

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1084 of 2017

S.Balasubramanian

.. Appellant

vs.

1.The Commandant,
Office of Deputy Inspector General,
Central Industrial Security Force,
R.T.C. Bhillai, Durg District,
Chattishgarh State.

2.The Senior Commandant,
C.I.S.F. Group Headquarters,
Chennai "D" Block, Rajaji Bhavan,
Besant Nagar,
Chennai - 90.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 05.4.2016 passed by the learned Single Judge in W.P.No.12688 of 2016.

PRAYER IN W.P.No.12688 of 2016

Writ petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus Calling for the records of the 1st respondent vide their order No. Sl.No.E36017/Court Case/Brupra/2014/ 6659 dated 16.09.2014 and in so far it is against the petitioner and quash the same and direct the 2nd respondent to execute the employment order No. E/32107/01/CONST/DVR/ ADII/GHC/2013/5437 dated 17.12.2013 to employ the petitioner so as to join in the forth coming course as Driver/Constable in the respondents Police service

For Appellant : Mr.SA.Sarangabani

For Respondents : Mr.J.Madanagopal Rao

JUDGMENT

(Delivered by Subramonium Prasad, J.)

The writ petitioner is the appellant. The appellant/writ petitioner was an applicant for being appointed for the post of Constable/Driver in the Central Industrial Security Force (CISF). He was selected and an appointment order was given to him on 17.12.2013. However, the appointment order was cancelled on the ground that he was involved in a criminal case in the past and, therefore, it was decided that he was not eligible for appointment in the CISF. The said order was the subject matter of challenge in the writ petition, from which the instant appeal arises.

2. The material on record discloses that the appellant/writ petitioner was an accused in an alleged case of theft of tyres and was proceeded ahead in C.C.No.135 of 2012 on the file of Judicial Magistrate No.I, Thoothukudi. There were five accused and the appellant/writ petitioner was shown as accused No.3 in C.C.No.135 of 2012. Out of five accused, accused No.2 viz., Pathirakali was convicted and rest of them were acquitted. The date of acquittal is on 30.01.2014, which is after the order of appointment dated 17.12.2013.

3. The learned Single Judge rejected the writ petition only on the ground that the appellant/writ petitioner had not produced the copy of the judgment of the trial Court acquitting him. In the appeal, the appellant/writ petitioner has produced the copy of the order of the trial Court acquitting the appellant.

4. The short issue, which arises for consideration is as to whether the fact that the appellant/writ petitioner stands acquitted should be a relevant circumstance which should be taken note of by the authority before deciding as to whether the appellant is or is not entitled to be appointed in the CISF.

5. The Hon'ble Supreme Court has laid down parameters which have to be considered by the appointing authority before deciding the suitability of the candidate involved in the criminal case to be appointed in an organisation.

6. The Hon'ble Supreme Court in Avtar Singh v. Union of

India, reported in (2016) 8 SCC 471, has observed as under:
"30. 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:

(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 : -

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

7. This Bench has also, in similar circumstances in the case of C.Surendar v. Director General of Police and others, reported in 2019 (6) CTC 465 (Mad), held as follows:

"31. Consequently, we are of the opinion that once the Division Bench had ruled otherwise, it was not open to the learned Single Judge to have laid down a law separately without referring the matter to a larger Bench, in the event it required a further consideration for an authoritative pronouncement.

32. However, the march of law does not rest there. The issues raised came to be considered later on and as per the judgments that have been cited at the bar, we find that they have been settled to the effect that the acquittal in a criminal case is not conclusive of the suitability of a candidate for a particular post. The antecedents of a candidate have to be verified and more particularly, in a case where it is a matter of Uniformed Service of the State Police. The judgments that have been cited at the bar are as follows:

(i)Avtar Singh v. Union of India and others, 2016 (8) SCC 471;

(ii)Vithal Waman Shelke v. The High Court of Bombay, 2017 (4) Bom.CR 145;

(iii)Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another, 2019 (1) LLN 549 (SC) : 2018 (1) SCC 797;

(iv)Ashutosh Pawar v. High Court of Madhya Pradesh, 2018 (1) CTC 353 (FB) (MP) : 2018 (1) LLN 180 (FB) (MP);

(v)State of Madhya Pradesh and others v Abhijit Singh Pawar, 2018 (6) CTC 659 (SC) : 2018 (18) SCC 733; and

(vi) V. Jayavarthan v. Member Secretary, Tamil Nadu Uniformed Services Recruitment Board and others, 2018 (5) LW 150.

