

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 30-07-2020

Judgment pronounced on : 31-08-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 2059 of 2019
and CMP No.13843 of 2019

M. Nithyanandam ... Appellant/Petitioner

Versus

1. The Director General of Police
TNUSRB, Anna Salai, Chennai
2. The Superintendent of Police
Tirupur District ... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.04.2019 passed in WP No. 31786 of 2018 on the file of this Court.

Prayer in WP No.31786 of 2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a writ in the nature of Writ of certiorarified mandamus, calling for the records and quashing the impugned order of the second respondent dated 26.10.2018 vide NA. KA. No.A4/007/2018 and consequently direct the respondents to grant appointment to the petitioner for the post of Grade II Police Constable for the selection year 2017-18 subject to the outcome of the criminal prosecution.

For Appellant : Mr. K. Ravi Anantha Padmanaban
For Respondents : Mrs.A.Sri Jayanthi
Additional Government Pleader

JUDGMENT

R. SUBBIAH, J

The unsuccessful writ petitioner before the learned Single Judge of this Court in WP No. 31786 of 2018, is the appellant in this appeal. In this appeal, he challenges the order dated 03.04.2019 passed by the learned single Judge dismissing his writ petition.

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2. The appellant, as writ petitioner, has filed the Writ Petition No. 31786 of 2018 before the learned Single Judge,

challenging the order dated 26.10.2018 passed by the second respondent, cancelling his appointment to the post of Grade-II Police Constable.

3. For the purpose of disposal of this writ appeal, certain facts, which are germane and necessary are briefly stated in the following paragraphs.

4. The second respondent has resorted to a recruitment drive for selection and appointment to the post of Grade-II Police Constable during the year 2017-2018. The appellant submitted his application on 23.01.2018 for such selection and appointment. He has passed the written examination conducted by the second respondent, as also the physical examination. While the appellant was anticipating for receipt of an order of appointment, he was shocked to receive the order dated 26.10.2018 of the second respondent rejecting his candidature for selection and appointment to the post of Grade-II Constable, notwithstanding his coming out successfully in the selection process. As per the order of rejection dated 26.10.2018, it was stated that when an enquiry was caused as to the antecedence of the appellant, it came to light that he involved himself in a criminal case registered in Crime No. 251 of 2017 for the offences punishable under Sections 143, 283 and 241 of Indian Penal Code (in short IPC) on the file of the Inspector of Police, Kangeyam Police Station. As the appellant suppressed his involvement in the criminal case referred to above, in the application dated 23.01.2018 submitted by him for selection and appointment to the post of Grade-II Police Constable, the order dated 26.10.2018 was passed by the second respondent rejecting his candidature.

5. As regards the case in Crime No. 251 of 2017 is concerned, according to the appellant, on 02.05.2017, a road-roko was resorted to by the Villagers of Palayakottai demanding continued water supply to their Village. According to the Villagers, water supply was not effected for about three months, which led to the agitators squatting on the road purportedly to invite the attention of the instrumentalities of the Government. It is stated that the elders of the Palayakottai Village decided to resort to a road roko, inasmuch as their oral demands made to the Revenue Authorities did not yield any result. In the agitation as stated above, the appellant also participated. According to the appellant, when the agitation was in progress, the Revenue Officials along with the Police Officials intervened and assured to install the drinking water pump immediately. On the basis of such an assurance, the agitators dispersed peacefully without causing any damage to any of the public property. Notwithstanding the same, a complaint was given by the Village Administrative Officer, based on which, the case was registered in Crime No. 251 of 2017 against 32 persons, including the appellant. The appellant was arrayed as Accused No.13 in Crime No. 251 of 2017. According to the appellant, he never knew about the registration of the criminal case against him.

6. Assailing the order of rejection, before the Writ Court, the appellant, an Engineering Graduate, vehemently contended that he was not aware of the registration of the case in Crime No. 251 of 2017 at all. It was further stated that the appellant and the Villagers have resorted to an agitation only to invite the attention of the Revenue Officials about the pressing water needs. It is also stated that the appellant is fully qualified for holding the post of Grade-II Police Constable and he has also successfully passed all the tests conducted by the second respondent. However, by citing the inclusion of the name of the appellant in the First Information Report, he was unceremoniously denied employment by the respondents.

