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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WP.No.15053/2021

[Video Conferencing]

D.Mahadevan

...Petitioner

Vs.

The Director General of Police
Tamil Nadu, Dr.Radhakrishnan Salai
Mylapore, Chennai-4.

...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus directing the respondent to consider and pass orders on the representation dated 27.11.2020 made by the petitioner for appointment to the post of Sub Inspector of police for the year 2006-2007 within a limited time frame.

For Petitioner : Mr.M.Alagu Goutham

For Respondent : Mr.C.Kathiravan
Government Advocate

ORDER

1. By consent, the writ petition is taken up for final disposal and disposed of by this order.
2. Mr.C.Kathiravan, learned Government Advocate accepts notice on behalf of the respondents.
3. The petitioner has filed the present writ petition seeking mandamus to direct the respondent to consider and pass orders on the representation dated 27.11.2020 made by the petitioner for appointment to the post of Sub Inspector of police for the year 2006-2007 within a limited time frame.
4. Brief facts which are necessary for the disposal of this writ petition, are as follows.
5. The petitioner was appointed as Grade II Constable on 01.12.2003 through the Tamil Nadu Uniformed Service Recruitment Board [hereinafter referred to as 'TNUSRB'] for the year 2002-2003 and promoted as Grade I Constable during the year 2013 and finally promoted as Head Constable during the year 2018. It is the case of the



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petitioner that prior to his entering in the service, he was involved in a criminal case in Crime No.118 of 1999 for the alleged offences u/s.341, 323 and 325 of IPC and he was arrayed as the second accused. It is his further case that the said criminal case ended in acquittal and the Trial Court had acquitted him based on benefit of doubt. Since the petitioner had suppressed the said fact of criminal case at the time of his appointment as Grade II Constable, he was issued with a charge memo under Rule 3[b] of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules, in PR.No.24/2005 and he was awarded punishment of reduction in time scale of pay by two stages for two years without cumulative effect.

6. During the year 2006, TNUSRB had called for applications for the post of Sub Inspector of Police and the petitioner had participated in the same and secured 75 marks [both written examination, physical fitness and viva voce]. However, the Department had rejected the petitioner's candidature vide order dated 19.12.2007 on the ground of suppression of his involvement in the criminal case. Subsequently, vide order dated 31.12.2007, the earlier order dated 19.12.2007 came to be modified stating that since the petitioner had informed about his involvement in the criminal case, his candidature is rejected solely on the ground of his involvement in the said case.
7. The petitioner, challenging the said order dated 31.12.2007, had filed WP.No.976/2007 and this Court, vide order dated 14.03.2008 had disposed of the said writ petition by directing the respondent to reconsider the case of the petitioner to the post of Sub Inspector of Police by eschewing the involvement of the petitioner in the criminal case. Aggrieved over the same, the respondent preferred WA.No.1287/2008 and a Division Bench of this Court vide judgment dated 02.09.2009 had allowed the said writ appeal in the following lines:-

'17.On the facts of this Case, the Board was justified in not selecting the respondent on the ground that he had involved in a criminal case and through he was acquitted, the same was only on benefit of doubt. The reliance placed by the Board to explanation-1 to sub-rule [b] of Rule 13 cannot be said to be either unfair or unreasonable or the decision is not supported by any provision of the rules. In view of our above discussion and in view of our finding that the acquittal by the criminal court was only on benefit of doubt and it cannot in any way be construed as one of honourable acquittal, the respondent is not entitled to be considered for selection.

Hence, the impugned order directing the



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appellant to consider the respondent for appointment to the post of Sub Inspector of Police eschewing from consideration of the criminal case is liable to be set aside. Accordingly, the impugned order is set aside.''

8. It is admitted that the petitioner, challenging the above said judgment of the Division Bench dated 02.09.2009, had filed a Special Leave Petition in SLP [Civil] No.12108/2010 and the Hon'ble Supreme Court of India dismissed the said SLP vide order dated 01.02.2012. The petitioner has not moved any review and the judgment of the Division Bench has become final.
9. The petitioner, narrating the above set of sequence of facts, had submitted a fresh representation to the respondent on 27.11.2020 to reconsider his case in the light of subsequent judgment of this court in some other case. Since the said representation did not evoke any kind of response, the petitioner is constrained to approach this Court by filing the present writ petition.
10. The petitioner has relied upon a judgment of the Apex Court reported in 2018 [1] SCC 797 [Union Territory, Chandigarh Vs. Pradeep Kumar], wherein the Hon'ble Supreme Court of India explained the word 'honourable acquittal', in the light of the previous judgments. It is held that 'when an accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.''
11. Referring to a few judgments of the Hon'ble Apex Court reported in 2016 [8] SCC 471 [Avtar Singh Vs. Union of India and others] and 2013 [3] SCC 99 [M.Manohar Reddy and Another V. Union of India and others], the Hon'ble First Bench of this Court, in WA.No.3877/2019 [C.Surendran V. The Director General of Police, Chennai-4 and others], vide judgment dated 13.11.2019, has held as follows:-

'34. The next question is whether such involvement would necessarily 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



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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 was 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 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 appellant 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 petitioner.''

12. Relying upon the above cited judgment, the petitioner has submitted the present representation to consider his case once again afresh despite the binding judgment of this Court in the writ petition filed by him.
13. This is nothing but re-litigation. The principle of res judicata is held applicable to writ proceedings. The judgment inter-parties which has become final cannot be reopened. The parties to the judgment are bound by it except the remedy available by way of appeal or review. The issue once decided between the same parties cannot be re-agitated in a subsequent proceedings. The earlier judgment of this Court will operate as res judicata. The practice of a person indulging in re-litigation should be deprecated.



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14. Hence, holding that the petitioner's attempt by way of a fresh representation, is nothing but an abuse of process of law, this Court finds no merits in the writ petition and accordingly, the same is dismissed at the admission stage itself with costs of Rs.5,000/- [Rupees five thousand only] payable to the Tamil Nadu State Legal Services Authority, Chennai, within a period of three weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP

To

The Director General of Police
Tamil Nadu, Dr.Radhakrishnan Salai
Mylapore, Chennai-4.

Copy to :

The Secretary,
The Tamil Nadu State Legal Services Authority,
High Court, Chennai.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.34820

+1cc to the Government Pleader, S.R.No.35314

WP.No.15053/2021

GJ(CO)
RVM(23/08/2021)