



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.2998 of 2020

and

W.M.P.(MD) No.2546 of 2020

M.Malaiselvam

... Petitioner

/Vs./

1.The Chairman,

Tamil Nadu Uniform Services and Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai 600 008.

2.The Director General of Police,

O/o., The Director General of Police,
Chennai 600 004.

3.The Superintendent of Police,

Sivagangai District,
Sivagangai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to assess the candidature of the petitioner in the light of the observations made by the Hon'ble First Bench in the case of C.Surendhar Vs., The Director General of Police and other in W.A.No.3877 of 2019 dated 13.11.2019 and consequently direct the respondents to give order of appointment to the petitioner (Roll No.2905616) preference basis to the post of Grade II Police Constable or Jail Warden or Fireman 2019 in respect of selection made as per Notification made in Advertisement No.1/2019 dated 06.03.2019.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.K.Chellapandian

Additional Advocate General
assisted by Mr.R.Sethuraman
Special Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2.The petitioner's candidature, during the recruitment process for Grade II Police Constable pursuant to the Notification dated 06.03.2019, came to be rejected on the ground that the petitioner involved in a criminal case.



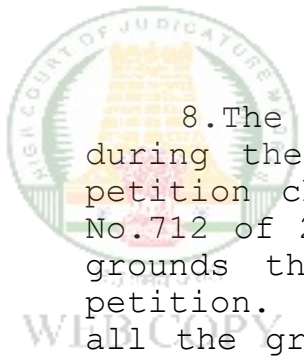
3.The learned counsel appearing for the petitioner would submit that under Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, the candidate, who was involved in a criminal case and whose involvement has been dropped of being a mistake of fact or has been honourably acquitted, can claim right of appointment in the next recruitment. Since the petitioner's involvement in the criminal complaint had entered in a compromise and accordingly, the criminal case came to be closed, he would be entitled for consideration during the recruitment process, without reference to the criminal case pending. The learned counsel would submit that pursuant to the closure of the criminal case, he had participated in two other recruitment process held by the respondent Board and the present impugned notification is the third recruitment process and in view of Rule 14(b) of the said Rules, the respondents should consider his candidature.

4.The learned counsel also submitted that the Hon'ble Division Bench of this Court in an order passed in W.A.No.3877 of 2019 dated 13.11.2019 has observed that the candidate's involvement in a criminal case requires to be appreciated in the context of whether his engagement would be detrimental for the selection.

5.The learned Additional Advocate General would submit that the petitioner was involved in heinous crimes for the offence under Sections 392 and 397 IPC and charge sheet was also laid, which was taken on file in PRC No.15 of 2017 by the learned Judicial Magistrate, Ilayangudi, Sivagangai District. Though the criminal case had entered into a compromise between the petitioner and the defacto complainant, that would not entitle the petitioner to seek for consideration in the recruitment process in view of the compromise, since the offences are heinous crimes and charges have also been levelled against him substantiating his involvement.

6.The learned Additional Advocate General also relied upon the order passed in W.P(MD).No.712 of 2019 dated 13.03.2019 by a learned Single Judge of this Court, wherein the petitioner request for appointment to the post of Group II Police Constable was rejected in view of his involvement in the criminal case.

7.Rule 14(b) of the Special Rule for Tamil Nadu Special Police Subordinate Service provides for consideration of a candidate who has involved in a criminal case at the time of police verification and when such a criminal case has entered in Hon'ble acquittal or treated as a mistake of fact, the authorities are bound to treat such involvement as non-involvement in a criminal case and consider the appointment during the course of the next recruitment process. In other words, Rule 14(b) of the said Rules would apply to cases of an Hon'ble acquittal or a criminal case that ends on the ground of mistake of fact.



