

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.10.2020
Pronounced On	03/11/20

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3363 of 2019
and
C.M.P.No.21601 of 2019

(Through Video Conferencing)

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai - 8.
2. The Secretary to Government,
Home Department,
Chennai - 9.
3. The Director General of Police,
Chennai - 4.
4. The Superintendent of Police,
Cuddalore, Cuddalore District. ...Appellants/Respondents

S.Jegan

Vs.

...Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 15.12.2017 passed by the learned Single Judge in Writ Petition No.28288 of 2017. Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified mandamus to call for the records pertaining to the memorandaum under reference Na.Ka.No.A4/333/TSP/2017-7 dated 09/10/2017 of the 4th respondent and quash the same.

For Appellants : Mrs.Narmadha Sampath,
Additional Advocate General,
assisted by Mrs.A.Srijayanthi, Spl.G.P.

For Respondent : Mr.A.E.Ravichandran

J U D G M E N T

C.SARAVANAN, J.

The appellants have filed the present Writ Appeal against the impugned order dated 15.12.2017 passed by the learned Single Judge in W.P.No.28288 of 2017.

2. The said writ petition was filed by the respondent, to call quash Memorandum bearing reference Na.Ka.No.A4/333/TSP/2017-7, dated 09.10.2017 of the 4th appellant. By the said Memorandum, the 4th appellant concluded that the respondent was unfit to be selected to the post of Grade II Police Constable due to his involvement in a criminal case previously.

3. The said writ petition was allowed based on a concession given by the then learned Additional Advocate General, who appeared for the appellants before the learned Single Judge. The operative portion of the impugned order of the learned Single Judge reads as follows:-

6. A careful reading of the above said judgment gives a clear finding to the crux of the issue raised by the petitioner that a candidate either inadvertently or deliberately failed to mention in the appropriate column regarding the pendency of the criminal case against him, at the time of submitting his application before the authority or deliberately omitted to mention the pendency of FIR or the criminal case, if subsequently, at the crucial time of police verification, disclosed all the information from the beginning, namely, registration of FIR till the culmination of criminal case, such disclosure could be treated as curing the defect which has occurred in the form.

7. Therefore, in the present case, the attitude of the petitioner is to be taken note of, at least at the crucial time of police verification, disclosed the information about the involvement in a criminal case and this cannot be treated as deliberate suppression of the vital information in the application.

8. Placing reliance on Explanation 2 of Rule 13 of Special Rules for Tamil Nadu Police Subordinate Services, learned Additional Advocate General submitted that the petitioner may be permitted to participate in the next recruitment.

9. In that view of the matter, the impugned order dated 09.10.2017 passed by the fourth respondent is set aside and this Writ Petition stands allowed and the petitioner is at liberty to participate in the next recruitment. No costs. Consequently, connected Miscellaneous Petition is closed.

4. Allusion to Rule 13 in the above paragraph appears to be a typographical mistake. The respective counsels agree it should be read to mean only Rule 14 of the aforesaid Rules.

5. The order passed by the learned Single Judge is now assailed by the appellants on the ground that the learned Single Judge failed to consider the purport of Rule 14(b)(ii) and (iv) of the Tamil Nadu Special Police Subordinate Service Rules and G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.01.2003.

6. It is submitted that a person is not eligible for being appointed by direct recruitment to the post of Grade II Police Constable unless he satisfies the appointing authority that his character and antecedents are clear and qualify him for such service.

7. It is submitted that mere acquittal or discharge of a person from a criminal case either because the complaint turned hostile or because of benefit of doubt does not entail such a person to be appointed to the post of a Grade II Police Constable.

8. The case of the appellants is that the respondent participated in the selection for the post of Grade II Police Constable pursuant to the notification issued by the 1st appellant in March, 2017 seeking to fill up 15,711 posts of Grade II Police Constables in various departments of Tamil Nadu Uniformed Service for the year 2017 by suppressing facts regarding the criminal case in which he was involved.

