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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10491 of 2020
and
W.M.P.No.12749 of 2020

R.Udhayakumar

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Secretary,
The Tamil Nadu Uniformed Services Recruitment Board,
No.807, 2nd Floor,
P.T.Lee Chengalvaraya Naicker Building,
Anna Salai, Chennai-600 006.
3. The Commissioner of Police,
Greater Chennai Police,
Vepperi, Chennai-600 007.
4. The Joint Commissioner of Police,
Greater Chennai Police,
Vepperi, Chennai-600 007.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mamdamus to call for the records relating to the impugned order in Na.Ka.No.R&T(1)/09/26555/2019 dated 02.06.2020, issued by the 3rd respondent and to quash the same insofar as non consideration of the petitioner for selection and consequently, directing the respondents 1 & 2 to consider the petitioner for appointment to the post of Grade 2 Police (Police Constable, Fireman, Jail Warden) in pursuant to Notification No.1/2019 dated 06.03.2019 issued by the 2nd respondent with all consequential and other attendant benefits.



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For Petitioner : Mr.Sarath Chandran
For Mr.S.Nedunchezhiyan
For R2 : Mrs.Narmadha Sampath
Addl. Advocate General
For Mr.V.Kadhirvelu
For R1, R3 & R4: Mr.P.S.Siva Shanmuga Sundaram
Spl. Govt. Pleader

O R D E R

Petitioner has come up with this Writ Petition, challenging the order passed by the 3rd respondent in Na.Ka.No.R&T(1)/09/26555/2019 dated 02.06.2020, by which the candidature of the petitioner for the recruitment of Grade-II Police (Police Constable, Fireman, Jail Warden) for the year 2019 was not considered for appointment. The Petitioner also sought for a direction to the respondents 1 & 2 to appoint him as Grade-II Police (Police Constable, Fireman, Jail Warden).

2. According to the petitioner, he was falsely implicated by the Police as A2 in respect of Crime No.610 of 2016 for offences under Section 341, 294(b), 326, 506(ii) IPC r/w 34 IPC, which had not culminated into a Charge Sheet. It is the case of the petitioner that the said case was quashed by this Court on 29.08.2017 in CrI.O.P.No.14916 of 2017, thereby, he was acquitted from the charges and subsequently, the petitioner, after getting an order of acquittal, applied for the post of Grade-II Police (Police Constable, Fireman, Jail Warden) and in the application, the petitioner omitted to mention about the Crime No.610 of 2016 that was quashed by this Court. It is also the case of the petitioner that to the shock and surprise, the 3rd respondent passed the impugned order, refusing to consider the petitioner for appointment to the post of Grade II Police Constable.

3. Learned counsel for the petitioner submitted that the 3rd respondent relied on Rule 14(2) in Sub-Rule (b)(iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978 and the said provision is not at all applicable to the case of the petitioner, as the criminal case was quashed by this Court as on the date of submission of application. Hence, he prayed for quashment of the impugned order.

4. Per contra, learned Additional Advocate General, appearing for Rw vehemently contended that the petitioner cannot, as a matter of right, seek for appointment, especially when he had failed to disclose about the criminal case in the application form. It was further contended that though the petitioner was acquitted of the said criminal case, it was not an honorable acquittal, as stated by the learned counsel for the petitioner and the case against him was quashed on the basis of



the compromise memo between the parties. That being the case, it is left to the discretion of the authorities to decide in the matter of recruitment of a person and there should not be any compulsion for appointment.

5. Learned Additional Advocate General, in support her contention, placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar, reported in 2018 (18) SCC 733, wherein it was held as under:

"15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our



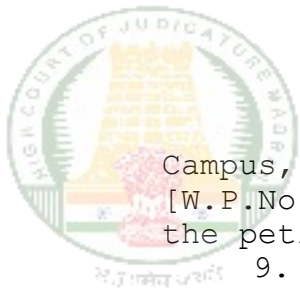
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considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs..."

6. Heard the learned counsel for the parties and perused the material documents available on record, including the judgment cited by the respondents.

7. A close attentiveness of the background of the present case unravels that at the time of submission of application, his involvement in a criminal case was not brought to the attention of the Board. Admittedly, the petitioner had involved in a criminal case, which was booked under serious offences of IPC and therefore, he cannot casually ask for a suitable appointment in the Police Department, which is otherwise known as a Disciplined Force. Even though the petitioner stated that he was acquitted honorably, a reading of the order of this Court is very clear that the FIR against him was quashed by taking into account the compromise entered into between the parties and therefore, Rule 14(2) in Sub-Rule (b)(iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978, will come into operative against the petitioner, as rightly stated in the impugned order. A Hon'ble Full Bench of this Court in the case of Manikandan and others vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai, reported in 2008 (2) CTC 97, had considered the scope of Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978 in the light of Explanation 1 to Clause (iv) of Rule 14(b) and held that 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 and the failure of a person to disclose in the application form, either of his involvement in a criminal case or pendency of a criminal case against him would entitle the appointing authority to reject his application on the ground of concealment of material facts, irrespective of ultimate outcome of the criminal case.

8. The Hon'ble Supreme Court in the case referred to supra clearly held that despite disclosure of antecedents by a candidate, it is well within the ambit of the employer to consider the same as well as the suitability of the candidate. It was also made clear in the judgment that the employer has every right to take into account the severity of charges, nature of acquittal, etc., to suit the job profile, for which the selection is undertaken. Referring to the judgments of this Court as well as Apex Court, I myself passed an order on 24.07.2020 in the case of A.Praveen Kumar vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Old COP Office



Campus, Pantheon Road, Egmore, Chennai-600 008 and others [W.P.No.9621 of 2020], negating the similar relief sought for by the petitioner therein.

9. Observing the scenario of the present case from the above perspective, coupled with the judgment of the Apex Court, I find much force in the contention of the respondents and the petitioner cannot demand appointment in a disciplined force rightfully. It is for the authority concerned to decide whether the petitioner can fit into the post or not and in the considered opinion of this Court, the decision of the 3rd respondent not to recruit the petitioner as Grade II Police Constable, which is impugned in this writ petition, does not warrant any interference by this Court.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Secretary,
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No.807, 2nd Floor,
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3. The Commissioner of Police,
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Vepperi, Chennai-600 007.
4. The Joint Commissioner of Police,
Greater Chennai Police,
Vepperi, Chennai-600 007.

+1cc to the Government Pleader in Sr.No.26551

W.P.No.10491 of 2020

ln(co)
rr ii (04/09/2020)