



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 16.03.2020

Delivered on : 02.06.2020

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CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.17530 of 2019

And

W.M.P.No.17010 of 2019

L.K.Starnesh

... Petitioner

Vs.

1.The Superintendent of Police,
Police Superintendent Office,
Near Dharmapuri Collecterate,
Dharmapuri, Dharmapuri District,
636 705

2.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.71, Adhithanar Road,
Pudupet, Komaleeswaranpet,
Egmore, Chennai-2

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the impugned order in C.No.A3/3440/2013, on the file of the first respondent, dated 21.08.2018 and quash the same as illegal, invalid and without jurisdiction and to direct the respondent herein to appoint the petitioner to the post of Police Constable Grade-II.

For Petitioner : Mr.M.Muruganantham

For Respondents : Mr.J.Pothiraj, Spl.G.P.



ORDER

The petitioner has filed the above writ petition with the following prayer:

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"To issue a writ of Certiorarified Mandamus calling for the impugned order in C.No.A3/3440/2013, on the file of the first respondent, dated 21.08.2018 and quash the same as illegal, invalid and without jurisdiction and to direct the respondent herein to appoint the petitioner to the post of Police Constable Grade-II."

2.The facts and circumstances gave rise to the filing of the present writ petition are briefly stated hereunder:

(a)The petitioner participated in the selection conducted by the second respondent Board for appointment to the post of Police Constable-II, in the year 2012. According to the petitioner, he had successfully emerged from the selection, but he found that his final result was not announced and the same was withheld. He received a communication on 07.01.2013 from the authority concerned that while filling up the Application Form, he had suppressed the information of his involvement in a criminal case in Crime No.141 of 2009, on the file of the District Munsif-cum-Judicial Magistrate, Pappirettipatti, Dharmapuri.

(b)According to the petitioner, he was involved in a petty quarrel and was implicated falsely in a criminal case, however, eventually, the criminal case registered against him, which was tried by the Criminal Court in C.C.No.170 of 2009, ended in honourable acquittal, vide Criminal Court judgment, dated 23.08.2010. He did not mention this fact on a bona fide impression that he was acquitted and therefore, not required to mention the information.

(c)In the above circumstances, the petitioner had earlier approached this Court challenging the action of the authorities withholding his selection, by filing W.P.No.3616 of 2013. This Court, after hearing the parties, allowed the writ petition, vide its order dated 22.03.2013 and directed the respondents herein to ignore the alleged involvement of the petitioner in the criminal case and to consider the petitioner for appointment, in case he falls within the merit for selection. As against the said order, a Writ appeal was filed in W.A.No.633



of 2017.

(d) The Hon'ble Division Bench of this Court, after hearing a batch of Writ Appeals (W.A.Nos.741 of 2017 etc.), which arose from a batch of Writ Petitions allowed by the learned single Judge, including the case of the present petitioner herein, disposed of all the Writ Appeals, vide its judgment dated 23.11.2017, modifying the order of the learned Single Judge. Paragraph Nos.15 and 16 of the said judgment are extracted hereunder:

"15.However, the issues involved herein have already been elaborately dealt with by the Larger Bench of the Supreme Court in Avtar Singh (supra), wherein, before coming to the conclusion as noted above, it has been observed as follows:

22. 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...

16.In the light of the decision of the Larger Bench, we hereby modify the order passed by the learned Single Judge, directing the appellants to reconsider the case of the respondents, after affording an opportunity of personal hearing to them and strictly in terms of the guidelines laid down by the Larger Bench of the Supreme Court in Avtar Singh (supra) and take a decision in accordance with law, with regard to the appointment of the respondents for the post in question. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this



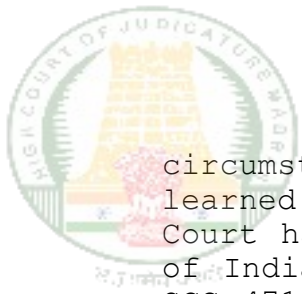
judgment”

(e) In pursuance of the modified judgment of the Division Bench, as extracted above, the first respondent herein, who is the competent authority, has passed an order on 21.08.2018, rejecting the claim of the petitioner herein, which is impugned in the present writ petition.

