

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.32421 of 2017

WMP.No.35711 of 2017

S.Panneerselvam

Petitioner

Vs.

1.The Director General of Police,
Head Office, Chennai-4

2.The Superintendent of Police,
District Police Office,Villupuram.

Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 2nd Respondent, dated 28.10.2017, in Na.Ka.No.A2/4500/2017 and to quash the same and consequently to direct the 2nd Respondent to issue an appointment order for the post of Grade II Police Constable, based upon passing of the written test, medical test and physical test by the Petitioner.

For Petitioner : Mr.K.L.Sekar

For Respondents : Mr.J.Ramesh,

Additional Government Pleader

ORDER

1.The prayer in this Writ Petition is to issue a Writ of Certiorarified Mandamus to call for the records, relating to the order of the 2nd Respondent, dated 28.10.2017, made in Na.Ka.No.A2/4500/2017 and to quash the same and consequently, to direct the 2nd Respondent to issue an appointment order for the post of Grade-II Police Constable, based upon passing of the written test, medical test and physical test by the Petitioner.

2.The facts, in a nutshell, leading to filing of this Writ Petition and necessary for disposal of this Writ Petition, are as follows:-

a) Pursuant to the Recruitment Notification issued by the Tamil Nadu Uniformed Services Recruitment Board, the Petitioner had applied to the post of Grade II Police

Constable and in the selection process, he was successful in the written test, medical test and physical test and all other tests. While the Petitioner was awaiting appointment to the said post, during the verification by the Respondent Police, since it was found that the Petitioner was involved in a criminal case in Cr.No.14 of 2013 for the offences under Sections 448, 294(b), 323, 324 and 506 (i) of IPC on the file of the Thirukoilur Police Station, in and by the impugned proceedings, dated 28.10.2017, appointment to the said post was denied on the ground of suppression of material facts i.e. the Petitioner did not disclose the pendency of the said criminal case against him in the appropriate columns 15, 16 and 18, at the time of applying.

- b) After trial, the said criminal case was ended in acquittal by the judgement dated 20.11.2017 made in CC.No.308 of 2017 by the Judicial Magistrate, Thirukoilur. After acquittal, the Petitioner had sent a representation, dated 22.11.2017, to the 2nd Respondent, seeking appointment to the said post. Since no steps have been taken by the Respondents in respect of the representation of the Petitioner, this Writ Petition has been filed, seeking the reliefs, as stated above.

3.This court heard the learned counsel on either side.

4.The learned counsel for the Petitioner has submitted that the Petitioner did not know about the criminal case registered against him and that only on service of summons, he came to know that on 16.01.2013, due to a festival dispute, a criminal case in CC.No.308 of 2017 on the file of the Judicial Magistrate, Tirukoyilur, for the offences under Sections 448, 294(b), 323, 324 and 506 (i) of IPC, was pending against him and that after trial, by judgement, dated 20.11.2017, the Trial Court, finding that the Prosecution had failed to prove the guilt of the accused beyond all reasonable doubts, by valid and cogent evidence and thereby, granting benefit of doubt to the Petitioner, had acquitted the Petitioner from the charges levelled against him in the said criminal case.

5.The learned counsel for the Petitioner has further submitted that only for the reason that the Petitioner had suppressed the above said criminal proceedings, by not mentioning the same in the appropriate columns 15, 16 and 18 in the application, seeking appointment to the said post, his appointment was denied and that even after acquittal of the Petitioner from the said criminal case, the denial of appointment to the Petitioner would cause great hardship and irreparable loss to the Petitioner and hence, appropriate

directions may be issued to the Respondents to appoint the Petitioner in the said post, by quashing the impugned proceedings. The learned counsel has relied on the decisions reported in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others) and the judgement of the Division Bench of this Court, dated 24.07.2017, made in WA.Nos.626, 627, 816 to 825 and 159 of 2014, wherein the Division Bench of this Court had considered the scope of rejection of appointment to the post of Police Constable and following the judgement of the Honourable Supreme Court reported in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others), had directed the DGP to consider the case of the Petitioner therein in the light of the decision of the Honourable Supreme Court in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others).

6. On the other hand, the learned Additional Government Pleader for the Respondents has submitted that after verification by the Police regarding the antecedents of the Petitioner, the verification report had revealed that the Petitioner was involved in the above said criminal case, however, the Petitioner had suppressed the said material facts in the appropriate columns 15, 16 and 18 in the application for the post of Grade II Police Constable and that irrespective of the facts as to whether the Petitioner would be acquitted or convicted, only on the ground of suppression of material facts regarding the criminal case pending against the applicant, appointment can be denied by the competent Appointing Authority. He would further submit that as per Rule 14(b) (ii) & (iv) of the Tamil Nadu Special Police Subordinate Service Rules, a candidate, being selected for the post of Grade II Police Constable should not involve in any criminal case and should have good character and that in the judgment, dated 28.02.2008 of this Court made in WP.No.39298 of 2005, it was 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 a 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 service by direct recruitment and that considering the antecedents of the petitioner, the impugned order, denying appointment to the Petitioner herein had been passed, which is valid, in the eye of law and consequently, this Writ Petition is liable to be dismissed. In support of his contention, he would rely on the decision of the Honourable Supreme Court reported in 2018 18 SCC 733:2018 (6) CTC 659 (Madhya Pradesh and others Vs. Abhijit Singh Pawar).