9. It is submitted that the respondent suppressed this fact in the application filed by him on 09.02.2017. Sl.No.26 of the application reads as follows:-

Questions	Answers
26. உம்மீது எப்போதாவது குற்ற வழக்கு பதிவு செய்யப்பட்டுள்ளதா? Was any criminal case ever registered against you? (a) Yes/ ஆம் [Y] No/ இல்லை [N]	

26(a) ஆம் எனில் காவல் நிலையம் வழக்கு எண், பிரிவுகள், நாள், வழக்கின் தற்போதைய நிலையைக் குறிப்பிடவும்-

If yes, furnish Police Station, Crime No, Section of law, date and present stage of the criminal case

10. It submitted that the respondent stated "N" against Sl.No.26, implying "No" and thereby mislead the department. If the answer correctly given, the respondent's application would have been rejected in limine. It is submitted only during Police verification on 11.09.2017, the respondent gave the details of the criminal case answered at Sl.15& Sl.18.

11. The case of the appellants is that as per the amended Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978 vide G.O.(Ms) No.101, Home (Pol.IX) Department, dated 30.01.2003, a person like the respondent was disqualified to apply to participate in the qualifying exams.

12. It is submitted that the respondent suppressed the facts regarding Cr.No.123/2010 wherein he was arraigned as Accused 2. It is submitted that charges against the respondent along with the co-accused were serious in nature under Sections 147, 148, 294(b), 323 and 324 of IPC pursuant to a complaint that came to be field before the Kaadampuliyur Police Station, Panruti Taluk.

13. It is submitted that the respondent suppressed the fact that he was involved in a criminal case before the police verification and was therefore not entitled to apply for the post of Grade II Police Constables in various departments of Tamil Nadu Uniformed Service.

14. The learned Additional Advocate General Ms. Narmadha Sampath for the appellants further submits the appointment of the respondent also would set a bad precedent and his involvement in a criminal case shows his prior mental disposition and propensity to commit crime in future and therefore renders him to be an unfit person to serve the police force.

15. The learned Additional Advocate General specifically drew our attention to the Charge Sheet date 23.04.2020 filed

under Section 173 of Cr.P.C. before the Judicial Magistrate' Court No.11, Panruti pursuant to Crime No.123/2010, wherein, the respondent was arraigned as the 2nd accused. She submits that the respondent was involved in the crime in as much as the investigation revealed that the respondent along with the other accused had waylaid victim-complainant and had hit him on his left leg with a iron pipe.

16. She further stated that respondent had originally surrendered before the Court and that as per the Charge Sheet and was arraigned as A-2/R-2 before the Judicial Magistrate Court No.2, Panruti in C.C.No.84/2010.

17. She further relies on a recent decision in W.A No.2059 of 2020 of rendered by this very Bench vide order dated 31.3.2020, wherein under a similar a circumstances, the plea of a candidate having criminal antecedent was rejected by us. She also placed reliance on the decision of the Supreme Court in State of MP Vs. Abhijit Singh Pawar, reported in 2018 (8) SCC 733.

18. The impugned order of the learned Single Judge is defended by the learned counsel for the respondent. It was submitted that the impugned order was well reasoned and requires no interference. It is further submitted that in fact, after the impugned order came to be passed, the respondent was also allowed to participate in the selection for the same post in the year 2019. In the examination conducted also, the respondent scored successfully but his selection has been kept in abeyance and is awaiting further orders of this Court in the present Writ Appeal.

19. Learned Counsel for the respondent further submits that the respondent is a person coming from a down trodden community and was merely a 19 year boy and was falsely implicated in the case by his neighbour due to the previous enmity. He further submits that the respondent was the first graduate from his family and is being unfairly being denied of an opportunity of being appointed to the Uniform Service.

20. He submits that on the date of the application for the Post of Grade II Police Constable on 09.02.2017, no case was pending against the respondent in as much as the criminal case was dropped on 06.11.2014 by the said Court.

21. He further submits that the respondent was falsely implicated in the criminal case by his neighbors and that the said proceedings has also resulted in acquittal of all accused in the said criminal proceedings by the Judicial Magistrate No.2, Panruti. He drew our attention to the order of acquittal acquitting all accused.

22. It is further submitted that respondent not violated the Rule 14 of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978 and that there was nothing irregular on the part of the respondent in applying for the post of Grade II Police Constable in terms of the decision of the Hon'ble Supreme Court in Avatar Singh Vs. Union of India and Others, reported in (2016) 8 SCC 471.