3. After notice, Mr. J. Pothiraj, learned Special Government Pleader, has entered appearance on behalf of the respondents and a detailed counter affidavit has been filed.

4. The learned counsel for the petitioner Mr. M. Muruganantham would submit that the first respondent, who passed the order of rejection, has not taken into consideration the fact that the petitioner was acquitted honourably by the criminal Court and in such an event, the bar that the petitioner was involved in a criminal case stood removed. However, the first respondent has concluded in the rejection order that the petitioner was acquitted not honourably, but on the basis of benefit of doubt and also that the petitioner concealed the material fact of his involvement in the criminal case, which according to the authority, is a disqualification under Sub-clause (iv) of Rule 14(b) of the Special Rules for the Tamil Nadu Special Police Subordinate Service. The learned counsel would submit that the application of the Rule was in fact considered by the learned single Judge in detail and the learned Single Judge has held in the earlier proceedings that in the case of petitioner, the acquittal was much before the selection and at that time when the Application Form was filled up by the petitioner there was no criminal case pending against him and therefore, the provision relied on by the official would not operate as a bar against the petitioner. In that view of the matter, the learned counsel would submit that the impugned order passed by the authority, once again relying on the said provision, suffers from mis-application of mind and hence, liable to be interfered with.

5. The learned counsel would further submit that even otherwise, the discretion exercised by the first respondent suffers from non-application of mind, since the authority has not truly appreciated the circumstances under which the petitioner was implicated in the criminal case and also the ultimate acquittal by the criminal Court. According to the learned counsel, the criminal Court has completely exonerated the petitioner of his involvement in the criminal case, as there was absolutely no evidence at all. The learned counsel would also rely on a decision of this Court rendered in similar



circumstances, in W.P.No.1578 of 2013, dated 18.07.2017. The learned counsel in fact would submit that in the said order this Court has referred to the decision of the Hon'ble Supreme Court of India in Avtar Singh vs. Union of India and Others [(2016) 8 SCC 471)], which was relied on by the Division Bench as well as the authority in the impugned order and ultimately concluded that the petitioner therein was entitled to be considered for appointment. The facts in that case are identical to the case of the present petitioner as well. The learned counsel would draw particular reference to the detailed consideration by this Court, from paragraph Nos.5 to 9 of the said order. The said paragraphs are extracted hereunder:-

"5.Mr.Govardhanan, learned counsel appearing for the petitioner would submit that on the date when the petitioner was directed to fill up the Police Verification Roll Form in November 2012, he had already been acquitted of the criminal case and the queries raised in the Police Verification Roll Form only point out whether the person has been convicted or punished by the Criminal Court. Therefore, he was of the bonafide impression that there was no necessity to fill up any information regarding the criminal complaint or the case which was pending against him earlier. Learned counsel for the petitioner further submitted that even otherwise, the criminal case had ended in acquittal, that too, this Court has converted the ordinary acquittal into one of honourable acquittal and therefore, the denial of employment on the said score cannot be countenanced in law. In support of his contention, learned counsel for the petitioner would rely on the decision of the Supreme Court in Avtar Singh Vs. Union of India and Others ((2016) 8 SCC 471). Learned counsel would particularly draw the attention of this Court to paragraphs 34, 35 and 36 of the order of the Supreme Court. The ratio laid down by the Supreme Court would point to the fact that consideration per se whether intentionally or unintentionally cannot be a basis for denial of employment or cancellation of appointment. The employer ought to take into consideration the nature of charges and the circumstances under



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which a candidate was placed while furnishing/non-furnishing of the information. In the instant case, admittedly, the facts are that at the time of filling up the details, the petitioner was acquitted in the criminal case and the said acquittal has also been held to be an honourable acquittal by this Court.

6.Mr.K.Venkataramani, learned Additional Advocate General appearing for the respondents would vehemently oppose the grant of relief to the petitioner on the ground that even on the matter of acquittal, the fact remained that the petitioner did not disclose the information of his involvement in criminal case.