7. Pending writ petition, the appellant filed WMP No. 37019 of 2018 seeking to permit him to undergo the statutory training and this Court, by order dated 30.11.2018, permitted the appellant to undergo statutory training for the post of Grade-II Police Constable for the selection year 2017-2018 from 03.12.2018, subject to the result of the writ petition.

8. When the writ petition was taken up for hearing, the learned Single Judge, after hearing the counsel for both sides held that the decision taken by the respondents to reject the candidature of the appellant for having suppressed his involvement in the criminal case, cannot be found fault with. Having come to such a conclusion, the learned Single Judge declined to interfere with the order of rejection passed by the second respondent. Aggrieved by the same, the present Writ Appeal is filed before us.

9. The learned counsel appearing for the appellant vehemently contended that the appellant was not aware about the registration of the criminal case against him as on the date of submitting his application for selection and appointment to the post of Grade-II Police Constable till the conclusion of the selection. Even in respect of the criminal case, the Villagers were frustrated due to non-supply of water for nearly three months and therefore, left with no other alternative, they have decided to resort to a road-roko. However, the agitation was, by and large, peaceful for an hour. The agitation was not spearheaded by any untoward incident and it was peaceful. The intention of the agitators was only to bring the plight of the Villagers to the notice of the Revenue Officials and administrators and not to resort to a violent protest. Even during the agitation, there was no damage caused to any public property. When the agitation was in progress, the Block Development Officer, Village Administrative Officer and police officials came to the spot and pacified the villagers to give up their agitation with an assurance to do the needful. Accepting such an assurance, the Villagers immediately dispersed. During the period of agitation for over an hour, there was no disruption caused to free flow of traffic or any damage caused to the public property. Therefore, none of the agitators have any knowledge about the registration of the criminal case in connection with the agitation. Further, the

appellant was not summoned by any of the Court in connection with the registration of the case. The appellant came to know about the registration of the First Information Report and inclusion of his name thereof, only when he received the order of rejection dated 26.10.2018 from the second respondent. Even otherwise, the offences for which the case in Crime No. 251 of 2017 was registered, relate to bailable offence(s) and they do not fall within the scope and ambit of 'moral turpitude' and on the basis of registration of such a criminal case, the rejection of candidature of the appellant is not warranted.

10. The learned counsel for the appellant also submitted that during the pendency of the writ petition, the appellant filed Crl.OP No. 21965 of 2019 before this Court to quash the proceedings in S.T.C. No. 376 of 2018 corresponding to the First Information Report registered in Crime No. 251 of 2017 insofar as it relates to the appellant. However, by order dated 21.08.2019, this Court quashed the entire proceedings in S.T.C. No. 376 of 2018 on the file of Judicial Magistrate, Kangeyam against all the 32 persons shown as accused by holding that the demand for water by staging peaceful demonstration is not a criminal offence at all and it falls under the Fundamental Rights of our Constitution of India. By placing reliance on the above subsequent development, the learned counsel for the appellant submitted that in view of the quashing of the criminal proceedings against the appellant, there may not be any embargo for the respondents to appoint the appellant to the post of Grade-II Police Constable.

11. The learned counsel for the appellant further submitted even assuming for the sake of argument that the appellant had suppressed his involvement in the criminal case, the offence(s) to which the appellant was subjected to, is only a trivial demeanour, for which rejection of his candidature is not warranted. In this context, the learned counsel for the appellant relied on the decision of the Supreme Court in Avtar Singh vs. Union of India reported in (2016) 8 Supreme Court Cases 471, wherein the appellant therein was refused selection due to his involvement in a criminal case. The Supreme Court held that in such cases, a discretion is vested with the employer to either accept or reject the candidature, taking note of the special circumstances, if any and all the cases may not warrant an order of rejection. By placing reliance on the above decision, the learned counsel for the appellant would contend that the involvement of the appellant in this case is not such that it warrants rejection of his candidature.

