

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.09.2020	Pronounced on: 06.10.2020
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.10788 of 2020
and W.M.P.Nos.13101 & 13104 of 2020

K. Sneha,
D/o. Kathavasu

... Petitioner

Vs.

1. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4.

2. 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 connection with the impugned order passed by him in Na.Ka.No.F1/5482/2019 dated 13.03.2020 and quash the same and direct the respondents to appoint the petitioner as Grade -II Woman Police Constable in the Tamil Nadu Police Subordinate Service and send her for training and grant such other further relief.

For Petitioner : Mr. K.Venkataramani
Senior Counsel for
M.Muthappan

For Respondent: J. Ramesh
Government Pleader

O R D E R

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 connection with the impugned order passed by him in Na.Ka.No.F1/5482/2019 dated 13.03.2020 and quash the same and direct the respondents to appoint the petitioner as Grade -II Woman Police Constable in the Tamil Nadu Police Subordinate Service and send her for

training and grant such other further relief.

2. The case of the petitioner is that she is the first graduate in her family and belongs to Most Backward Class Community (MBC). The Tamil Nadu Uniformed Services Recruitment Board invited applications from eligible candidates for selection and appointment to the post of Grade - II Woman Police Constable (AR) from the open market. The petitioner being fully qualified for consideration of appointment, submitted her application in respect of the notification issued by the Board in the year 2019. According to the petitioner, in the application submitted in response to the notification, she had mentioned all her educational qualifications in support of her claim.

3. In the process of selection, the petitioner was directed to appear for the written examination, which was held on 25.08.2019 and she was successful in the written examination having secured 52 marks, which was more than cut off marks prescribed towards her category. Thereafter, she was called upon to appear for the physical measurement test, endurance test physically efficiency test and certificate verification on 08.11.2019. As per the directive, the petitioner appeared and produced all her educational qualification certificates, community certificate and other related certificates sought by the Board and according to the petitioner, those materials produced by her, were also duly verified.

4. The petitioner claims that on completion of the selection process, she had been provisionally selected for appointment and thereafter she was directed to appear for Medical examination and she had appeared and had come out successfully without any deficiency noticed in her health condition. Finally, she was directed to fill up the questionnaire at the time of medical examination and according to the petitioner, in Column Nos.15 and 16 of the questionnaire, she had mentioned that she was not involved in any criminal case earlier to the recruitment.

5. While matter stood thus, the second respondent issued a communication dated 13.03.2020 rejecting the candidature of the petitioner on the ground that the petitioner antecedents were verified and it was found that she was involved in a criminal case registered in crime no.10 of 2016 on the file of the Vettaikaranpudur PS for the offence under Section 294(B) and 323 of IPC and she was arrayed as third accused in the criminal case. The criminal case was registered against the petitioner, her sister and mother on the basis of the complaint lodged by her sister-in-law due to some family dispute. All three of the family members including the petitioner pleaded guilty of the offence and paid a fine

of Rs.600/- (Rupees Six hundred only).

6. According to the impugned order that involvement in the criminal case is a bar for recruitment in the Police Force as per Rule 13(d) & (e) of the Special Rules for Police Subordinate Service. The rejection order dated 13.03.2020 is the subject matter of challenge in the writ petition.

7. Mr. K. Venkataramani, learned Senior Counsel appearing for the petitioner would submit that the rejection of the petitioner's candidature suffers from non-application of mind, as the criminal case was registered against the petitioner, when she was a minor and not completed 18 years of age. Moreover, the criminal case pertains to a family dispute between the mother-in-law, sisters-in-law on one side and daughter-in-law on the other. The petitioner herein was a minor at that time and had been wrongly implicated in the case. However, the police had mentioned the age as 20 years in order to attract the provisions of the India Penal Code and in any event by way of family compromise, fine was paid and the criminal case rested at that development.

8. The learned Senior Counsel would submit that non-mentioning of her involvement in the criminal case, and the offence said to have been committed by the petitioner perse can operate as a bar for the subject recruitment for the simple reason that at the time when the petitioner was implicated in the criminal case, she had not completed the age of 18 years. The authority passed the order of rejection has simply followed the rule position mechanically without proper understanding and appreciation as to the facts and circumstances which led to the registration of criminal case and payment of fine by way of family compromise.