8.The petitioner herein while seeking for a similar relief during the selection process in the year 2018, had filed a writ petition challenging the rejection of his candidature in W.P(MD). No.712 of 2019 and the petitioner had predominantly raised the same grounds therein, which has now been raised in the present writ petition. The learned Single Judge of this Court had appreciated all the grounds raised by the petitioner and while dismissing the writ petition, had held that though the petitioner had entered into a compromise with the complainant, there was no liability fixed to appoint the petitioner. The learned Judge had also relied upon the Rulings of the Hon'ble Apex Court in Civil Appeal No.4842/20113 in this regard. The relevant portion of the order reads thus:

'11. Coming to W.P.(MD)No.712/2019 - After examination, on antecedents enquiry, it was found that when the petitioner was a college student, a criminal case in FIR No.83/2016 was registered and the same was subsequently quashed by this Court in Crl.O.P.(MD)No.6227/2017 by compromise. The impugned order proceeds to say that as per Rule 13(b) and (e) of the Tamil Nadu Police Subordinate Service Rules [hereinafter referred to as 'the Rules'], for the post of Grade II Police Constable, no person is involved in any bad antecedent and as per the order of the Hon'ble Apex Court in Civil Appeal No.4842/2013 (arising out of S.L.P.(Civil) No.38886/2012), dated 02.07.2013, even if the applicant entered into compromise with the complainant, there is no liability fixed to appoint the applicant. Therefore, the appointment of the petitioner was rejected, considering his antecedents.'

9.In the present writ petition, the learned counsel would rely upon a decision of the Hon'ble Division Bench of this Court passed in **W.A.No.3877 of 2019 dated 13.11.2017** in the case of **C.Surendhar Vs., The Director General of Police, Dr.Radhakrishnan Salai, Chennai** to substantiate that a mere involvement will not be a bar for selection. The Hon'ble Division Bench had placed reliance on the decision of the Hon'ble Apex Court and held thus:-

'.....

34.The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of M.Manohar Reddy and another v. Union of India and others,

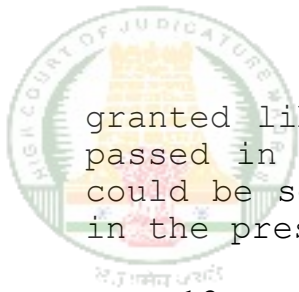
<https://hcservices.ecourts.gov.in> (2013) 3 SCC 99. Whether the fact or



information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person was involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appellant did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant. '

10. On a bare reading of the aforesaid observations of the Hon'ble Division Bench, it cannot be said that the petitioner has been given a clean chit in view of the findings rendered above. Nevertheless, the Division Bench was of the view that the involvement of a candidate in a criminal case and the question of involvement would weigh with the employer to assess as to whether such involvement would be detrimental for the recruitment.

11. However, since the learned Single Judge has already rejected the petitioner's request earlier during the year 2018's recruitment process, it would be inappropriate for this Court to direct the respondents to consider the petitioner's request in the light of the subsequent Division Bench orders. However, if the petitioner is



granted liberty to challenge the order of the learned Single Judge passed in W.P.No.712 of 2019 dated 13.03.2019, the ends of justice could be secured. It is needless to say that the prayer sought for in the present writ petition cannot be given consideration.

12.In the light of the above observations, the petitioner is granted liberty to file an appeal against the order passed by the learned Single Judge of this Court in W.P.No.712 of 2019 dated 13.03.2019 within a period of fifteen (15) days from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any of its view either with regard to the petitioner's entitlement to be considered during the selection process or on the sanctity of the compromise arrived at between the petitioner and the defacto complainant.

13.With the above liberty, the Writ Petition stands closed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

- 1.The Chairman,
Tamil Nadu Uniform Services and Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai 600 008.
 - 2.The Director General of Police,
O/o., The Director General of Police,
Chennai 600 004.
 - 3.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- +1 CC to Mr.M.SARAVANAKUMAR, Advocate (SR-6558[F] dated 17/02/2020)
+1 CC to SPL.GP (SR-6897[F] dated 18/02/2020)

Order made in
W.P. (MD) No.2998 of 2020
14.02.2020

MK (20.03.2020) 5P 6C

<https://hcservices.ecourts.gov.in/hcservices/>