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 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."

8. The learned Single Judge has not taken into account the judgment of the Hon'ble Supreme Court in the case of Avtar Singh, supra, before deciding the issue and therefore, the order of the learned Single Judge deserves to be set aside. The material on record discloses that the competent authority has also not taken into account the parameters laid down by the Hon'ble Supreme Court and the same is contrary to law, which is also set aside. The matter is, therefore, remitted back to the authority concerned once again to consider all the circumstances and take a decision as to whether the appellant/writ petitioner is or is not entitled to be appointed as Driver/Constable in the CISF. We make it clear that we are not expressing any opinion on the merits of the candidature of the appellant/writ petitioner. Needless to say that the said exercise be completed within a period of two months from the date of receipt of a copy of this judgment.

9. The appeal is allowed in terms aforesaid. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

bbr

To

1.The Commandant,
Office of Deputy Inspector General,
Central Industrial Security Force,
R.T.C. Bhillai, Durg District,
Chattishgarh State.

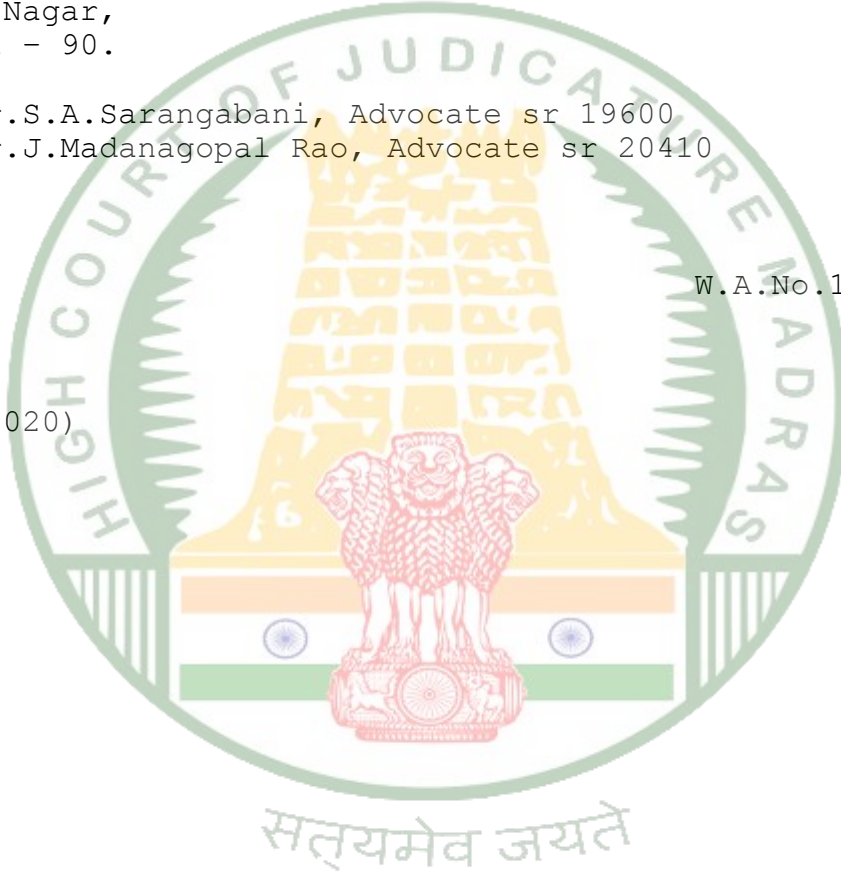
2.The Senior Commandant,
C.I.S.F. Group Headquarters,
Chennai "D" Block, Rajaji Bhavan,
Besant Nagar,
Chennai - 90.

+1cc to Mr.S.A.Sarangabani, Advocate sr 19600

+1cc to Mr.J.Madanagopal Rao, Advocate sr 20410

W.A.No.1084 of 2017

BS (CO)
GS (21/05/2020)



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