

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2020

Pronounced on : 23.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.11442 of 2020 and  
W.M.P.Nos.13957, 13958 & 13959 of 2020

G.Sasikumar

... Petitioner

-Vs-

1. The Superintendent of Police,  
Vellore District, Vellore.

2. The Director General of Police,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai 600 004.

... Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.A2(3)/171/1880/PV/2019 dated 24.03.2020 and quash the same and direct the respondents to appoint the petitioner as Jail Warden and grant him all consequential benefits.

For Petitioner : Mr.K.Venkataramani, SC for  
Mr.M.Muthappan

For Respondents : Mr.J.Pothiraj, SGP

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O R D E R

This writ petition has been filed to call for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.A2(3)/171/1880/PV/2019 dated 24.03.2020 and quash the same and direct the respondents to appoint the petitioner as Jail Warden and grant him all consequential benefits.

2. The case of the petitioner is that the Tamil Nadu Uniformed Services Recruitment Board has issued notification in March 2019, calling for applications for recruitment to the post of Grade II Police Constable, Fireman and Jail Warden in terms of the special rules for the Police Subordinate Service. The petitioner being eligible, had applied for consideration in response to the notification. In terms of the notification, the selection has to be conducted by three stages, the first stage is Written Examination, the second stage is Physical and Endurance Test and the third stage is Verification of Antecedents and Medical Examination.

3. The written examination was held on 25.08.2019 and the petitioner was declared as a successful candidate as he secured 58 marks. The next stage of selection viz., Physical Test was held on 07.11.2019. Even in the second stage, the petitioner has secured 12 marks and was successful. The petitioner was also awarded 0.5 marks for his participation in the State Level Kabbadi competition. Therefore, the petitioner has secured totally 70.5 marks and the cut off mark for final selection in respect of the petitioner's community was fixed as 69 marks.

4. In the final stage of verification, it was found that the petitioner was involved in a criminal case, earlier to the selection and he had suppressed the same when he had applied for consideration in response to the notification issued by the Board. Therefore, the first respondent, by order dated 24.03.2020, rejected the candidature of the petitioner holding that the petitioner was unfit to be selected to the Police Force in terms of the relevant rules. As against the rejection of his candidature, the petitioner is before this Court.

5. Mr.K.Venkataramani, learned senior counsel for the petitioner would submit that the petitioner's involvement in the criminal case which was the basis of the rejection order, had actually ended in acquittal as early as in 2017 itself and when the petitioner applied for consideration in 2019, no criminal case was pending against him at all. In any case, according to the senior counsel that the non disclosure of the criminal case was neither intended nor deliberate.

6. The learned counsel further submitted that as regards the criminal case registered against the petitioner, it was an incident arising out of altercation between two group of youngsters during the time when some girls were playing and some one tried to take photograph of the girls while they were playing near the lake. A simple clash in a common place occurrence resulted in registration of FIR against the petitioner and few others under Sections 147, 148, 294 (b), 323, 354 (B) and 506 (ii). However, the case was taken up before the

learned Judicial Magistrate in C.C.No.110 of 2017. After perusal of the charge sheet, it was found that no case was made out under Sections 147, 148 and 506 (ii) and hence, it was removed and only Section 506(i) was added.

7. The learned senior counsel would submit that during the course of the trial, all the prosecution witnesses had turned hostile, resulting in no evidence against the petitioner and others. Ultimately, since it was a simple clash between two groups of youngsters without any criminal intention and the offences being compoundable, an application was made under Section 320 of Cr.P.C and the offences were also thereafter compounded and the order was also passed by the Criminal Court. As far as Sections 294(b) and 354(b) which are non compoundable, the Trial continued and ultimately in the absence of any evidence, the petitioner and others stood acquitted vide Criminal Court Judgment dated 01.06.2017.