23. The learned counsel for the respondent also relied certain other decisions of Hon'ble Supreme Court and of this Court, which are as follows:-

- i. Union Territory, Chandigarh Administration and Others Vs. Pradeep Kumar and Another, reported in (2018) 1 SCC 797.
- ii. The Chairman, Tamil Nadu Uniform Service Recruitment Board and Others Vs. P. Anandha raja and Others and batch of case, unreported Common Judgment dated 24.07.2017 passed by the Madurai Bench of this Court in W.A. (MD). Nos. 626 of 2014 and batch of cases.
- iii. P. Praveenkumar Vs. State of Tamil Nadu and Others, reported in 2019 SCC OnLine Mad 1450.
- iv. C. Surendhar Vs. The Director General of Police, Chennai and Others, Judgment dated 13.11.2019 passed by this Court in W.A. No. 3877 of 2019.
- v. L. K. Starnesh Vs. The Superintendent of Police, Dharmapuri and Another, Judgment dated 02.06.2020 passed by this Court in W.P. No. 17530 of 2019.

24. We have perused the impugned order passed by the learned Single Judge and the decisions cited by both side counsels. We have considered the arguments advanced by Mrs. Narmadha Sampath, the learned Additional Advocate General for the appellants and Mr. A. E. Ravichandran, the learned counsel for the respondent.

25. We have also perused the Rule 14(2)(b) of the Special Rules for Tamil Nadu Special Police Subordinate Service, 1978, which reads as follows:-

14) Qualifications:-

(1)

(2) (a)

(b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

(i) that he is of sound health active habits and free

from any bodily defect or infirmity unfitting him for such service; and

(ii) that his character and antecedents are such as to qualify him for such services; and

(iii) that such a person does not have more than one wife living;

(iv) that he has not involved in any criminal case before police verification;

Explanation 1- A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved in a criminal case.

Explanation 2- A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment.

26. Rule 14(2)(b) of the Special Rules for Tamil Nadu Special Police Subordinate Service, 1978 does not specifically bar a person against whom a criminal case was pending in the past from making an application.

27. However, candidature will be rejected if the applicant's case fell within the exception provided under Rule 14(2)(b)(iv) of the aforesaid Rules. Candidates are required to disclose the same in the application as is evident from a reading of the above Rule and from serial number 26 and 26 (a) of the application which has been extracted. In any event, the truth has to be furnished at the time of verification.

28. In this case, the respondent failed to disclose the details of his involvement in the aforesaid criminal case and acquittal at the time of filing of the application. Perhaps the respondent feared the rejection of the applications at the threshold.

29. However, at the time of police verification on 11.09.2017, the details of C.C.No.84 of 2010 before the Judicial Magistrate Court II, Panruti were furnished by him.

30. In Commr. of Police Vs. Mehar Singh, reported in (2013) 7 SCC 685, the Supreme Court held that "The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force."

31. It further observed that "In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

32. The Hon'ble Supreme Court also reiterated that "Honesty and integrity are inbuilt requirements of the police force. Whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future". The above observation of the Hon'ble Supreme Court will apply to every public service of the Government and the State.

33. In Avtar Singh Vs. Union of India, reported in (2016) 8 SCC the Hon'ble Supreme Court summarised its conclusion as follows:-

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 recourses 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."

(emphasis in original)

34. Thus, where there was suppression of information or false information was furnished regarding involvement in a criminal case or where conviction or acquittal recorded before filling of the application/verification comes to knowledge of employer later, the employer has several options to take any of appropriate recourses mentioned by the Hon'ble Supreme Court.

35. In the present case, the learned Additional Advocate General who appeared for the appellants before the Single Judge had given a concession based on the understanding of Rule 14 of the said Rules. Pursuant to the said concession, the respondent has also appeared for the second time in the examination conducted for the year 2019.

36. The respondent has once again qualified in the qualifying examination but his selection has been kept in abeyance and further orders of this Court are awaited in this Writ Appeal.

37. Though the concession given by the counsels before the Court without instruction of the clients are not binding on them and can be challenged, yet statement/concession of senior officers of the Court such as the Advocate General or Additional Advocate General are not to be taken lightly and cannot be brushed aside or ignored to reverse the decision of the Court. They are deemed to be made with a sense of responsibility by such officers in their endeavour to help the court to come to a fair conclusion.