7.This Court has given its anxious consideration to the rival submissions of the learned counsels. The charges which are framed against the petitioner were relating to the family quarrel and did not appear to be a serious one, to be taken note of, for the purpose of denying the employment to the petitioner. Even otherwise, the petitioner having been acquitted honourably cannot be denied the employment in view of his provisional selection for appointment to the post of Grade II Police Constable. The mere involvement in a criminal case cannot be used to deny the employment unless the employer appreciates the totality of the circumstances under which a person is involved in a criminal case. In many cases, the persons may get implicated or involved in a trivial matter, which assumed the character of criminality. Therefore, the yardstick has to be applied on the touchstone of facts and circumstances of each case and cannot be applied in a straight jacket formula.

8.In the upshot of the above discussion and the narrative, this Court is of the view that the impugned order dated 10.12.2012 is liable to be quashed and therefore, the same is quashed. The respondents are directed to grant appointment to the petitioner to the post of Police Constable Grade II with all consequential and attendant benefits. It is also made clear that the petitioner is not



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entitled to wages for the period in question on the ground of "No work No pay". However, he is entitled to all other benefits like seniority and continuity of service etc., The said direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

9.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed."

The learned counsel would, therefore, submit that the rejection order of the first respondent does not meet the requirement of proper consideration, in the facts and circumstances of the case and therefore, the impugned order is liable to be interfered with.

6.Per contra, Mr.J.Pothiraj, the learned Special Government Pleader, appearing for the respondents would submit that mere fact of acquittal does not entitle the petitioner for consideration of appointment to the Uniformed Service. He would submit that in this case, the petitioner was charged with serious offences under Sections 294(b), 323, 324 and 506(ii) of IPC and hence, it is perfectly within the discretion of the authority to consider the suitability of the petitioner for the Uniformed Services.

7.According to the learned Special Government Pleader, the standard of discipline, conduct and behaviour in Uniformed Services is rather stricter than other Civil Services and a person, who was involved in violent crime, by wielding iron rod in committing the crime, cannot expect that he will be considered for appointment even in the face of acquittal in the criminal case. Therefore, the first respondent has passed the order rightly rejecting the claim of the petitioner, notwithstanding the acquittal by the criminal Court. Ultimately it is the employer, who has to be satisfied with the conduct and suitability of a person de hors the development in the criminal case and that is what the Honourable Supreme Court of India has held in Avtar Singh case. Unless such discretion exercised by the authority is patently arbitrary or whimsical, the same does not call for interference by this Court.



8.The learned Special Government Pleader would also emphasize the fact that the authority has not only taken a decision on the basis of Sub-Clause (iv) of Rule 14(b) of Special Rules, but also on the basis of Rule 1 of Rule 13(e) of the Special Rules, which deals with 'acquittal on benefit of doubt or the complainant turning hostile'; contemplates that such person shall still be treated as a person having involvement in a criminal case. In the present case on hand there are two issues, which are against the petitioner. One that, notwithstanding the acquittal, the petitioner had concealed the information and failed to disclose in the application form about his involvement in the criminal case and such concealment would disentitle him for consideration of selection under Rule 14 of the Special Rules, coupled with the fact that a person acquitted by giving benefit of doubt or complainant turning hostile shall also be treated as a person involved in a criminal case for the purpose of consideration of appointment to the post. The authority, who passed the impugned order, has considered the Rule provision in correct perspective and rightly rejected the petitioner's claim. Lastly, the learned Special Government Pleader would submit that the authority has also considered the relevant legal principle laid down by this Court and also the Hon'ble Supreme Court of India on the issue and negated the claim of the petitioner, which requires no review at all by this Court.

9.Heard Mr.M.Muruganantham, the learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

10.The point falls for consideration before this Court is as to whether the authority, who passed the impugned order dated 21.08.2018, has discharged his responsibility of the discretion vested in him properly or not.

