

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P. No.28986 of 2017 and

W.M.P.No.31208 of 2017

U.Mugesh

.. Petitioner

Vs.

1. The Director General of Police,
Chennai.
2. Tamilnadu Uniformed Services Recruitment Board,
Represented by Member Secretary,
Old Commissioner of Police Office Campus,
Pantheon Road, Chennai - 600 008.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in relation to his proceeding issued in Na.Ka.No.A4/333/TSP/2017-9 dated 09.10.2017 and quash the same, consequently direct the respondents to appoint the petitioner as Grade-II Police Constable as per the selection done for the year 2016 with all attendant benefits.

For Petitioner : Mr.R. Saseetharan

For Respondents : Mr.J.Ramesh,

Additional Government Pleader

ORDER

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 in Na.Ka.No.A4/333/TSP/2017-9 dated 09.10.2017 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 Crime No.12 of 2014

for the alleged offences under Sections 147, 148, 341, 294(b), 323, 506(ii) IPC.

2. According to the learned counsel appearing for the petitioner, the petitioner was arrayed as A5 out of five accused. Subsequently, the said case has been taken on file in C.C.No.241 of 2016 and after trial, the learned Judicial Magistrate-II, Cuddalore, (Addl. In-charge), by a judgment dated 07.06.2017, acquitted the petitioner from the aforesaid criminal case on the ground of benefit of doubt and the petitioner has been acquitted from the above said criminal case prior to his applying for the post of Grade-II Police Constable.

3. 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 reported in [(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).

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner had not disclosed his involvement in the criminal case registered against him in coloumn No.15, 16 and 18 of the application submitted for the post of Grade II Police Constable. As per Rule 13(b) & (e) of Tamil Nadu 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 09.10.2017 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 Madhya Pradesh & Others v. Abhijit Singh Pawar reported in 2018 (6) CTC 659.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. 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.

7. 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 case (supra), 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 Supreme 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.'

8. The Hon'ble Supreme Court in the case of State of Madhya Pradesh & Others v. Abhijit Singh Pawar reported in 2018 (6) CTC 659, 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.'

9. 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 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 on merits and in accordance with law. Therefore, this Court is inclined to pass the following order:

(i) The impugned order, dated 09.10.2017 passed by the third respondent is hereby 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, in the light of the aforesaid discussion and pass orders in accordance with law, within a period of twelve weeks (12) from the date of receipt of a copy of this order.

10. The writ petition is disposed of with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

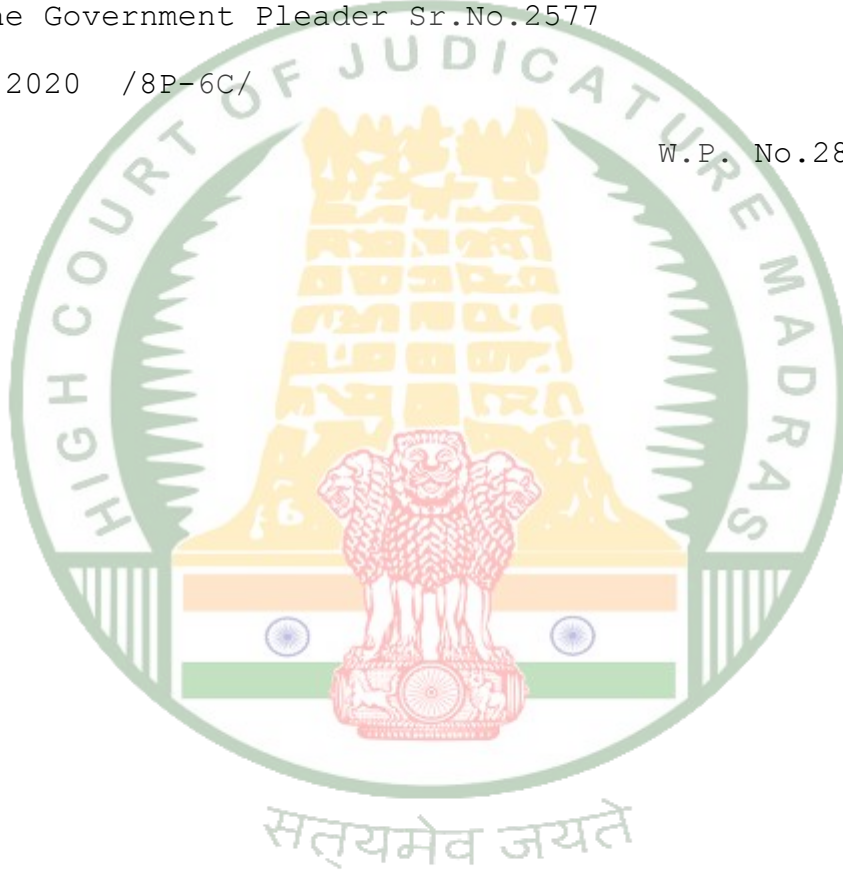
1. The Director General of Police,
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2. The Member Secretary,
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3. The Superintendent of Police,
Cuddalore District, Cuddalore.

+1cc to Mr.R.Saseetharan, Advocate Sr.No.1613
+1cc to The Government Pleader Sr.No.2577

AKM/13.03.2020 /8P-6C/

W.P. No.28986 of 2017



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