



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.10.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD)No.571 of 2018

and

C.M.P. (MD)No.3226 of 2018

1. The Director General of Police and Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
P.T.Lee Chengalva Naicker Building,
No.807, II Floor, Anna Salai, Chennai-2.

2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

: Appellant/Petitioner

Vs.

Sriram Ganapathy

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the interim orders dated 16.04.2013 made in W.P.(MD)No.5338 of 2013 passed by this Court.

Prayer in WP(MD). 5338/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd respondent to appoint the petitioner whose Registration No. 2509629 as Second grade Police constable in Tamil Nadu Special Police (TSP) men in Virudhunagar District with effect from the appointment of the petitioners batchmates of 2012 Combined Recruitment and pass such other or further orders.

For Appellants

: Mr.V.R.Shanmuganathan
Special Government Pleader

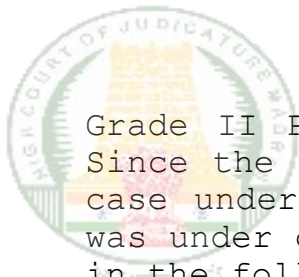
For Respondent

: Mr.S.Mahalingam

JUDGMENT

(Judgment of the Court was delivered by the **Honourable Chief Justice**)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader for the appellants and Mr.S.Mahalingam, learned counsel for the respondent.



Grade II Police Constable in the Tamil Nadu Special Police Force. Since the respondent / writ petitioner was an accused in a criminal case under Sections 454 and 380 IPC, his selection and appointment was under cloud. The writ petition filed by him was however allowed in the following terms:-

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"41. The following writ petitions coming under category (ii) is allowed and a direction is issued to the respondents to give appointment orders to the petitioners on condition that the appointment is subject to the result of the decision of the Larger Bench of the Apex Court referred to above:-

- 1.W.P. (MD) No.6014/2013
- 2.W.P. (MD) No.4733/2013
- 3.W.P. (MD) No.4732/2013
- 4.W.P. (MD) No.5125/2013
- 5.W.P. (MD) No.5696/2013
- 6.W.P. (MD) No.5581/2013
- 7.W.P. (MD) No.5539/2013
- 8.W.P. (MD) No.5338/2013
- 9.W.P. (MD) No.1277/2013
- 10.W.P. (MD) No.16753/2012
- 11.W.P. (MD) No.5126/2013
- 12.W.P. (MD) No.5507/2013
- 13.W.P. (MD) No.16771/2012
- 14.W.P. (MD) No.5943/2013
- 15.W.P. (MD) No.5975/2013"

3. The Larger Bench referred to in the above quoted paragraph was answered by the Hon'ble Apex Court in **(2016) 8 SCC 471 [Avatar Singh Vs. Union of India and others]**, which case came to be disposed of in terms of the reference answered, which is reported in **(2018) 1 SCC 268 [Avatar Singh Vs. Union of India and others]**. The larger Bench in Paragraph 38, drew its conclusion as follows:-

"38.1. Information given to the employer by a candidate as to conviction, acquittal or arret, or pendency of a criminal case, whether before or after entertaining 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."

4. Learned Special Government Pleader contends that keeping in view the categorisation referred to by the Larger Bench, the instant case does not fall within the venue of the explanation and therefore, this Writ Appeal should be allowed and the impugned order to that extent should be set aside as it was already subjected to the judgment of the Larger Bench referred to above.

5. The learned Counsel for the respondent /writ petitioner further submitted that writ petitioner shall be treated to have been honourably acquitted in view of the judgment of this Court, dated 04.01.2013 in CrI.R.C.(MD)No.1 of 2013 and therefore, his service cannot be dispensed with.

6. Replying to the said submission, learned Special Government Pleader submits that the said order, dated 04.01.2013, does not lay down the correct law as has been held in the judgment of the Hon'ble Division Bench reported in **2019 (6) CTC 465 [C.Surendar vs. Director General of Police and others]** and other later decisions of the Honourable Apex Court.

7. Having considered the submissions raised, we are of the opinion that the authorities concerned have to apply their mind to the parameters as laid down in the case of Avatar Singh (supra) and then, pass appropriate orders, for which an appropriate assessment shall be made by the authorities in respect of the nature of the involvement of the respondent / writ petitioner in the criminal case and its impact.

8. We therefore, dispose of this Writ Appeal with liberty to the appellants to pass an appropriate order in the light of what has been stated above, within a period of two months from today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.S)

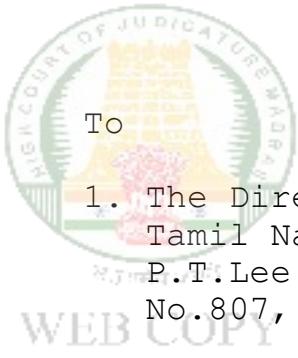
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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Director General of Police and Chairman,
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No.807, II Floor, Anna Salai, Chennai-2.

2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

+1 CC to the SPL GP SR-20475.

ORDER MADE IN
W.A. (MD) No.571 of 2018
15.10.2020

VR(CO)
CS(29.10.2020) 5P 4C