11.No doubt, the first respondent, who is the competent authority, has to take a final call in the matter as to whether the petitioner is suitable for appointment to the Police Force, notwithstanding the acquittal of the petitioner by the criminal Court, as the first respondent alone is in a position to decide about the fitness and suitability of the candidate concerned. The Hon'ble supreme Court of India in Avtar Singh case has held that ultimately the employer has to be satisfied about the suitability of the candidate regardless of the fact whether a person is acquitted in a criminal case or not.



12. In the face of the settled legal position that the suitability of the candidate is left entirely within the wisdom of the administering authority and a clear discretion is vested in the authority, nonetheless, such authority, while exercising his discretion, has to exercise the same on the basis of the facts and the circumstances, which formed the basis of claim by the petitioner as against the view taken by the authority.

13. Further, Explanation (2) to Rule 13(e) of the Special Rules itself has indicated that if a person is honourably acquitted, he shall be treated as a person not involved in a criminal case and his appointment can be considered in the subsequent recruitment. In view of this Explanation, the claim of the petitioner that he was honourably acquitted and therefore, he was entitled to be considered has some force. However, the fact that the petitioner failed to disclose his involvement in the criminal case is still staring at him and on that basis alone, is it still possible for the authorities to reject his claim is another dimension this Court has to take into consideration.

14. As far as the concealment of fact is concerned, the learned Judge of this Court, in the earlier proceedings filed by the petitioner herein (W.P.No.3616 of 2013 etc., batch, dated 22.03.2013) has held in Paragraph No.27 of the Order as follows:

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



15. The learned Judge of this Court has interpreted Rule 14 (b) in favour of the petitioner herein in a case of acquittal prior to the commencement of selection and held that application of Rule 14(b) was not called for. In that view of the matter, the argument that the petitioner had concealed the information of his involvement in the criminal case and therefore, on that ground alone he was not entitled to be considered for selection is not a valid argument and the same is liable to be rejected.

16. Now, the other aspect of the matter as to whether the petitioner was acquitted honourably or on the basis of benefit of doubt or on the basis of complainant turning hostile is to be analyzed, examined and judged on the basis of the judgment of the criminal Court.

17. This Court perused the judgment of the criminal Court carefully and finds that there were four independent witnesses alone, apart from official witnesses, who deposed before the criminal Court. The four witnesses were the complainant himself, his son and his two daughters-in-law. Apart from these four independent witnesses, there was no other independent witness at all to support the case of the prosecution. Even the evidence of these witnesses was found to be extremely untrustworthy and contradictory in view of the close relationship of the witnesses with the complainant. In the said circumstances, the criminal Court had rightly held that there was no worthwhile evidence at all to hold the petitioner guilty of the offences charged against him and ultimately and rightly acquitted the petitioner. On the whole, there cannot be any doubt in coming to the conclusion that the acquittal of the petitioner is to be considered as one of honourable acquittal, as his involvement in the criminal case was not even remotely established.

18. In the backdrop of the above clean acquittal of the petitioner, this Court has to necessarily take a call as to whether the first respondent, who passed the impugned order, has considered in proper perspective the basis on which the judgment of the acquittal was handed out to the petitioner by the criminal Court.

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,

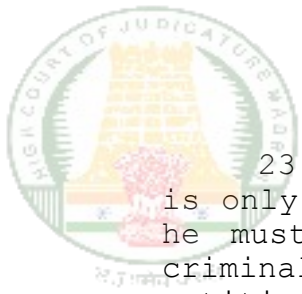


nevertheless, has not chosen to apply either the legal principle or the Rule position on the factual matrix of the present case. Unfortunately, the authority though right in his demonstration of the Rules and the legal principles, yet, has not appreciated the fact that the provisions and the legal principles 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.

26. The respondents are directed to pass appropriate orders in this regard within eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

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Sub-Assistant Registrar

Msk
To

1. The Superintendent of Police,
Police Superintendent Office,
Near Dharmapuri Collectorate,
Dharmapuri, Dharmapuri District,
636 705

2. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No. 71, Adhithanar Road,
Pudupet, Komaleeswaranpet,
Egmore, Chennai-2

W.P.No.17530 of 2019

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