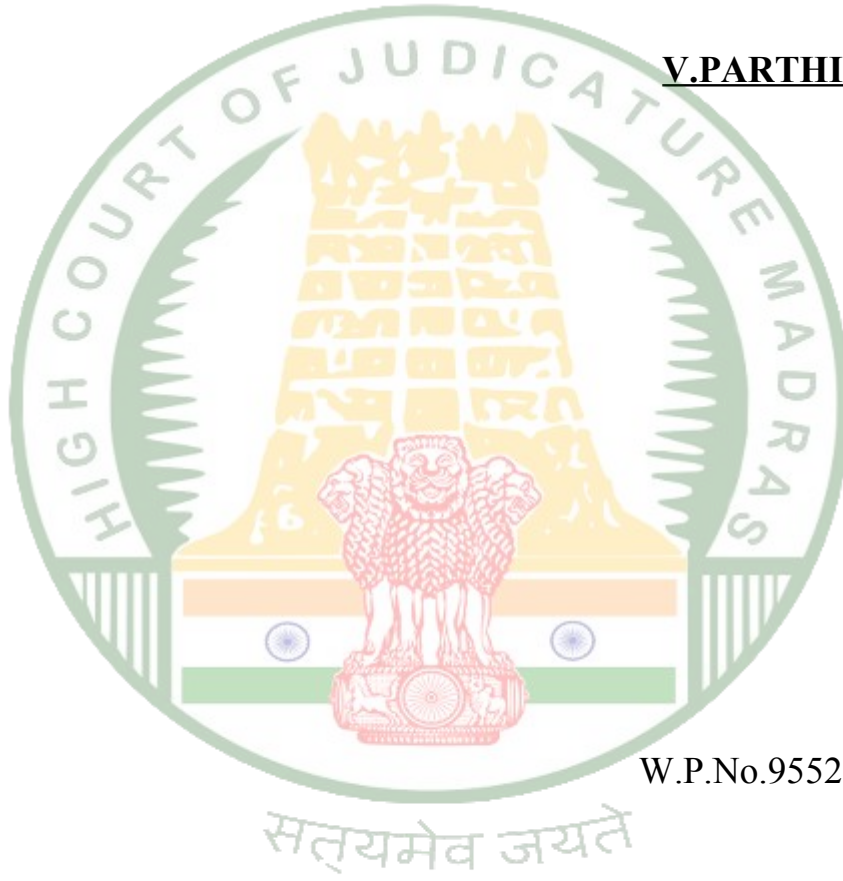


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