

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.28489 of 2017 and
W.M.P.No.30608 and 30609 of 2017

K.Gopi

....Petitioner

Vs.

1. The State of Tamilnadu
Rep. by the Secretary to Government,
Home Department,
Secretariat, Chennai-9.
2. The Director General of Police,
Mylapore, Chennai-4.
3. The Superintendent of Police,
District Police Officer,
Villupuram District, Villupuram.

....Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his Proc. No.Na.Ka.No.A2/4500/2017 dated 28.10.2017 and quash the same and direct the respondents to select the petitioner for appointment to the post of Police Constable Grade-II with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan (Senior Counsel
for Mr.R.Jayaprakash

For Respondents: Mr.J.Ramesh, Addl. Government Pleader
(for R1 to R3)

ORDER

Challenging the order passed by the 3rd respondent in Proc. No.Na.Ka.No.A2/4500/2017 dated 28.10.2017 , this writ petition has been filed by the petitioner.

2. The brief case of the writ petitioner is as follows.

Pursuant to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board, the petitioner had applied for the post of Grade II Police Constable. The petitioner successfully completed all the tests conducted by the respondent Board including written examination, physical test, etc., and qualified for the said post. Under these circumstances, the impugned order, dated 28.10.2017 has been passed by the third respondent stating that the petitioner's selection was cancelled on the ground that the petitioner had involved in a criminal case registered in Cr.No.120 of 2015 for the alleged offence under Sections 147, 294(b), 323, 354 and 506(ii) of Indian Penal Code.

3. According to the learned counsel appearing for the petitioner, the petitioner was not arrested for the above said criminal case and had not applied for bail. He further submitted that though the criminal case was registered in Crime No.120 of 2015 on 21.07.2015, the charge sheet was filed only on 03.10.2017 before the Judicial Magistrate, Gingi and the case was ended with acquittal on 12.10.2017.

4. Further, the learned counsel appearing for the petitioner submitted that the Division Bench of this in an identical issue in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, dated 24.7.2017 considered the scope of rejection of appointment to the post of Police Constable and following the judgment of the Hon'ble Supreme Court in Avtar Singh Vs. Union of India [(2016) 8 SCC 471] and directed the D.G.P. to consider the case of the petitioner in the light of the decision rendered by the Hon'ble Supreme Court in Avtar Singh case (supra).

5. The learned Addl. Govt. Pleader appearing for the respondents submitted that the petitioner had not disclosed his involvement in the criminal case registered against him in the application submitted for the post of Grade II Police Constable. 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. Further, in the judgment, dated 28.2.2008 of this Court in W.P.No.39298 of 2005, 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 service by direct recruitment. Considering the antecedents of the petitioner, the impugned order, dated 28.10.2017 has been passed by the third respondent. In support of his contention, he relied on the

judgment of the Hon'ble Supreme Court in the case of State of M.P. & others vs. Abhijit Singh Pawar reported in 2018 (6) CTC 659.

6. Heard the learned counsel appearing for the petitioner and the learned A.G.P. Appearing for the respondents and perused the materials available on record.

7. The sum and substance of the case is that a candidate who has been successfully passed all the tests conducted by the respondent Board, his selection can be rejected or cancelled on the ground that he involved in a criminal case registered against him or he had not disclosed the criminal case registered against him in the application submitted for the post of Grade II Police Constable.

8. The Division Bench of this Court in an identical issue in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, considered the scope of rejection of the candidature to the post of Grade II Police Constable and following the judgment of the Hon'ble Supreme Court in Avtar Singh Vs. Union of India and others reported in 2016(8) SCC 471, observed that the involvement of the candidate in a criminal case may have adverse impact, the appointing authority would take a decision after considering the seriousness of the case and directed the Director General of Police to consider the case of the petitioner therein in the light of the decision rendered by the Hon'ble Supreme Court in Avtar Singh case, wherein the Hon'ble Surpeme Court held as under:

'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.''