38. In State of U.P. v. Ram Gopal, (2004) 13 SCC 762 the Hon'ble Supreme Court noted that the learned Additional Advocate General had himself conceded that Section 6 was not attracted to the facts of the case and therefore held it is difficult to sustain the government order issued removing the respondents from office. It observed that the learned counsel for the appellants found himself in difficulty in overcoming the statement made by the learned Additional Advocate General.

39. Since case was contested by the appellants and was represented by another Additional Advocate General and the State wanted to resile from the concession given by the then Additional Advocate General, we called for the records in C.C.No.84/2010 before the Judicial Magistrate Court No.2, Panruti which acquitted the respondent and perused the same.

40. It is noticed that the respondent was arraigned as a 2nd Accused pursuant to a complaint given by one Pandian before the before the jurisdictional Police Station in Crime No.123/2010 on 31.03.2010 in respect of a alleged crime committed on him along with other accused persons on 28.3.2010 at about 7.am.

41. In the complaint, it was alleged that the respondent and other accused persons had waylaid the complainant Pandian on 28.10.2010 and physically assaulted and verbally abused him. The FIR states that one of the Accused named Sankar Das had hit the said Pandian (complainant) on the head with a knife while the

respondent had hit him with an iron pipe on the front side of his left leg. It also stated that others had hit the complainant with casuarina sticks.

42. A charge sheet /Final report was also filed on 23.04.2010 before the Court. The Charge Sheet reiterates the content of the FIR. Thereafter, summons was issued to the respondent by the said Court. Since the respondent failed to appear before the Court, a non bailable warrant was issued against respondent by the said Court. Under these circumstances, the respondent surrendered before the Magistrate on 26.12.2013.

43. The complaint, FIR, Observation Mahasar and sketch are all dated 31.03.2010 were marked as Exhibit P1 to 4. Exhibit Ex.P5 to P8 which are wound certificates of the P.W.1, P.W.2, P.W.3 and P.W.4 were generated on 28.03.2010 and the charge sheet is dated 23.04.2010.

44. Later, the over a period of time, evidence was recorded before the Court. Not only complainant but also the witnesses gave contradictory statements. Thus, on 06.11.2014, the Judicial Magistrate No.2, Panruti, acquitted the respondent in C.C.No.84/2010.

45. While, deposing evidence, PW.1 has contradicted himself and gave a different version about the crime. Though in the complaint filed before the jurisdictional police station, the PW.1 complainant alleged that the respondent had also assaulted him along with other co-accused, however at the time of recording evidence on 08.05.2014, he has not made any statements against the respondent.

46. He has deposed that on 28.03.2010, when he was returning in his Tata Ace, the accused persons were sitting on the road and blocking the road and therefore he told them to move out so that he could proceed, when A1, A5 and A7 attacked him with knife, iron pipe and plunger. It shows that there was previous enmity between two groups of persons. Some of the statements in the complaint were exaggerated. The evidence of PW.1 complainant does not indict the involvement of the respondent in the crime.

47. These facts indicate that there was previous enmity between the two groups of persons and the parties had indulged in verbal and physical assaults against each other. It is in the said back ground, a complaint was filed against accused where the respondent was arraigned as the 2nd accused.

48. The respondent was perhaps mute spectator and was caught unaware of the consequences. Be that as it may, the respondent was just about 19 years at the time of the incident and may not

have the realized the seriousness and consequence of crime committed by others. He did not have any other previous criminal case against him. The other accused were also aged about between 24 to 33 years. They also do not have past criminal records. It is perhaps, on account of these factors, the then learned Additional Advocate General gave the above concession.

49. Thus, on an overall consideration of facts and consideration of the case, the concession given by the then Additional Advocate General was a fair concession. We therefore do not find any merits in the present Writ Appeal filed by the appellants. Accordingly, this Writ Appeal is dismissed. No cost. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To.

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai - 8.
2. The Secretary,
Home Department,
Government of Tamil Nadu,
Chennai - 9.
3. The Director General of Police,
Chennai - 4.
4. The Superintendent of Police,
Cuddalore, Cuddalore District.

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.35542

+1cc to the Government Pleader, S.R.No.35607

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Judgment
in

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SR(CO)
RV(11/12/2020)