



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE **N. KIRUBAKARAN**

AND

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

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W.A. (MD) No. 997 of 2020

and

C.M.P. (MD) No. 5403 of 2020

against WP (MD) No. 14381 of 2019

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai.
2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Ramanathapuram Range, Ramanathapuram District.
3. The Additional Director General of Police - cum -
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai - 600 008. : Appellants/Respondents

Vs.

P. Muthurasu : Respondent/Petitioner

PRAYER: Appeal filed under Clause 15 of the Letters Patent challenging the order dated 03.12.2019, made in W.P. (MD) No. 14381 of 2019.

Prayer in WP (MD). 14381 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order made in No. 3583/EW.1/2017-22 dated 17.11.2017 on the file of the 3rd respondent and to quash the same and direct the respondents to appoint the petitioner as Grade II Police Constable (Men)/ Grade II Jail Warder (Men)/ Firemen for the year 2017 in the Common Recruitment for the post of Grade II Police Constables (Men, Women & / Third Gender)/ Grade II Jail Warders (Men & Women) and Firemen for the year 2017.

For Appellants : Mr. Muthugeethaiyan,
Special Government Pleader
For Respondent : Mr. V. Kannan



JUDGMENT

(Judgment of the Court was delivered by **B. PUGALENDHI, J.**)

This writ appeal is filed by the appellants / Department challenging the order dated 03.12.2019, passed in W.P.(MD) No.14381 of 2019, in and by which, the learned Single Judge directed the third appellant to appoint the respondent / writ petitioner as Grade II Jail Warden.

2. The facts of the case is that the respondent / petitioner applied for the posts of Grade II Police Constables / Grade II Jail Warden and Firemen for the year 2017 and completed all the tests successfully and was also provisionally selected for the post of Grade II Jail Warden. On police verification, the respondent was found to have been involved in a criminal case in Crime No.127 of 2017, on the file of the Palamedu Police Station, Madurai, for the offence under Section 366 IPC. Therefore, the third appellant has passed an order rejecting the candidature of the respondent that he suppressed the pendency of the criminal case foisted against him. Aggrieved, the respondent has filed the writ petition in W.P.(MD) No.14381 of 2019 and the Writ Court held in his favour. As against the same, the present appeal came to be filed.

3. The learned Special Government Pleader appearing for the appellants / Department would submit that the respondent / petitioner has suppressed the pendency of the criminal case as against him, in the police verification roll. He would further submit that in view of the Government Order in G.O.Ms.No.1410, Home (Pri-II) Department, dated 17.10.2018, if the respondent / petitioner's involvement in a criminal case is deducted during the police verification, the same could be taken as a disqualification.

4. The learned Special Government Pleader has relied upon Rule 6(f) of the aforesaid government order, which reads as follows:

"f) A person has not involved in any criminal case before Police Verification.

Explanation-1: A person who is acquitted or 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.

Explanation-2: A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment."

Therefore, according to the learned Special Government Pleader, the respondent / writ petitioner can claim right for appointment only by participating in the next recruitment and not in the present recruitment.



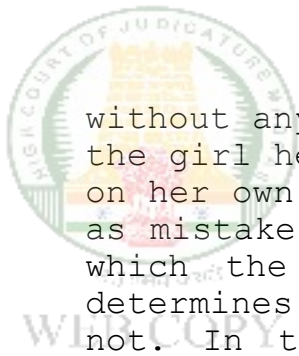
5. The learned Counsel for the respondent / petitioner would submit that the application to the post was made as early as on 09.02.2017, whereas, the criminal case was registered only on 23.06.2017, as such, the question of suppression of registration of criminal case does not arise at all. He would further submit that the case in Crime No.127 of 2017 on the file of the Palamedu Police Station, was registered for the offence under Section 366 IPC, at the instance of one Rajendran, F/o.Prema, over the alleged kidnapping and abduction of his daughter by the respondent herein. However, the said Prema appeared and stated that she was not kidnapped and both of them had married and are living together. Therefore, the case in Crime No.127 of 2017 itself was closed by the police as 'mistake of fact'.

6. Heard the learned Special Government Pleader for the appellants / Department and the learned Counsel for the respondent / petitioner.

7. It is not in dispute that the respondent / writ petitioner applied for the posts of Grade II Police Constables, Grade II Jail Wardens and Firemen for the year 2017; appeared and got provisionally selected as Grade II Jail Warden. On police verification, it was found that a case was registered as against the respondent in Crime No.127 of 2017 for the offence of kidnapping under Section 366 IPC, on the file of Palamedu Police Station, Madurai. But, as rightly pointed out by the learned Counsel for the respondent / writ petitioner, the case was registered only on 23.06.2017 and as on the date of application, ie., on 09.02.2017, there was no criminal case pending against the respondent, as such, the question of suppression does not arise.

8. The case in Crime No.127 of 2017 was registered for the offence under Section 366 IPC, at the instance of one Rajendran, over the alleged kidnapping and abduction of his daughter, namely, Prema by the respondent herein. But the fact remains that both of them married and they also filed an affidavit dated 13.10.2017, before the learned Judicial Magistrate, Vadipatti, wherein, the girl stated that she was not kidnapped. Based on this affidavit, the criminal case itself was dropped as mistake of fact.

9. The First Information Report is a written document prepared by the police, on receipt of information as to the commission of a cognizable offence. In short, it is a register, in which the information, as conveyed by the defacto complainant, is recorded. No doubt, an FIR is a very important document, as it sets the criminal law in motion. But, without ascertaining as to whether the said Prema, a major, went on her own volition or was kidnapped, her father, Rajendran, lodged a complaint as against the respondent and since the complaint was of the nature of kidnapping and abduction, ~~the police also registered the case,~~



without any delay. But, on investigation, it was found otherwise and the girl herself stated that she was not kidnapped and that she went on her own volition. A complaint, after investigation, can be closed as mistake of fact on various footings. But the circumstances under which the complaint was closed has to be viewed carefully, as it determines whether the offender has in fact committed a crime or not. In the present case on hand, the alleged kidnapee herself filed an affidavit before the learned Magistrate that she was not kidnapped and on her own volition, she left the parental house. The respondent and the alleged kidnapee also got married, based on which, the complaint was closed. While so, denying the employment opportunity based on an unfounded complaint, which was lodged without ascertaining the real fact, is not proper.

10. In view of the foregoing discussions and reasonings, we are of the considered opinion that the order of the learned Single Judge in W.P.(MD)No.14381 of 2019 warrants no interference. Accordingly, this writ appeal is dismissed and consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Gk

To

- 1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board, Chennai.
- 2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Ramanathapuram Range, Ramanathapuram District.
- 3.The Additional Director General of Police - cum -
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai - 600 008.

+1 CC to Mr. Special Government Pleader, SR.No. 27263

W.A. (MD) No. 997 of 2020
23.12.2020

sj (CO)
VB(06.01.2021) 4P 5C