

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1554 of 2021

and WMP No.1762 of 2021

M.Dharani Kumar Petitioner

vs.

- 1.The Director General of Police,
Tamil nadu, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
- 2.The Deputy Commissioner of Police,
O/o. Commissioner of Police Building,
Greater Chennai Police, Vepery,
Chennai - 7. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection to the impugned order passed in Na.Ka.No.R & T(1)/09/266555/2019, dated 07.04.2020 and quash the same and further direct the respondents to appoint the petitioner to the post of Gr-II PC (TSP) and grant him all consequential benefits.

For Petitioner : Mr.M.Alagu Goutham

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition, challenging the order passed by the 3rd respondent in Na.Ka.No.R & T(1)/09/266555/2019, dated 07.04.2020, by which the candidature of the petitioner for the recruitment of Grade II Police Constable-TSP, Grade II-Jail Warden and Fireman, for the year 2019 was not considered for appointment.

2. According to the petitioner, he was falsely implicated by the Ambattur Tank Factory Police in respect of Crime No.1209 of 2017 for offences under Sections 294(b), 324 and 506(ii) IPC, which culminated into a Charge Sheet in Crime No.1210 of 2017 on the file of the learned Judicial Magistrate, Ambattur. It is the case of the petitioner that since he was acquitted from the said criminal case, he did not disclose the factum of the criminal case at the time of application to the post of Grade II Police Constable-TSP, Grade II-Jail Warden and Fireman. It is the further case of the petitioner that to the shock and surprise, the 2nd respondent passed the impugned order, refusing to consider the petitioner for appointment to the said post.

3. Heard the learned counsel for the parties and perused the material documents available on record, including the judgment cited by the respondents.

4. Admittedly, the petitioner had involved in a criminal case and therefore, he cannot casually ask for a suitable appointment in the Police Department, which is otherwise known as a Disciplined Force. Even though the petitioner stated that he was acquitted from the criminal case, it was not on merits, but on the ground of benefit of doubt and therefore, in the light of the judgment of the Hon'ble Supreme Court, in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar, reported in 2018 (18) SCC 733, he is not entitled to the relief sought for. The Hon'ble Supreme Court in the case referred to supra went on to add that despite disclosure of antecedents by a candidate, it is well within the ambit of the employer to consider the same as well as the suitability of the candidate. It was also made clear in the judgment that the employer has every right to take into account the severity of charges, nature of acquittal, etc., to suit the job profile, for which the selection is undertaken.

5. In yet another case in Avtar Singh vs. Union of India and others, reported in 2016 (8) SCC 471, the Hon'ble Supreme Court dealt with the issue of suppression of material facts in an elaborate manner and observed as follows:

"22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely

fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so, employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service."

6. A Hon'ble Full Bench of this Court in the case of Manikandan and others vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai, reported in 2008 (2) CTC 97, had considered the scope of Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978 in the light of Explanation 1 to Clause (iv) of Rule 14(b) and held that a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the Police service and the failure of a person to disclose in the application form, either of his involvement in a criminal case or pendency of a criminal case against him would entitle the appointing authority to reject his application on the ground of concealment of material facts, irrespective of ultimate outcome of the criminal case.

7. In the result, finding much force in the contention of the respondents, I am of the view that the petitioner cannot demand appointment in a disciplined force rightfully and the petitioner is not entitled to any relief in this Writ Petition.

8. Accordingly, the Writ Petition fails and is dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

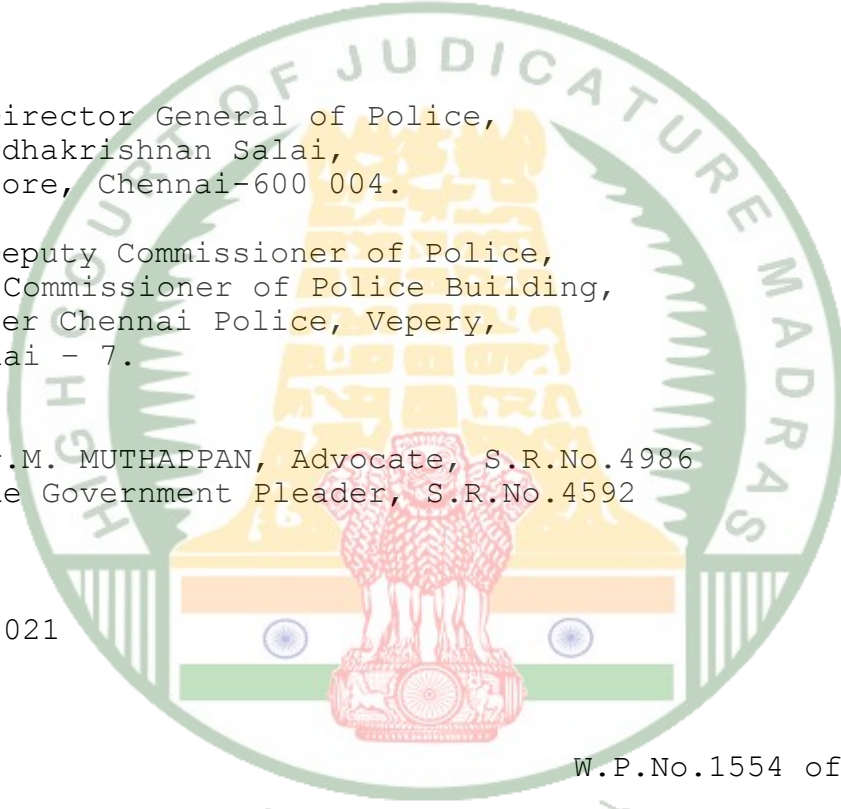
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To:

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
2. The Deputy Commissioner of Police,
O/o. Commissioner of Police Building,
Greater Chennai Police, Vepery,
Chennai - 7.

+1cc to Mr.M. MUTHAPPAN, Advocate, S.R.No.4986
+1cc to the Government Pleader, S.R.No.4592

SMI (CO)
SM/22/02/2021



W.P.No.1554 of 2021 and

सत्यमेव जयते WMP No.1762 of 2021

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