12. The learned counsel for the appellant further contended that if the offences for which a candidate had been implicated in a criminal case, do not involve or attract moral turpitude or it is only a petty offence, it does not warrant rejection of a candidature. In this context, he placed reliance on the decision of the Supreme Court in Mohamed Imran vs. The State of Maharashtra, reported in 2018 SCC Online SC 1945, wherein it was held that an alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the

appellant, when he has on all other aspects and parameters been found to be fit for appointment. By referring to Avtar Singh case, mentioned supra, the Supreme Court held that if empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment. In effect, it was observed by the Supreme Court that there cannot be any mechanical or rhetorical incantation of moral turpitude to deny appointment simplicitor to a candidate.

13. Above all, the learned counsel for the appellant invited the attention of this Court to the order dated 21.08.2019 passed by this Court in Crl.OP No.21965 of 2019, in which it was observed that when persons are deprived of drinking water for a long time, the only manner in which the people can show their protest is by resorting to a peaceful agitation and it cannot be considered to be a criminal offence. Therefore, the learned counsel for the appellant prayed this Court to set aside the order dated 03.04.2019 of the learned Single Judge as also the order dated 26.10.2018 passed by the second respondent and to allow the writ appeal as prayed for.

14. Opposing the submissions of the learned counsel for the appellant, the learned Additional Government Pleader appearing for the respondents contended that it is not as though a peaceful road-roko was resorted to. The fact remains that the agitators obstructed the traffic by squatting on the road. At the same time, it is true that at the intervention of the Revenue Officials, the road roko was given up. As regards the registration of the criminal case, the appellant was fully aware of the case, especially when he resides in the same Village. The appellant ought to have indicated his involvement in the criminal case at the time of submission of the application for appointment to the post of Grade-II Police Constable, but he wantonly and wilfully suppressed the same for the purpose of getting appointed to the post. On the contrary, his involvement in the criminal case surfaced during an enquiry conducted to unravel the antecedence of each and every candidates prior to their appointment. Even assuming that the appellant was not aware of the registration of the case, at the time of filling the form, the appellant ought to have taken steps to cause an enquiry as to whether the road-roko in which he participated had resulted in registration of any criminal case or not. When the appellant seeks appointment in a disciplinary force, he ought to have been prudent to cause an enquiry with respect to any registration of criminal case against him. However, the appellant has mechanically stated that there is no criminal case registered against him. When once the involvement of the appellant came to light and the appellant also suppressed it, the inference that an employer could draw is that the appellant had suppressed the registration of criminal case with full knowledge about it. To buttress her submissions, the learned Additional Government Pleader placed reliance on the decision of the Full Bench of this Court in the case of (Manikandan and other vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and others), reported in (2008) 2 MLJ 1203, wherein the Full Bench of this Court held that the non-disclosure of the

involvement of the petitioners in the criminal case would only result in rejection of their candidature. Thus, it was held that non-selection of the petitioners or the rejection of their candidates by the respondents, either on the basis of their involvement in criminal case or on the basis of the suppression of their involvement, is perfectly justified. By placing reliance on the decision of the Full Bench of this Court, the learned Additional Government Pleader would contend that the order of rejection, rejecting the candidature of the appellant, by the second respondent, is wholly justified and it does not call for any interference by this Court.

15. The learned Additional Government Pleader also relied on the decision of the Supreme Court in the case of Union Territory of Chandigarh Administration and others vs. Pradeep Kumar and another (arising out of Civil Appeal No. 67 of 2018 etc., dated 08.01.2018 - SLP (C) No. 20750 of 2016), wherein the Supreme Court, emphasising the importance of integrity and high standard of conduct required to be adhered in Police force, has held that when the Screening Committee has concluded that the respondents therein are not suitable for being appointed to the post of Constable, such a decision cannot be slightly interfered with by the Court by substituting its own views. By referring to this decision of the Supreme Court, the learned Additional Government Pleader appearing for the respondent prayed for dismissal of the writ appeal.

