

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.18867 of 2013

D.Sathiyaraj

... Petitioner

Vs.

1.Director General of Police
Tamil Nadu P.S.
Mylapore,
Chennai - 600 004.

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

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent dated 20.06.2011 in Na.Ka.157172/ நியமனம் 1(2)/2011 with regard to Tamil Nadu Uniformed Service Recruitment Board and quash the same and consequently direct the second respondent to appoint the petitioner in the post of constable.

For Petitioner : Mr.J.Suresh

For Respondents : Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

The writ petition has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent dated 20.06.2011 in Na.Ka.157172/ நியமனம் 1(2)/2011 with regard to Tamil Nadu Uniformed Service Recruitment Board and to quash the same and to consequently direct the second respondent to appoint the petitioner in the post of Constable.

2.The facts leading to the filing of the writ petition is that the respondents called for application for the post of

Grade II Constable and the petitioner applied to the said post. Earlier, the petitioner was implicated in a criminal case registered in FIR No.16/2008 for the offences punishable under Sections 147, 294(b), 323, 506(i) of the Indian Penal Code. The said case was, thereafter, assigned with C.C.No.72 of 2008 on the file of the learned Judicial Magistrate No.1, Cuddalore and the petitioner was acquitted by the said Court on 26.08.2009 on the ground of benefit of doubt. The petitioner's appointment was refused on account of the above said criminal case. Hence, this writ petition.

3.The learned counsel for the petitioner submits that Writ Petition No.38296 of 2005, which was relied upon by the first respondent to deny appointment to the petitioner, is not applicable to the case on hand. Further, as the petitioner was acquitted from the criminal case by the the learned Judicial Magistrate No.1, Cuddalore, the past pendency of the same cannot be taken into account for denial of appointment to the petitioner.

4.The learned counsel for the petitioner further submits that the non-disclosure of the pendency of criminal case is only due to lack of knowledge and not an intentional one.

5.In support of the contention, the learned counsel for the petitioner relied on the following decisions:

- (i) Avtar Singh vs. Union of India reported in 2016(8) SCC 471.
- (ii) W.P.(MD)No.24995 of 2018, dated 08.01.2019 [V.Vasanth vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board].
- (iii) Ram Kumar v. State of U.P [2011(6) CTC 440].
- (iv) Commissioner of Police vs. Sandeep Kumar [2011(4) SCC 644].
- (v) Mohammed Imran vs. State of Maharashtra, dated 12.10.2018 [Civil Appeal No.10571 of 2018].

6.With the above background and drawing the attention of this Court to the above cited decisions, the learned counsel for the petitioner prayed for appropriate orders in favour of the petitioner, as he is entitled for appointment.

7.Per contra, the learned Additional Government Pleader appearing on behalf of the respondents/State would submit that the non-disclosure of the pendency of the criminal case in the application amounts to suppression of material facts. In a matter of public employment, the applicant should be vigilant and has to fill up the application in a proper manner. Without doing so, the petitioner, now, cannot contend that such suppression was due to lack of knowledge. Even if the petitioner fill up the column regarding criminal antecedents in such a manner, the employer has got every right to decide about the antecedents of the petitioner and as to whether the petitioner

is eligible to be considered for appointment to the post of Grade II Police Constable, is vested within the domain of the employer. The application form issued to the petitioner contained a question relating to the involvement of a candidate in any criminal case. Therefore, the petitioner is duty bound to make a true disclosure while filling up the form. The failure of a person to disclose his involvement in a criminal case at the earliest point of time when the application form is filled up, is fatal and the subsequent disclosure will not cure the defect.

8.The learned Additional Government Pleader, in support of his contentions, relied on the following judgments:

- (i) Manikandan v. Chairman, T.N. Uniformed Services [2008(2) MLJ 1203].
- (ii) Commissioner of Police v. Mehar Singh [2013(7) SCC 685].
- (iii) State of Madhya Pradesh and others v. Abhijit Singh Pawar [2018(6) CTC 659].

9.I have considered the submissions made on either side and perused the materials available on record including the judgments relied on by both parties carefully and meticulously.