9. The learned Senior Counsel would further submit that the criminal case had come to an end on 02.02.2016 itself, three years before the date of her recruitment and as minor, being involved in the so called criminal case, the petitioner was obviously not aware as to the legal implication of the fine being paid on her behalf and consequently, she did not mention this fact when she filled up the form. From the circumstances, it could be inferred that there was no intention on the part of the petitioner, to suppress any material fact. Therefore, he would submit that this is a fit case where the authority can be directed to reconsider the claim of the petitioner.

10. Notice was issued in the writ petition and in response to the notice, Mr.J.Ramesh, learned Addl.Government Pleader entered appearance for the respondents and a detailed counter affidavit has been filed in the writ petition.

11. The facts as narrated above have been repeated in the counter affidavit, which are not in dispute at all. In the counter affidavit, it is referred that in writ petition No.38296 of 2005 and batch cases dated 28.02.2008, this Court had upheld the Rules brought in by the G.O.Ms.No.882, Home (Police 6) Department dated 12.06.2007 and Rule 13(b) and (e) of Special Rules for Tamil Nadu Police Subordinate services. In view of the upholding of the Rule position by this court in batch of writ petitions, the petitioner became ineligible to be considered for the appointment. More particularly, in this case, she had admitted and paid fine of Rs.600/- (Rupees Six hundred only) in the criminal case, which means that the petitioner stood convicted by the Criminal Court and the criminal case was closed on 10.11.2016. The learned Government Pleader reiterated the above facts and would submit that the candidates, who seek recruitment to the Police force, are expected to exhibit higher degree of spotless conduct and blemishless character and once a candidate is involved in the criminal case, which particularly ended in conviction, the candidate becomes a convicted person no matter as to the fact that only fine amount was imposed and paid by the petitioner. Further, the petitioner had failed to mention her involvement in the said criminal case and hence there was an act of suppression of material fact on the part of the petitioner, besides being a convicted candidate. Even on that account, the petitioner was liable to be disqualified in terms of the regulations of the notification and also as per the Rules and other judgments of this Court. Therefore, he would submit that the petitioner is not entitled to any relief and the order passed by the second respondent rejecting her candidature, is valid in the eye of law.

12. This Court has considered the submissions of Mr.K.Venkataramani, learned Senior counsel for the petitioner and Mr.J.Ramesh, learned Addl. Government Pleader for the respondents, perused the relevant materials and the pleadings placed on record.

13. At the outset, it is to be seen that the involvement of the petitioner herein in Crime No.10 of 2016 charging her under Section 294(b) and 323 IPC and her payment of fine and thereby her conviction is an admitted fact. However, what has to be examined in this case is, on the premise of the cardinal principle of objective and dispassionate consideration whether the act of the petitioner, as revealed can invite irretrievable disqualification permanently to be appointed in the Police Force or not, in the teeth of the legal precedents which hold the field on the subject matter.

14. As submitted by the learned Senior Counsel that the petitioner was a minor at the time of registration of FIR

and conviction recorded, this Court verified the age of the petitioner as per the Secondary School Leaving Certificate (SSLC), her date of birth is mentioned as 16.07.1998 and the same date of birth is also reflected in the Transfer Certificate issued by the college on 21.08.2018. In the said circumstances, when the FIR was registered against the petitioner on 02.02.2016, she had not completed the age of 18 years. In that view of the matter, submission of the learned Senior Counsel appears to be having considerable force in deciding this case. The factum of her date of birth as reflected in the SSLC and college Transfer Certificate has not been disputed by the respondents. No doubt, this Court cannot set aside the conviction recorded by the trial Court, but at the same time, this Court can consider the fact about her status as minor at the time of registration of FIR, atleast for the purpose of deciding this case, apart from the issue of nature of the criminal offence made out against the petitioner.

