

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.30145 of 2017
and W.M.P.No.32751 of 2017

1 A. Sudhagar
S/o. Arumugam No.143 Ambedkar Road New
Colony Thoravalur Colony Virudhachalam
Taluk Cuddalore District ...PETITIONER

Vs.

1 The State of Tamil Nadu
Rep. by the Secretary to Government,
Home Department Secretariat Chennai-09

2 The Director General of police,
Dr.Radhakrishnan Salai Mylopore,
Chennai 4

3 The Superintendent of Police
District Police office Cuddalore District
Cuddalore.

4 The Member Secretary
Tamil Nadu Uniformed services Recruitment
Board Old Commissioner of Police
office Campus Pantheon Road
Egmore, Chennai 600 008. ...RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari Mandamus, to call for the records pertaining to order passed by the 3rd respondent vide his proceedings in Na.Ka.No.A4/333/TSP/2017 -5 dated 09.10.2017 and to quash the same as illegal incompetent and ultravires and thereby consequently directing the respondents to appoint the petitioner in the post of Police Constable Grade-II.

For Petitioner : Mrs.G.Dhanalakshmi for
Mr.K.Suthan

For Respondents : Mr.J.Ramesh, A.G.P.

O R D E R

Pursuant to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board, Chennai, 4th respondent herein, the petitioner had applied for the post of Grade II Police Constable. The petitioner successfully completed all the test conducted by the respondent Board including written examination, physical fitness test, etc. and qualified for the said post. At this stage, the third respondent passed the impugned order in Na.Ka.No.A4/333/TSP/2017-5, dated 9.10.2017 by rejecting the selection of the petitioner stating that the petitioner is not eligible for appointment to the said post on the ground that the petitioner was convicted in criminal case filed against him by judgment, dated 6.7.2015 made in C.C.No.49 of 2015 on the file of Judicial Magistrate No.1, Virudhachalam for the offence under Sec. 323 of I.P.C. and also S.T.C.No.69 of 2017 on the file of Judicial Magistrate No.1, Vridhachalam for the alleged offences under Sections 147, 341, 353, 188 of I.P.C. wherein the petitioner was acquitted by judgment, dated 3.10.2017. Hence, the petitioner approached this Court for the aforementioned relief.

2. According to the learned counsel appearing for the petitioner, the impugned order has been passed as a result of non application of mind and therefore, per se illegal and ultravires. The cases filed against the petitioner are trivial in nature and no way decides the character of the petitioner. Therefore, the impugned order is liable to be quashed.

3. According to the learned Additional Government Pleader appearing for the respondents, there is no dispute in respect of the criminal cases filed against the petitioner. At the time of police verification, it was found that the writ petitioner involved in two criminal cases registered in Cr.No.653 of 2014 for the alleged offences under Section 294(b), 323 and 506(ii) I.P.C. wherein the petitioner was convicted by the Judicial Magistrate No.1, Vridhachalam by judgment, dated 6.7.2015 in C.C.No.49 of 2015 for the offences under Sec.323 of I.P.C. and imposed a fine of Rs.1000/- in default to undergo simple imprisonment for one month and another case in S.T.C. No.69 of 2017 was pending on the file of Judicial Magistrate No.1, Vridhachalam and the same was ended in acquittal on benefit of doubt under Sec.255(i) of Cr.P.C. The petitioner has not disclosed the criminal cases registered against him in col. No.15, 16 and 18 of the application submitted by the petitioner. Therefore, as per Rule 14(b) (ii) & (iv) of Tamilnadu Special Police Subordinate Service Rules, 1978, no person who is a candidate for selection to the post of Grade II Police Constable shall be eligible for appointment to the service by direct

recruitment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service and person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile shall be treated as person involved in a criminal case at the time of Police Verification. Considering the antecedents of the petitioner, the impugned order, dated 9.10.2017 has been passed by the third respondent. Therefore, the petitioner is not eligible for appointment to the post of Grade II Police Constable.

4. The Hon'ble Supreme Court while dealing with an identical issue in State of M.P. Vs. Abhijit Singh Pawar [2018 (6) CTC 659 = 2018 (18) SCC 733], the Hon'ble Supreme Court settled the proposition of law that the employer is still have the right to consider the antecedents and the suitability of the candidate and held as under:

''14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) CrPC, the law declared by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], specially in paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

15. The reliance placed by Mr Dave, learned Amicus Curiae on the decision of this Court in Mohd. Imran [Mohd. Imran v. State of Maharashtra, Civil Appeal No. 10571 of 2018, order dated 12-10-2018 (SC)] is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of the said decision, this Court had found that the

only allegation against the appellant therein was that he was travelling in an autorickshaw which was following the autorickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohd. Imran [Mohd. Imran v. State of Maharashtra, Civil Appeal No. 10571 of 2018, order dated 12-10-2018 (SC)] thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] and Pradeep Kumar [UT, Chandigarh Admn. v. Pradeep Kumar, (2018) 1 SCC 797 : (2018) 1 SCC (Cri) 504 : (2018) 1 SCC (L&S) 149] .

16. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge [Abhijit Singh Pawar v. State of M.P., WP No. 9412 of 2013, order dated 31-7-2014 (MP)] as well as by the Division Bench [State of M.P. v. Abhijit Singh Pawar, 2015 SCC OnLine MP 7517] and dismiss Writ Petition No. 9412 of 2013 preferred by the respondent. No costs.'

5. Petitioner sought for appointment in the Police department. The petitioner must possess the required qualification, honesty integrity and also have a clean record having good antecedents and character. Admittedly, the petitioner had not disclosed his involvement in two criminal cases, wherein the petitioner was convicted in C.C.No.49 of 2015 for the offence under Sec.323 of I.P.C. and imposed a fine of Rs.1000/- in default to undergo one month simple imprisonment and also a case in STC.No.69 of 2017 for the alleged offences under Sections 147, 341, 353, 188 of I.P.C. was pending on the file of Judicial Magistrate No.1, Vridhachalam at the time of

Police verification.

6. Considering the serious nature of the criminal case registered against the petitioner and the decision of the Hon'ble Supreme Court in the case of Abhijit Singh Pawar (supra), wherein the Hon'ble Supreme Court settled the proposition of law that the employer is have the right to consider the antecedents and the suitability of the candidate for appointment, there is no scope for interference with the order, dated 12.10.2017 passed by the third respondent. Therefore, this Court cannot direct the third respondent to appoint the petitioner to the post of Police Constable, Grade II.

7. Consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Secretary to Government,
State of Tamil Nadu
Home Department Secretariat Chennai-09
 - 2 The Director General of police,
Dr.Radhakrishnan Salai Mylopore
Chennai 4
 - 3 The Superintendent of Police
District Police office Cuddalore District
Cuddalore.
 - 4 The Member Secretary
Tamil Nadu Uniformed services Recruitment
Board Old COP office Campus Pantheon Road
Egmore Chennai 600 008.
- +1 CC to The Govt. Pleader sr 3243.

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NRL (CO)
SP (27/02/2020)