16. We have given our anxious consideration to the rival submissions made. At the outset, we wish to observe that Police force is a disciplined force, which demands profuse integrity, rectitude and high standard of conduct on the part of the employees who join such service. For the purpose of adherence and to uphold these shining principles at all times, the employer has prescribed certain parameters which are required to be fulfilled by all the candidates in letter and spirit. Any deviation or compromise of these principles will result in defeating the very purpose and object with which the force has been established. A candidate applying for any post in such disciplinary force, must not only prove himself to be upright, but also should be free from any blameworthy conduct, either prior to his selection or after and at all times.

17. In the present case, the appellant submitted his application for selection and appointment to the post of Grade-II Police Constable. At the time of filling up the application, to the question as to whether he involved himself in any criminal case, he has merely stated 'No'. Admittedly, the appellant has passed the written examination as well as other fitness examination conducted by the second respondent. However, prior to his appointment, on an enquiry, it has surfaced that the appellant is one of the accused in Crime No. 251 of 2017 on the file of Inspector of Police, Kangeyam Police Station. We are not inclined to go into the merits or otherwise of the basis on which the criminal case was registered. All that we intend to examine is as to whether the appellant has suppressed the registration of criminal case

leading to his involvement in the road-roko or he was unaware of the registration of the case. In this case, the appellant feigned ignorance by stating that only after the order dated 26.10.2018 passed by the second respondent, cancelling his appointment to the post of Grade-II Police Constable was received, did he come to know about the registration of the criminal case. We could hardly find any justification on the part of the appellant to say that he was not aware of the registration of the criminal case. The appellant is not a layman, but a Graduate in Engineering. Admittedly, he participated in the road-roko along with other Villagers on 02.05.2017. He submitted his application for selection and appointment to the post of Grade-II Police Constable on 23.01.2018. In the interregnum period of eight months, he could have had knowledge about the registration of the criminal case consequent upon his involvement in the road-roko. If not, at the time of submitting his application - before indicating 'No' in the column meant for disclosure of information relating to his involvement in any criminal case, he could have exercised prudence to know whether there was any case registered against him. Moreover, the appellant is residing in the same Village from the time when he participated in the road roko till such time he submitted his application for selection and appointment to the post. Even assuming that the appellant had truly and faithfully declared his involvement in the criminal case, yet it is the prerogative of the employer to consider the nature and effect of the criminal case in which he was involved - whether it is a heinous offence or a trivial misconduct, or any other antecedents etc., however, the appellant cannot demand or compel the employer to appoint him in a disciplinary force merely because he had truly set out his involvement in a criminal case without suppressing it. Therefore, viewed from any angle, we could conclude that the appellant was not prudent enough to cause a verification with the concerned Police Station, especially when he knew fully well that an enquiry will be caused prior to his employment about his antecedence as he along with other Villagers participated in a road-roko demanding supply of water and the agitators were dispersed only at the intervention of the Revenue Officials and Police Officials. We also hasten to add that the appellant, if appointed, has to subject himself to the Rules, Procedures and Orders of his higher authorities. The same yardstick will equally apply to him prior to his appointment to ensure that he disclose all the material particulars sought for by the employer, truly and honestly, without any suppression. In other words, the selection process contains certain guidelines and parameters to be fulfilled by him and on his failure to comply with the requirement of the employer, he is bound to suffer. The learned Single Judge, keeping in view the aforesaid requirements which are precedent for consideration of a candidature in a disciplinary force and in the light of several decisions over which he placed reliance, has come to the conclusion that the order of rejection passed by the second respondent, rejecting the candidature of the appellant, is proper. We see no reason to interfere with such a conclusion arrived at by the learned

single Judge.

18. The learned counsel for the appellant vehemently contended that during the pendency of the writ proceedings, the entire criminal proceedings have been quashed by this Court on 21.08.2019 in Crl.O.P.No.21965 of 2019 and therefore, there is no embargo for appointing the appellant to the Post of Grade-II Constable in the selection drive resorted to by the respondents for the year 2017-2018 by setting aside the order dated 26.10.2018 passed by the second respondent. The learned Additional Government Pleader replied that upon quashing the criminal proceedings against the appellant, he was appointed to the post of Police Constable during the year 2018-2019.