7. I have carefully considered the respective submissions of the learned counsel on either side and also perused the materials placed on record.
8. On perusal of the entire materials placed before this Court, it is seen that admittedly, the Petitioner had qualified himself to the post of Grade II Police Constable, by passing all the tests and that during the verification of the antecedents of the Petitioner by the Police, it was revealed that the Petitioner was involved in a criminal case in the year 2013 in Cr.No.14 of 2013 for the offences under Sections 448, 294(b), 323, 324 and 506 (i) of IPC on the file of the Thirukoilur Police Station, which was taken cognizance in CC.No.308 of 2017 by the Judicial Magistrate, Thirukoilur. It is also not in dispute that the Petitioner did not disclose the said criminal case pending against him in the appropriate columns 15, 16 and 18, at the time of applying.
9. On the ground of non disclosure of material facts and since the antecedents of the Petitioner herein are not satisfactory, relying on the Rule 14(b) (ii) and (iv) of the Tamil Nadu Police Subordinate Service Rules, 1978 and the order of this Court, dated 28.2.2008 made in WP.No.38296 of 2005, the Petitioner was denied appointment to the post of Grade II Constable, by the impugned proceedings, dated 28.10.2017, stating that irrespective of the final decision of the criminal case against the Petitioner one way or the other, the application of the Petitioner could be rejected and accordingly, rejected the application of the Petitioner.
10. It is also not in dispute that that the criminal case is of the year 2013 and in the year 2017, he was acquitted from the said criminal case by the Trial Court, by the judgement, dated 20.11.2017, which is enclosed in the typed set of papers.
11. On perusal of the said judgement of acquittal, this Court is able to see that after trial, by judgement, dated 20.11.2017, the Trial Court, finding that the Prosecution had failed to prove the guilt of the accused beyond all reasonable doubts, by valid and cogent evidence and thereby, the Petitioner was entitled to the benefit of doubt, had acquitted the Petitioner from the charges levelled against him in the said criminal case.
12. In respect of the questions as to whether denial of appointment on the ground of suppression of material facts, such as, conviction, acquittal, arrest or pendency of a criminal case, is proper or not and whether the acquittal of a

candidate will entitle him to get appointment or not, in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others), in paragraph 38, the Honourable Supreme Court had summarised its conclusions thus:-

"38.1. 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.

38.2. 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.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. 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 recourses appropriate to the case may be adopted:

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. 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.

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

13. In the judgement, dated 24.07.2017, made in WA.Nos.626, 627, 816 to 825 and 159 of 2014, in similar circumstances, the Division Bench of this Court had considered the scope of rejection of the candidature to the post of grade II Police

Constable and by following the decision of the Honourable Supreme Court reported in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others), had observed that the involvement of the candidate in the criminal case may have adverse impact and the appointing authority would take a decision after considering the seriousness of the case and had directed the concerned Appointing Authority/DGP to consider the case of the Petitioner therein afresh in the light of the decision of the Honourable Supreme Court, reported in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others).

14. In 2018 18 SCC 733:2018 (6) CTC 659 (Madhya Pradesh and others Vs. Abhijit Singh Pawar), the Honourable Supreme Court, following its decision reported in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others), it was 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."

15. In sum and substance, in the light of the decisions of the Honourable Supreme Court, cited supra, this Court is of the considered view that a candidate, who has successfully passed all the tests conducted by the Respondent Board, his/her selection can be rejected or cancelled on the ground that he/she is involved in a criminal case, registered against him or he/she had not disclosed the criminal case registered against him/her in the application submitted for the post of Grade II Police Constable in the Department.

16. Keeping in mind the above said principles laid down by the Honourable Supreme Court, this Court is of the opinion that the Employer has still have a right to consider the antecedents of a candidate and is competent to take a decision with regard to the appointment of the candidate for the post of Grade II Police Constable. However, considering the directions issued by the Honourable Supreme Court in 2016 8 SCC 471 (Avatar Singh Vs. Union of India and others), this Court is inclined to direct the 1st Respondent, Director General of Police to consider the case of the Petitioner herein, afresh and pass orders, in accordance with law.

17. In the result, this Writ Petition is disposed of, with the following directions:-

i. The impugned order, dated 28.10.2017, is quashed and the matter is remanded to the 1st Respondent to consider the same afresh.

ii. The 1st Respondent shall pass appropriate orders, in the light of the aforesaid decision and pass orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

iii. There shall be no order as to costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Head Office, Chennai-4

2. The Superintendent of Police,
District Police Office, Villupuram.

+1cc to Mr. K. L. Sekar, Advocate Sr.No. 2384

+1cc to The Government Pleader Sr.No. 3245

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