8. The learned senior counsel would therefore submit that a simple altercation which ultimately ended in acquittal, cannot be a valid reason for rejecting the candidature of the petitioner when the petitioner has become otherwise fit for appointment. The learned senior counsel would draw the attention of this Court to the earlier order passed by the learned Single Judge as well as the learned Division Bench of this Court, wherein, similar rejection has been dealt with and similar impugned order has also been set aside on the ground that there was no proper application of mind. The learned senior counsel would draw the attention of this Court to W.A.No.3877 of 2019 dated 13.11.2019, he would refer to paragraph Nos.33 and 34 of the observations of the learned Division Bench which are extracted hereunder:

"33. The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is "involvement". The word "involvement", therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether "he was involved in a criminal case or not".

34. The next question is whether such involvement would necessarily 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 it's 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."

9. The learned senior counsel would also draw the attention of this Court to the impugned order passed by the first respondent dated 24.03.2020. The order does not disclose whether

there was any application of mind at all by the first respondent as to the nature of the criminal case registered against the petitioner and the Criminal Court Judgment acquitting the petitioner etc. Moreover, the first respondent has rejected the candidature of the petitioner mechanically only on the basis of the involvement of the petitioner in the criminal case and non disclosure of the same, without appreciating that whether such non disclosure or involvement would make him ineligible for his life time. Therefore, he would submit that the claim of the petitioner has to be re-considered in terms of the ruling of the learned Division Bench of this Court.

10. Per contra, Mr.J.Pothiraj, learned Special Government Pleader would submit that the petitioner having involved in a criminal case, had deliberately withheld the information while filling up the application. Thereby, he had committed fraud upon the Recruitment Board. Such person who conceals material information is unfit to be employed in the Police Force where the standard of discipline is higher and is mandatory in all respects. A detailed counter affidavit has also been filed, stating that once the offences were compounded on the basis of compromise between the parties and moreover, since all the witnesses have turned hostile, the learned Magistrate had to acquit the petitioner in the trial and such acquittal cannot be considered as an hon'ble acquittal, enabling the petitioner to make any claim for selection in the Police Force.

11. The learned Special Government Pleader would also submit that Rule 14(b) (ii & iv) of the Tamil Nadu Special Police Subordinate Service clearly provided for eligibility criteria viz., unless a person satisfied that his character and antecedents, as to qualify him for such service and a person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as person involved in a criminal case. In this case, the first respondent has rightly treated the petitioner as a convicted person and quite rightly his candidature was also rejected.

12. This Court has considered the submissions of the learned senior counsel for the petitioner and the learned Special Government Pleader for the respondents. In matters of this nature, particularly, in the recruitment of Police force, this Court has passed a number of orders emphasizing the importance of proper application of mind on the part of the authority who is vested with the power of assessment of suitability of the candidates. Time and again this Court has held on the basis of the Hon'ble Supreme Court's encompassing decision on the subject matter as to how to deal with the claim of the candidates who are involved in criminal cases on various aspects.

13. But, despite all the decisions, it is unfortunate that the authorities had been passing orders almost in a cyclostyled form quoting the same decisions and rule position without disclosing any material that the authority had taken into consideration each candidates' involvement in the criminal case, nature of the offences, the manner in which he or she was acquitted and whether the non disclosure of the involvement was material, intentional or deliberate, there are several aspects like these to be considered before the candidature could be rejected. But, unfortunately the authorities have been adopting a mechanical route in rejecting the candidature merely with reference to the involvement in the criminal case.

14. The solemn discretion vested in the authority would have no meaning if such cliched approach is adopted in rejecting the candidature across the Board based on the mere fact of pending criminal case or involvement in the criminal case or non disclosure of the involvement in the criminal case by the candidate concerned. The discretion so vested is not to be surrendered apathetically in violation of the fundamental rights of the candidates in being considered for public employment. Accordingly, the involvement of the candidate in criminal case does not become an absolute bar from consideration in public employment, even in the Police Force unless the authority comes to a valid conclusion that the appointment of the candidate in the Police Force is against public interest. Such conclusion must be found in the order passed while rejecting the candidature of the candidates concerned. Otherwise such orders are liable to be interfered with as a matter of routine by this Court.

