

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4565 of 2021

K.Ukkira Pandiyan

... Petitioner

Vs.

1. The Secretary to Government,
Home (Police II) Department,
Fort St. George,
Chennai 600 009.
2. The Director General of Police,
Office of the Directorate General of Police,
Santhome High Road,
Chennai 600 004.
3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Chennai 600 008.
4. The Superintendent of Police,
Sivagangai District,
Sivagangai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the order issued by the 2nd Respondent in Na.Ka.No.A3/35300/2017, dated 19.11.2018 and quash the same and consequently direct the Respondent to assess the candidature of the Petitioner for direct recruitment to the post of Police Constable Grade II (E.No.2903250) 2017-2018 in the light of the judgment made in W.A.No.3877 of 2019, dated 13.11.2019 (C.Surrender vs. The Director General of Police, Chennai - 4 and two others).

For Petitioner : M/s.T.Dharani

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Petitioner has come up with the present Writ Petition, to call for the records of the 2nd Respondent in Na.Ka.No.A3/35300/2017, dated 19.11.2018 and for a direction to the Respondents to assess the candidature of the Petitioner for direct recruitment to the post of Police Constable Grade II.

2. According to the Petitioner, he was falsely implicated in a criminal case in Crime No.548 of 2013 registered by Manamadurai Police Station under Sections 323, 355 I.P.C. and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002 and was acquitted by the Judicial Magistrate, Manamadurai vide judgment dated 13.04.2017 in C.C.No.409 of 2014, on benefit of doubt. It is the further case of the Petitioner that, to his shock and surprise, the 2nd Respondent passed the impugned order, refusing to consider his case for appointment to the post of Police Constable Grade II, on the ground that, his acquittal was on benefit of doubt.

3. In support of his case, the Petitioner has relied on a First Bench judgment in the case of C.Surrender vs. The Director General of Police, Chennai rendered in W.A.No.3877 of 2019, dated 13.11.2019. The said Writ Appeal was allowed, setting aside the impugned orders therein, with a direction to the Appointing Authority to assess the candidature of the Appellant in the light of the observations made therein and pass fresh orders.

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. Admittedly, the Petitioner herein was involved in a criminal case and therefore, he cannot casually ask for a suitable appointment in the Police Department. Even though the Petitioner has 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 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.

6. The Apex Court in yet another case in Avtar Singh vs. Union of India, reported in 2016 (8) SCC 471, has 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."

7. A Hon'ble Full Bench of this Court in the case of Manikandan vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai, reported in 2008 (2) CTC 97, has 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 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.

8. 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 as such, he is not entitled to any relief in this Writ Petition.

Accordingly, the Writ Petition fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
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Fort St. George, Chennai 600 009.
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4. The Superintendent of Police,
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+1cc to M/s.T.Dharani, Advocate Sr.13317
+1cc to the Government Pleader Sr.13190

W.P.No.4565 of 2021

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