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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No.2367 of 2021

- 1.The State of Tamil Nadu
Rep. By the Secretary to Government
Home Department
Secretariat,
Chennai - 600 009.
 - 2.The Director General of Police,
State of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
 - 3.The Superintendent of Police,
Chengalpattu District
i/c Kancheepuram District,
Kancheepuram. ... Appellants
- vs-
- Tr.E.Sugumar ...Respondent

Prayer: Writ appeal is filed under clause 15 of the Letters Patent praying to set aside the order dated 16.12.2020 made in W.P.No.7229 of 2020 and allow the Appeal and thus render justice.

Prayer in W.P.No.7229 of 2020:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus call for the records pertaining to the proceedings of the 3rd respondent in Na.Ka.No.M1/22432/2019 dated 03/03/2020 and quash the same as illegal incompetent and ultravires and consequently direct the respondents to appoint the petitioner in the post of Police Constable Grade -II.



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For Appellants : Mr.K.V.Sajeev Kumar
Government Counsel

For Respondents: Mr.S.R.Rajagopal, Senior Counsel
for Mr.R.Jayaprakash Narayanan

O R D E R

(Judgement of the Court was made by S.VAIDYANATHAN, J.)

Instant Writ Appeal is directed against the order dated 16.12.2020 made in W.P.No.7229 of 2020.

2. Mr.Sajeev Kumar, learned Government Counsel appearing for the Appellants submitted that the Respondent failed to disclose his involvement in a criminal case, as required under Rules 13 & 14 of the Tamil Nadu Special Police Subordinate Service Rules and therefore, the learned Single Judge ought not to have interfered with the order impugned in the Writ Petition. When a person is acquitted or discharged on benefit of doubt on the ground of witnesses turning hostile, the candidature will have to be rejected.

2.1. Learned Government Counsel further submitted that admittedly, there was a criminal case pending against the Writ Petitioner / Respondent herein and therefore, the Authority was right in rejecting the candidature of the Writ Petition. The learned Government Counsel also relied upon a judgment of the Apex Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar, reported in 2018 (18) SCC 733 and contended that in view of the aforesaid judgment of the Apex Court, the candidature was rightly rejected.

2.2. Learned Government Counsel also submitted that disclosure about the criminal case has not been duly made in the application and his involvement has been subsequently found out through Tamil Nadu Police Verification Roll in Column No.16. The act of the Respondent in not disclosing in the application is fatal to his case. When there is a suppression in the application, rejection on that score is correct and the candidature has been rightly rejected for non disclosure.

3. Per contra, Mr.S.R.Rajagopal, learned senior counsel appearing for the Writ Petitioner / Respondent herein submitted that a case was registered as early as in the year 2015 for offences under Sections 294 (b), 352 and 506(i) of IPC, pursuant to a family quarrel, and the dispute between the family members was resolved by way of compromise on 10.03.2016. On the date of application filed in the year 2020, there was no criminal case



pending against the Writ Petitioner / Respondent and therefore, the disclosure of criminal case does not arise at all. In support of his contention, he also referred to the very same judgment of the Apex Court in the case of State of Madhya Pradesh and others Vs Abhijit Singh Pawar reported in 2018 (18) SCC 733, wherein it was held in respect of determination of suppression and false information as follows:-

"12.A three Judge Bench of this Court in Avtar Singh v. Union of India was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

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

38.1. 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.

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 a acquittal had already been recorded before filing 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.

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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 a 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 but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointment 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 suppression or suggestion falsi, knowledge of the fact must be attributable to him."

14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320 (8) CrPC, the law declared by this Court in Mehar Singh, specially in paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges leveled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition".

4. In reply, learned Government Counsel submitted that the acquittal of the Respondent from the criminal case was not an honourable one and in case of benefit of doubt, there is no impediment for the Appellants to summarily reject the candidature, as the compromise between the parties will have to be treated on par with the one of acquittal on benefit of doubt. Thus, it was prayed that the order of the learned Single Judge will have to be reversed and the impugned order in the writ petition has got to be restored.