9. The Hon'ble Supreme Court in the case of State of M.P. & others vs. Abhijit Singh Pawar reported in 2018 (6) CTC 659, held as under:

''15. 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.

16. 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] .

17. 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.'

10. Considering the facts and circumstances of the case and the decisions rendered by the Hon'ble Supreme Court cited supra and the Division Bench of this Court, this Court is of the view that the employer is still have a right to consider the antecedents of the candidates and competent to take a decision with regard to the appointment of the candidate for the post of Grade II Police Constable in the department. However, considering the directions issued by the Hon'ble Supreme Court in Avtar Singh case (supra), this Court is inclined to direct the Director General of Police to consider afresh and pass orders in accordance with law. Therefore, this Court is inclined to pass the following order:

(i) The impugned order, dated 28.10.2017 passed by the third respondent is quashed.

(ii) The Director General of Police, Mylapore, Chennai is directed to consider afresh, the petitioner's selection for appointment to the post of Grade II Police Constable and pass orders in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order.

11. The writ petition is disposed of with the above directions. No costs. Consequently, connected writ miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

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1. The Secretary to Government,
State of Tamilnadu,
Home Department,
Secretariat, Chennai-9.

2. The Director General of Police,
Mylapore, Chennai-4.

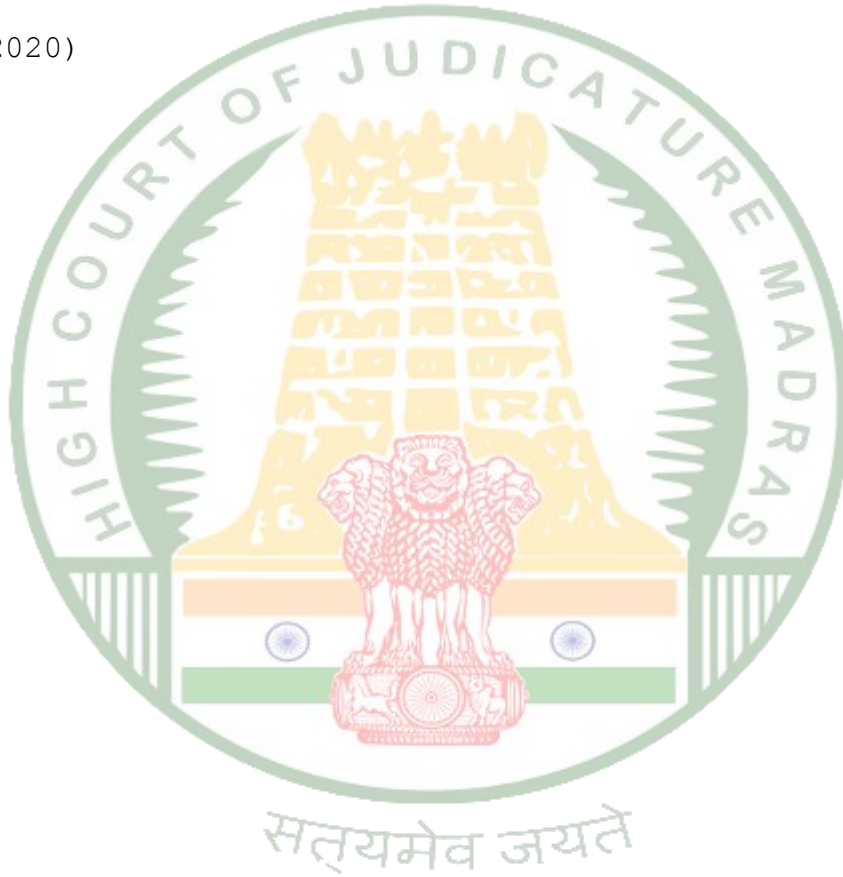
3. The Superintendent of Police,
District Police Officer,
Villupuram District, Villupuram.

+1 CC to Govt. Pleader sr 3239.

+1 CC to Mr.R.Jayaprakash, Advocate sr 2535.

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W.M.P.No.30608 and 30609 of 2017

SP(14/02/2020)



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