15. As far as the objections of the respondents are concerned, two issues emerge for consideration by this Court. One issue is that the petitioner failed to mention her involvement in the criminal case in the application form filled up by her, when she applied for consideration in response to the notification issued by the Board. The other objection is that being a convicted candidate, her right to seek appointment in the Police Force, consequently stood negated. In support of the objections, the Authority has relied on the Rule position namely Rules 13(d) & (e) of the Special Rules for Police Subordinate Service and also above referred batch of writ petitions, wherein, a decision was rendered by this Court upholding the Rules.

16. After the decision was rendered in the above batch of writ petitions, several decisions have been rendered both by this Court as well as Hon'ble Supreme Court of India and it has been held that discretion vested in the authority in dealing with the case of involvement in the criminal case, must be discharged judiciously and not perfunctorily. The order rejecting such candidatures must in all fairness disclose proper application of mind and cannot be on the basis of hackneyed and stereo-typed discharge of the discretionary power so vested.

17. Time and again, this Court has held that in matters like this, the authorities who are vested with the discretionary power of assessing the suitability of the candidates in question must exhibit broader application of mind in understanding the circumstances and the facts, which led to involvement in the criminal case and the conviction. The authorities concerned as a matter of routine exercise of power cannot simply apply the letter of the Rules and lose

sight of its spirit purpose and the objective behind, the Rules. In fact, the Hon'ble Supreme Court of India in its celebrated decision in regard to the present subject matter, in the case of "Avtar Singh Vs. Union of India and Ors. [reported in 2016 SCC Online SC 726] has considered all the issues pertaining to the recruitment of the candidates involved in criminal cases and after analysis of divergent views on various aspects, has finally summed up by reconciling various contingencies to be dealt with by the authorities that may arise for their consideration. The Hon'ble Supreme Court all-encompassing summation in paragraphs, 29 to 38.11 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."

18. The above decision by the Hon'ble Supreme Court is a momentous directive to the authorities as to how they should deal with such claims of the candidates concerned. As far as the present case on hand is concerned, the Hon'ble Supreme Court has particularly held in paragraphs 38.4 and 38.4(i), which are carved out as under:

"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."

19. The above ruling of the Hon'ble Supreme Court would aptly apply to the case on hand wherein, the petitioner was stated to be a minor at the time when the FIR was registered, even believing the prosecution case, she was convicted at a very young age of 20 years that too in a family dispute. Such disputes are too well known and common within the cultural settings of many household in the State. Thus, applying the ruling of the Hon'ble Supreme Court in its entirety, whether non-mentioning of the criminal case involved by the petitioner prior to the recruitment and conviction recorded by the Criminal Court would be of any material significance for the authority to reject the candidature of the petitioner, is what engages the critical lens of this Court in the present adjudicatory process.

20. Sticking to the Rule and implementing the same across the spectrum, unmindful and the fact situation would defeat the ends of justice and this Court in earlier decision, in W.P.No.8284 of 2020 dated 18.08.2002 while allowing similar claim, has in fact concluded such perfunctory discharge of discretion vested in the authority would be a meaningless exercise. This Court in fact in the said decision has elaborately dealt with the discretion vested with the authority and observed in paragraphs 15 to 17 as under:

"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.

21. In fact the Hon'ble Supreme Court in the Avtar Singh case has also used the apposite expression "McCarthyism" which is antithesis to constitutional goal, which means that the authority cannot treat the young offenders even assuming the offence was made out in this case on the same scale of offenders, committing grave and heinous crimes, would only be a travesty of justice and would certainly not advance good governance or administration.

22. Further a Division Bench of this court in the case of 'C.Surendhar versus The Director General of Police, Chennai and others' in its judgment dated 13.11.2019 in W.A.No.3877 of 2019, while dealing with similar issue, has emphasised as to how the authorities must display objective consideration in such matters. The following succinct observation of the Hon'ble Division Bench in paragraph 34 read as under:

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

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

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

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

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mp/dua

To

1.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4.

2.The Superintendent of Police,
Nagapattinam District.

+1cc to Mr.M.Muthappan, Advocate SR.33101

W.P.No.10788 of 2020

NMI (CO)
CB(06/11/2020)

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