

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.30381 of 2017
and W.M.P.No.33121 of 2017

1 K. Venkatesan
S/o. Krishnan,
Reddypatty Village,
Uthankarai Post & Taluk,
Krishnagiri District. ..PETITIONER

Vs.

1 The Director General of police,
Head of Police Force,
Mylapore, Chennai 600 004
2 The Tamil Nadu Uniformed Services,
Recruitment Board (USRB) Rep. by
its Member Secretary,
Egmore Chennai 600 008
3 The Superintendent of Police
Krishnagiri District ..RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the impugned order of rejection of appointment of the petitioner dated 12.10.2017 vide in Na.Ka.No.A2/15484/Oo.Va.05/2017 passed by the 3rd respondent herein and quash the same consequently direct the respondents to appoint the petitioner as Grade II Police Constable (TSP-PC) or Grade II Jail Warders or Firemen forthwith.

For Petitioner : Mr.K.Balu
For Respondents : Mr.J.Ramesh,
Additional Government Pleader

ORDER

Pursuant to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board, Chennai for the year 2017, the petitioner had applied for the post of Grade II Police Constable. The petitioner secured 57 marks in written

examination and 15 marks in physical examination making a total of 72 marks and he was declared provisionally selected by the second respondent for the post of TSP-PC as per the results published in the website. Under these circumstances, the third respondent vide his letter, dated 12.10.2017 rejected his selection on the ground of suppression of criminal case pending against him. According to the petitioner, the petitioner honestly disclosed the particulars of pendency of criminal case registered against him in Cr.No.186 of 2013 of Uthankarai Police Station for the alleged offence under Section 147, 148 and 341 of I.P.C. r/w Sec.3 of Tamil nadu Prevention of Damage to Public Property Act. However, Crime number has been wrongly mentioned as Cr.No.186 of 2013 instead of correct Cr.No.184 of 2013 of Uthankarai Police Station. Therefore, the petitioner approached this Court to set aside the impugned order passed by the third respondent, dated 12.10.2017.

2. According to the learned counsel appearing for the petitioner, the third respondent has not applied his mind independently while considering the application of the petitioner. The petitioner honestly disclosed the pendency of criminal case in the relevant column of the application. The third respondent passed the impugned order without giving an opportunity to the petitioner and rejected his candidature for appointment in a mechanical manner. Even though proceedings initiated under Section 110 (a) of Cr.P.C. in Cr.No.174 of 2015 of Uthankarai Police Station is only a preventive measures taken by the Police to maintain peace and tranquility in the area and therefore, it is not a serious criminal offence. On receipt of rejection letter from the third respondent, the petitioner submitted a representation to the third respondent stating that he was falsely implicated in Cr.No.184 of 2013 of Uthankarai Police Station. Therefore, the impugned order is liable to be set aside.

3. The third respondent filed counter affidavit wherein it is stated that as per Rule 14 (b) of Tamilnadu Special Police Subordinate Service Rules, no person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that

- (i) he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and
- (ii) that his character and antecedents are such as to qualify him for such service; and
- (iii) that he has not involved in any criminal case before police verification.

Explanation (1) : a person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned

hostile shall be treated as a person involved in a criminal case. Explanation (2) : A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal treated as a mistake of fact shall be treated as not involved in criminal case and he can claim right for appointment only by participating in the next recruitment.

Further, it is stated that as per rule 14 (b) (iv) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified; and that in the event of failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, the appointing authority can reject his application on the ground of suppression of material fact. On verification, it was found that the petitioner is involved in the following criminal cases:

- (1) Cr.No.184 of 2013 - U/Sec. 147, 148, 341, 506(ii) of I.P.C. r/w Sec. 3(1), 4 of Prevention of Damage to Public Property Act, 1984 of Uthankarai Police Station wherein charge sheet filed and taken on file as P.R.C.No.15 of 2013 and pending before the trial Court.
- (2) Cr.No.174 of 2014 - U/Sec. 110(a) Cr.P.C. is pending against the petitioner.

Therefore, the third respondent rejected the petitioner's provisional selection vide Na.Ka.No.A2/15484 / C.No.05/2017, dated 12.10.2017 and the same was communicated to the petitioner. It is relevant to state that he is shown as Accused No.16 in Cr.No.184 of 2013 and the petitioner is PMK party sympathizer and his verification report on his character and antecedents are not satisfactory. Therefore, as per Rule 14(b) (iv) of Tamilnadu Special Police Subordinate Service rules, the writ petitioner is not entitled for appointment and hence, the third respondent has rightly cancelled the selection of the petitioner.

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 involved in two criminal cases viz., (1) Cr.No.184 of 2013 for the alleged offences under Sec. 147, 148, 341, 506(ii) of I.P.C. r/w Sec. 3(1), 4 of Prevention of Damage to Public Property Act, 1984 of Uthankarai Police Station wherein charge sheet was filed and taken on file as P.R.C.No.15 of 2013 (2) Cr.No.174 of 2014 for the alleged offences under Sec.110(a) Cr.P.C. Both cases are pending against the petitioner before the trial Court. It is relevant to extract here Sec.110 (a) of Cr.P.C. as follows:

110. Security for good behaviour from habitual offenders

When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or''

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 Surpeme 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.

Sd/-

Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

- 1 The Director General of police,
Head of Police Force, Mylapore, Chennai 600 004
- 2 The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board (USRB),
Egmore Chennai 600 008
- 3 The Superintendent of Police, Krishnagiri District

+1 cc to M/s.K.Balu, Advocate Sr.No. 4966

+1 cc to The Government Pleader Sr.No. 5353

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