15. Even this Court earlier has allowed few writ petitions by setting aside the similar type of orders by the authorities and unfortunately without taking any cue from those decisions, the authorities are still passing routine administrative orders without disclosing an iota of application of mind, in terms of the ruling of the Hon'ble Supreme Court of India and by this Court.

16. In this regard, two decisions are required to be referred here. This Court in its order dated 02.06.2020 in W.P.No.17530 of 2019, has passed a detailed order in similar circumstances and it is useful to refer to few paragraphs from 19 to 25.

"19.From the impugned order this Court is unable to see any examination of the authority with reference to the judgment of the criminal Court. The authority though has cited the legal principles from the case laws and the rule position, nevertheless, has not chosen to apply either the legal principle or

the Rule position on the factual matrix of the present case. Unfortunately, the authority though right in his demonstration of the Rules and the legal principles, yet, has not appreciated the fact that the provisions and the legal principles cannot operate uniformly across the Board and the same have to be operated and applied on the set of facts and circumstances of each case.

20.As far as the case on hand is concerned, the petitioner, though involved in a criminal case, it was ultimately found by the criminal Court that there was no evidence at all against the petitioner and in which event he is entitled to be considered as per Explanation (2) to Rule 13 of the Special Rules for TNPSS, which is quoted by the first respondent himself. A mere perusal of the judgment of the criminal Court would clearly show that it is a clean and complete acquittal, but unfortunately nothing is reflected in the impugned order that the authority has analysed the criminal Court judgment at all.

21.No doubt, as per the decision of the Honourable Supreme Court of India in Avtar Singh case, which is holding the field, the power and discretion is vested in the authority concerned to assess the suitability of the candidate in cases where the candidates were involved in criminal cases and were acquitted, nevertheless, the discretion so exercised is not beyond the judicial review of this Court. After all, any decision of the authority is always subjected to judicial review if the same is put to challenge on legitimate grounds. There may be situation that the authority may feel that his decision is right and not to be faulted with, but such decision may also be subjected to interference, when dispassionate consideration is the underlying principle adopted by the Courts by judging the merits and demerits of the respective claims, sans officious predilection.

22.In substance, this Court finds that the discretion, which is delegated to the employer, as per the decision of the Honourable Supreme Court of India, has been exercised more dutifully and less objectively and in such view of the matter, this Court finds it imperative to intervene in the impugned order passed by the first respondent.

23.Further, factually this Court finds that the petitioner is only 28 years old, as per his

indication in the affidavit and he must have been in his teen at the time when the alleged criminal offence took place in 2009. Even assuming that the petitioner was involved in a scuffle, which led to the framing of criminal charges against him, a solitary act of aberration in the conduct of the petitioner, at the time of his impressionable age with susceptible mind, cannot result in dubbing the person of criminality for all times to come. Although this Court is conscious of the fact that the recruitment is to the disciplined Police Force, yet, even if the standards of discipline are of higher degree, an incident happened during the immature teenage times, where understandably impulsive instincts and youthful brashness overwhelmed reasons and composure, need not be held against the petitioner and deprive him of his right to seek public appointment permanently. In such circumstances, the authority, who is to exercise his discretion in considering such cases is expected to display due empathy and larger understanding, before being subjectively satisfied of his decision.

24. In the upshot of the above narrative and discussion, this Court is of the view that this case falls under an exceptional class, where despite the involvement in the criminal case and subsequent acquittal by the criminal Court, the petitioner is still entitled to be considered. This is because, this Court, after thoroughly going through the criminal Court judgment, finds that there was absolutely no evidence at all against the petitioner and therefore, it must be considered as per Explanation (2) to Rule 13(b) of Special Rules that the petitioner was not involved in a criminal case at all. Having found thus, this Court has to necessarily conclude that the impugned order passed by the first respondent cannot be upheld, as the authority has not properly and correctly examined the judgment of the criminal Court. It appears that the authority has perfunctorily applied the judicial principle and rejected the claim of the petitioner, which according to this Court is liable to be reviewed in favour of the petitioner herein.