19. At the outset, we see no force in the said submission of the learned counsel for the appellant that, since the criminal proceeding against the appellant is quashed, he is bound to be given an order of appointment. First of all, while dealing with the Petition for quashing the criminal proceedings, this Court has dealt with the nature of the offence(s) alleged against the writ petitioner and others in staging a road-roko demanding supply of water. On the other hand, the order, cancelling the candidature of the petitioner for the post of Grade-II Police Constable came to be passed on noticing the suppression of material particular leading to his involvement in a criminal case. Thus, merely because the criminal proceeding against the appellant was quashed by this Court, it will not, in any manner, invalidate the order of rejection dated 26.10.2018 passed by the second respondent. We, however, record the submission of the learned Additional Government Pleader for the respondents about the factum of appointment of the appellant in the subsequent recruitment drive.

20. In the result, we confirm the order dated 03.04.2019 passed by the learned Single Judge in WP No. 31786 of 2018. The Writ Appeal, therefore, fails and it is dismissed. No costs. Connected CMP No. 13843 of 2019 is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Director General of Police,
INOSRB, Anna Salai, Chennai.

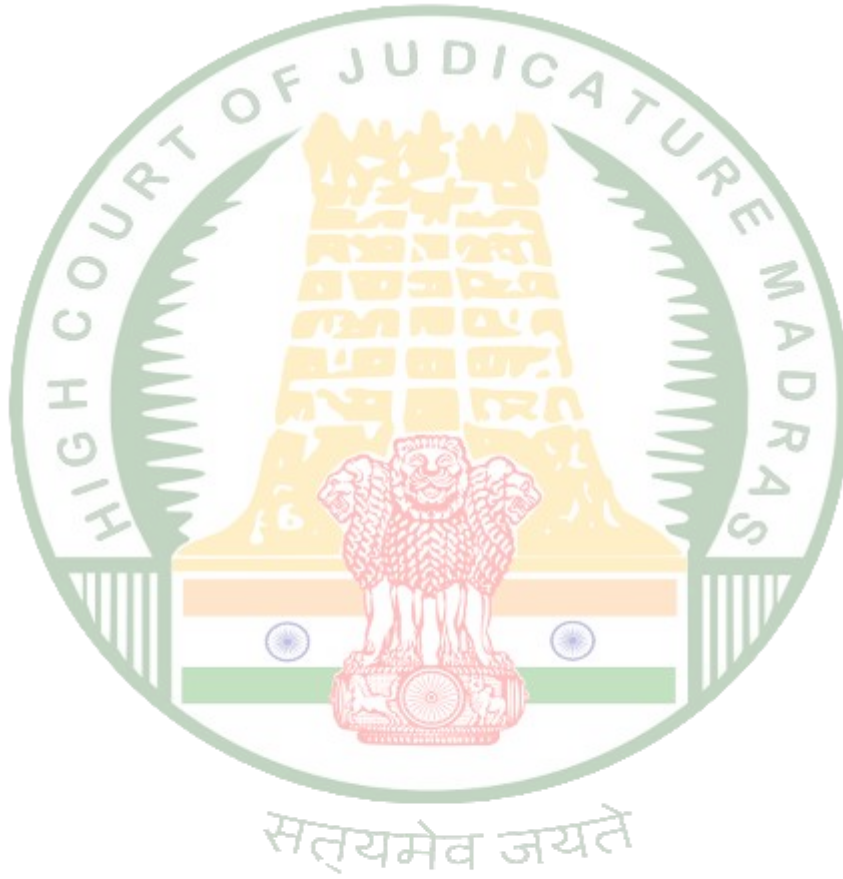
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2. The Superintendent of Police,
Tirupur District.

+1cc to Government Pleader SR.No.23498

WA No. 2059 of 2019

MR (CO)
GMY (21/10/2020)



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