10.After examination, on antecedents enquiry, it was found that as against the petitioner a criminal case in FIR No.16/2008 was registered and thereafter the petitioner was acquitted by the learned Judicial Magistrate No.1, Cuddalore on 26.08.2009 on the ground of benefit of doubt. The impugned order proceeds to say that as per Rule 14(b) (iv) of the Special Rules for Tamil Nadu Police Subordinate Service Rules [hereinafter referred to as 'the Rules'], for the post of Grade II Police Constable, if the applicant has been acquitted from a criminal case on the ground of benefit of doubt or on the ground that the complainant turned hostile, the applicant should be treated as if he was involved in the criminal case and as per the order of this Court in W.P.No.38296 of 2005, dated 28.02.2008, the amended Rule 14 (b) of the Special Rules for Tamil Nadu Police Subordinate Service Rules is not ultra vires or unconstitutional and the rejection of the candidature either on the basis of involvement in criminal case or on the basis of suppression of involvement is perfectly valid and justified. Therefore, the appointment of the petitioner was rejected, considering his antecedents.

11.It is pertinent to note that the suppression of a material fact to be a vitiating factor. The failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case.

12.It is also to be noted that when the failure of a person to disclose his involvement in a criminal case when the application form is filled up, is fatal, his subsequent disclosure will not cure the defect and the same would give right to the appointing authority to reject his candidature on the ground of suppression and antecedents.

13.The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force.

14.The issue at hand was elaborately dealt with by the Hon'ble Supreme Court very recently in State (UT of Chandigarh) v. Pradeep Kumar reported in 2018(1) SCC 797. The relevant paragraphs of the said judgment read thus:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

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15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an

honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

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17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

15. The above decision of the Hon'ble Apex Court cleared the cloud of suspicion on the issue raised herein.

16. Therefore, applying the ratio laid down in State (UT of Chandigarh) v. Pradeep Kumar reported in 2018(1) SCC 797, if the facts of the present case is analysed, this Court has no hesitation to hold that the decision taken by the concerned authorities in rejecting the candidature of the petitioner is absolutely correct and the same does not call for any interference.

17. Hence, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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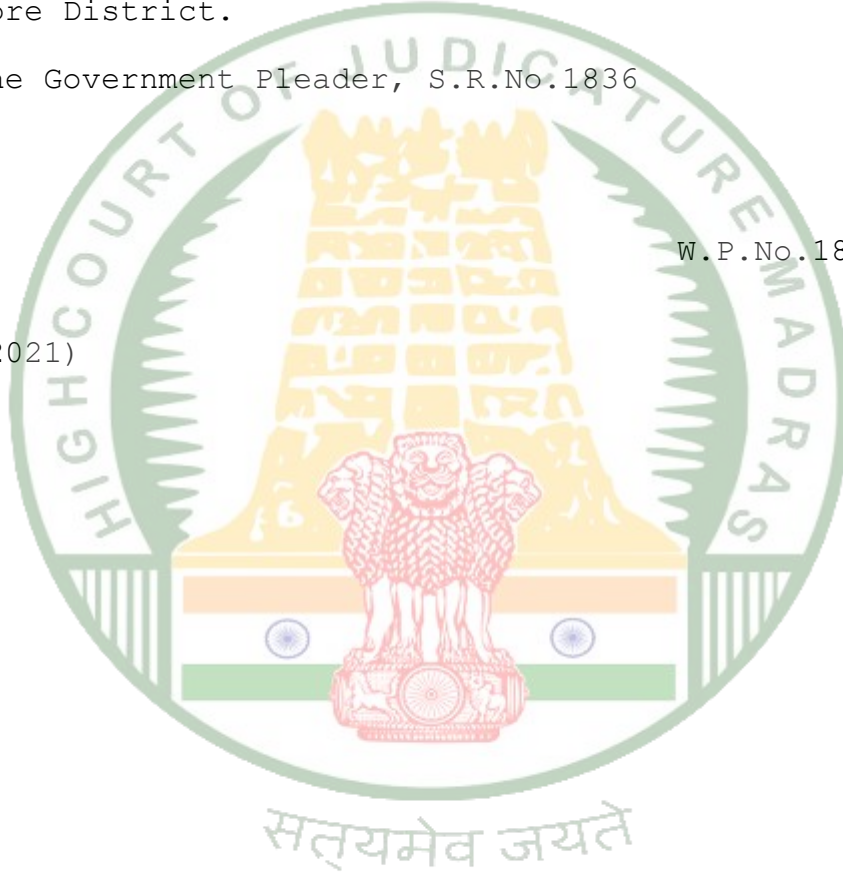
1.The Director General of Police
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+1cc to the Government Pleader, S.R.No.1836

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PL (CO)
KM(27/04/2021)



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