25. In these circumstances, this Court is constrained to quash the impugned proceedings of the first respondent in C.No.A3/3440/2013, dated 21.08.2018, as improper and invalid and accordingly it is quashed and consequently, the respondents are

directed to consider the claim of the petitioner for appointment to the post of Grade -II Police Constable in any existing vacancy or in future vacancy, in case the petitioner's selection in his category falls within the meritorious zone."

An other decision of this Court rendered in W.P.No.10788 of 2020 dated 06.10.2020, similar views were expressed referring to a detailed observation of the Hon'ble Supreme Court in Avtar Singh's Case in paragraph Nos.17 to 26, which are extracted hereunder:

"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 with 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 candidates 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. "

In the light of the above ratio laid down by this Court, it is imperative on the part of the authority to consider the claim of the petitioner afresh.

17. In the said circumstances, the impugned order in Na.Ka.No.A2(3)/171/1880/PV/2019 dated 24.03.2020, is hereby set aside. The first respondent is directed to consider the claim of the petitioner by applying the above legal principles laid down by this Court without being solely guided by the involvement of the petitioner in the criminal case and his non disclosure of his involvement in the application form. On such consideration, the petitioner is otherwise eligible, the first respondent is directed to select him for appointment. The first respondent is also directed to pass appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order.

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

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Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

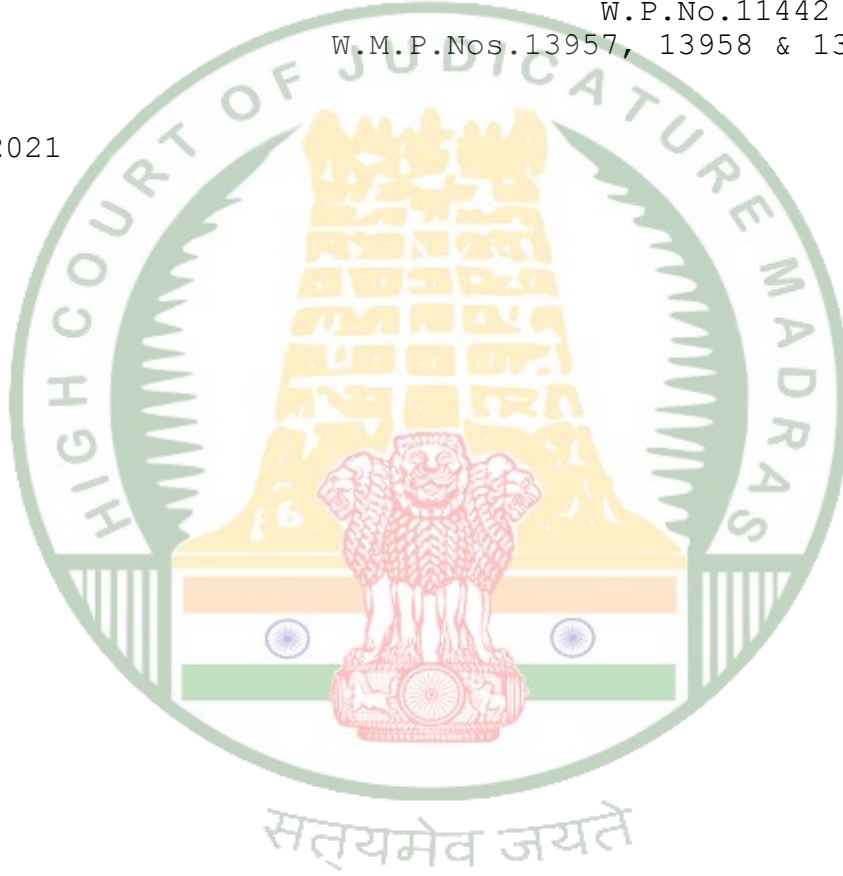
To

1. The Superintendent of Police,  
Vellore District, Vellore.
2. The Director General of Police,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai 600 004.

+2cc to Mr.Adithya Varadarajan, Advocate, S.R.No.42817  
+1cc to the Government Pleader, S.R.No.43145

W.P.No.11442 of 2020 and  
W.M.P.Nos.13957, 13958 & 13959 of 2020

AJS (CO)  
CS/02/02/2021



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