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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.30633 of 2017
and W.M.P.No.33538 of 2017

1 C.Rajamani
S/o.Chinnadurai
No.349 pillaiar Koil street,
Boothamangalam Post,
Keel Pennathur Taluk,
Thiruvannamalai District ... PETITIONER

Vs.

1 The Tamil Nadu Uniformed Services
Recruitment Board Rep by its
Member- Secretary, Chennai-600 008

2 The Director General of Police,
Tamil Nadu Chennai-600 001.

3 The Superintendent of Police,
Thiruvannamalai,
Thiruvannamalai 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 3rd respondent relating to the impugned order in Na.Ka. No.A2 (3)/ 06710/ 2017 dated 08.10.2017 to quash the same and consequently direct the respondents to appoint the petitioner as Police Constable Grade II (Regn No.0412281- TSP) in the Common recruitment for the post of Police Constable Jail Warden and Fireman 2017.

For Petitioner : Mr.T.Panchatsaram

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

O R D E R

Pursuant to the notification issued by the first respondent, the petitioner had applied for the posts of Grade II Police Constables, Grade II Jail Warders and Firemen. The petitioner successfully completed all the test including written examination conducted by the first respondent and



qualified for the said post. At this stage, the third respondent passed the impugned order in his proceedings in Na.Ka.No.A2 (3)/06710/2017, dated 8.10.2017, cancelled the appointment stating that the petitioner has involved in a criminal case registered in Cr.No.23 of 2013 on the file of All Women Police station, Tiruvannamalai for the alleged offence under Section 366(A), 376, 506(i) I.P.C. and Sec.3 & 4 of POCSO Act, 2012 and the petitioner was arrested and released on bail. Further, two other cases in C.C.No.50 of 2013 and SC. No.125 of 2014 were dismissed under Sec.235 (i) of Cr.P.C. Hence, the petitioner approached this Court for the aforesaid relief.

2. The learned counsel appearing for the petitioner submitted that the impugned order, dated 8.10.2017 passed by the third respondent is unreasonable by stating that aforesaid criminal case registered in Cr.No.23 of 2013 on the file of All Women Police station, Tiruvannamalai for the alleged offence under Section 366(A), 376, 506(i) I.P.C. and Sec.3 & 4 of POCSO Act, 2012 and the case was taken on file in S.C.No.125 of 2014 by the Fast Track Mahila (Sessions) Court, Tiruvannamalai, wherein the petitioner was acquitted from the charges by judgment, dated 1.2.2016. The aforesaid judgment passed much prior to the application submitted by the petitioner for the post of Grade II Police Constable in the year 2017. In such circumstances, the reason given by the third respondent reviewing the judicial order in order to reject the claim of the petitioner is unlawful and extraneous one. Therefore, the impugned order is liable to be quashed.

3. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner had not disclosed the aforesaid criminal case registered against him in column No.15, 16, and 18 in the application submitted for the posts of Grade II Police Constables. G.O.Ms.No.101 issued by the Home (Police) Department, dated 30.1.2003 wherein Rule 14(b) of Tamil Nadu Police Subordinate Service was amended with the introduction of explanation to Rule 14(b) (iv) of the Rules. As per Rule 14(b) (ii) & (iv) of Tamilnadu Special Police Subordinate Service, a candidate being selected for the post of Grade II Police Constable should not involved in any criminal case and having good character. In judgment, dated 28.02.2008 of this Court in W.P.No.39298 of 2005 wherein it is held that a person who is 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 and be considered as disqualified for selection to the Police service and shall not be eligible for appointment to the services by direct recruitment and therefore, on the aforesaid grounds, the petitioner is not entitled for appointment to the Police Service.

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:

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'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 :



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(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 writ petitioner had not disclosed his involvement in the criminal case registered against him in Cr.No.23 of 2013 on the file of All Women Police station, Tiruvannamalai for the alleged offence under Section 366(A), 376, 506(i) I.P.C. and Sec.3 & 4 of POCSO Act, 2012 and the case was taken on file in S.C.No.125 of 2014 and the judgment delivered by the Fast Track Mahila (Sessions) Court, Tiruvannamalai, dated 1.2.2016 in the application. In paragraph 17 of the aforesaid judgment, it is stated that the writ petitioner was acquitted in the criminal case on benefit of doubt, not by honorary acquittal. Petitioner failed to disclose the aforesaid criminal case registered against him in the application submitted by him.

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.



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

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Vaan

To

- 1.The Member- Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai-600 008
- 2.The Director General of Police,
Tamil Nadu Chennai-600 001.
- 3.The Superintendent of Police,
Thiruvannamalai, Thiruvannamalai Dist.

+1cc to Mr.G.Punniakoti, Advocate, S.R.No. 1745
+1cc to the Government Pleader, S.R.No. 2759

W.P.No.30633 of 2017
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BS (CO)
GN(04/03/2020)