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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.20640 OF 2009

A.Paul Raj

...Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by the Secretary to Government,
Home (Police IX) Department,
Fort St. George, Chennai 600 009.

2.The Director General of Police,
Mylapore, Chennai 600 004.

3.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai 600 078.

...Respondents

Prayer : Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent herein in Na.Ka.No.09113/Appointment-1 (2)/2008-17 dated 31.01.2009 and quash the same and direct the respondents to appoint the petitioner to the post of Constable Grade-II with all consequential benefits and pass orders.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.T.Arun Kumar, Addl.Govt. Pleader
for R1 to R3.

ORDER

This writ petition has been filed to quash impugned order dated 31.01.2009 and direct the respondents to appoint the petitioner to the post of Constable Grade-II with all consequential benefits.

2. The case of the petitioner in brief:

The petitioner had applied for recruitment to the post of Constable Grade-II during the year 2006-2007. The petitioner



was called upon to attend the tests by the third respondent in proceedings No.A-1/4747/2007 dated 'Nil' and he had attended physical endurance tests on 08.11.2008 and he was found fit. Further, the petitioner had qualified in written tests also. Though the petitioner qualified in both the physical endurance and written tests, he was not selected.

2.1. The petitioner made representation dated 28.01.2009 before the second respondent, enquiring his non-selection. The second respondent issued the impugned order stating that, while verification of conduct, it was found that the petitioner had been involved in a criminal case in Crime No.617/2005 and was acquitted vide order dated 17.07.2007 by the VIII Metropolitan Magistrate. On account of such involvement, as the past conduct is not found satisfactory, the appointment could not be made. According to the petitioner, since the petitioner has been acquitted of the charges levelled against him as early as on 17.07.2007, denial of appointment on the said ground is illegal. Hence this writ petition.

3. The brief contentions of the counter affidavit filed by the second respondent:

The petitioner was provisionally selected by the third respondent. While police verification, it was found that the petitioner was involved in a criminal case in Chennai C3, Seven Wells Police Station in Crime No.617/2005 under Section 160 of Cr.P.C. and was acquitted by the III Metropolitan Magistrate, George Town, Chennai on 17.07.2006. While submitting Form with regard to the police verification, for the Question No.15: Have you ever been concerned in any criminal case as defendant?, the petitioner stated "No". Further, with regard to the details of conviction, criminal case, C.C. Number and court, the petitioner stated "No". The candidate should have mentioned the fact about the involvement of criminal case in the above format. But the petitioner has suppressed the material fact of his involvement in the criminal case. Hence, as per rule laid down under Rule 14(b) of TNSPSS Rules, the petitioner was not considered for selection to the post of Grade-II Police Constable. Hence, the writ petition is liable to be dismissed.

4. Heard the rival submissions made by the counsels to both sides and I have perused the material on record.

5. It is not disputed by the petitioner that he has been involved in the criminal case in Crime No.617/2005 for the offence under Section 160 of IPC before the C-3, Seven Wells Police Station, wherein, the petitioner was arrayed as first accused. The case was referred to the criminal court in C.C.No.1135/2006 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai-1. By judgment dated 17.07.2006, the



Trial Court has acquitted the petitioner on the ground of benefit of doubt. The fact remains that the said dispute is purely a private dispute among the petitioner and the complainant. On perusal of the nature of the offences shows that the petitioner is not involved in moral turpitude or offence of heinous/ serious nature.

6. It is pertinent to rely upon the decision rendered by the Hon'ble Supreme Court in the case of Avtar Singh Vs. Union of India reported in 2016 (8) SCC 471, and the relevant portion reads as follows:

"23. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.



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25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.



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29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

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. 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. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 recourse appropriate to the case may be adopted : -

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.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 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.



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(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits"

7. Further, it is necessary to rely upon the decision of the Division Bench of this Court in W.A(MD)No.3877 of 2019 dated 13.11.2019 and the relevant paragraph is extracted hereunder:

" 33. The question of merits in the present case,



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however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is "involvement". The word "involvement, therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether "he was involved in a criminal case or not".

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 vs. Union of India and others, reported 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 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



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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 appointment 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.

35. We, accordingly allow the appeal and set aside the impugned judgment dated 27.04.2019 as well as the impugned order dated 08.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today."

8. In the case on hand, charge sheet was filed against the petitioner and it was taken on file in C.C.No.1135/2006 by the learned Judicial Magistrate and the case was ended in acquittal by judgment dated 17.07.2006. The petitioner was given the benefit of doubt and he was not honorarily acquitted on considering the nature of the offence in which the petitioner involved.

9. In the light of the decision in the case of Avthar's singh case and the decision of the Division Bench of this Court in W.A(MD)No.3877 of 2019 dated 13.11.2019, there is no hesitation for this Court to quash the impugned order.

10. Accordingly, the impugned order is quashed and the writ petition is allowed and the matter is remanded back to the Director General of Police, Mylapore, second respondent herein to consider the matter afresh and pass orders in accordance with law taking note of the decisions cited supra as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

mst



To

1. The Secretary to Government
Government of Tamilnadu,
Home (Police IX) Department,
Fort St. George, Chennai 600 009.

2. The Director General of Police,
Mylapore, Chennai 600 004.

3. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai 600 078.

+1cc to M/s.T.N.Sugesh, Advocate SR.No.61593

+1cc to the Government Pleader SR.No.61526

W.P.No.20640 of 2009

SJ(CO)
RVM(17/12/2021)