5. Heard the learned counsel on either side and perused the material documents available on record.



6. It is not in dispute that the Writ Petitioner / Respondent herein had involved in a criminal case on 11.03.2015, for which a case has been registered under Section 294 (b), 352 and 506 (i) of IPC and the same was tried by the learned Judicial Magistrate, Kancheepuram. It is also not in dispute that the said case ended in an acquittal on account of compromise on 10.03.2016. On a reading of the judgment of the Apex Court in the case reported in (2018) 18 SCC 733 (supra), cited by both parties, it could be seen that there was actually non-disclosure of fact therein and a criminal case was also pending, whereas, in the present case on hand, the criminal case ended in a compromise as early as on 2016 and an application for selection has been filed in the year 2020. There are certain offences, which could be compounded in terms of Section 320 (8) Cr.P.C. provided it falls within the norms mentioned therein, even if it is serious in nature. The Employer, depending upon the grave nature of the offences, de hors compromise, can ignore the compromise, by treating it to be the one of acquittal on benefit of doubt and reject the case. But, it does not mean that all the cases have to be rejected without application of mind

7. In the present case on hand, the criminal case was registered for a wordy quarrel amongst family members and the issues between them stood compromised. The offences, for which a criminal case was registered against him, cannot be treated to be the serious one, attracting the provisions of offences, which are heinous in nature.

8. The Writ Petitioner / Respondent herein has not disclosed about the criminal case in the application and the Appellants later on found out his involvement in the criminal case through Verification Roll. The offence, which is minor in nature and is compoundable (even though foisted) cannot be seriously taken note of in the light of the judgment of the Supreme Court in the case of Avtar Singh vs. Union of India and others, reported in (2016) 8 SCC 417. If a serious offence, like non-compoundable has been committed by the Respondent, definitely, the candidature needs to be rejected. Even after appointment, a candidate can be removed for the non-disclosure of the offence that comes to light at a later point of time, as it can be construed that initial appointment itself is irregular and illegal. Therefore, non-disclosure of the criminal case in the application by the Respondent cannot be treated to be a suppression. In case, the criminal case is still pending and the same was found during verification, obviously, the Respondent is not entitled to any relief in terms of Paragraph No.14 of the judgment (cited supra). In the present case on hand, the application was made in the year 2019 and the compromise was entered into in the year 2016.



9. One of us (SVNJ), while sitting singly, had an occasion to deal with the similar situation in W.P.No.9621 of 2020 dated 24.07.2020. In that case, the employee had involved in serious offences and in that situation it was held that the employee cannot casually ask for suitable employment in police department, which is otherwise known as disciplinary force and rejected the relief sought for, after considering Rule 14 of the Tamil Nadu Special Police Subordinate Services.

10. In the present case on hand, on the date of application, there was no criminal case pending against the Respondent and the family dispute culminated into a criminal case was amicably settled. Learned Single Judge, considered all those aspects and granted the relief to the Writ Petitioner. The Apex Court in (2018) 8 SCC 733 drew a distinction between acceptance and rejection of the candidature in Paragraph No.14 of the said judgment and the present case on hand falls under the exceptional category as found mentioned in Clause 38 of Paragraph No.12 of the judgment, as the offence is not a serious one.

11. Considering the totality of the circumstances, we are in entire agreement with the views taken by the learned Single Judge and are not inclined to interfere with the order of the learned Single Judge.

12. In the result, this Writ Appeal is dismissed, as devoid of merits. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Secretary of Government,
State of Tamil Nadu
Home Department
Secretariat,
Chennai - 600 009.



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2.The Director General of Police,
State of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

3.The Superintendent of Police,
Chengalpattu District
i/c Kancheepuram District,
Kancheepuram.

+lcc to M/s.R.Jayaprakash, Advocate Sr.48803

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