

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.03.2021

Judgment Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2811 of 2019

D.Sakthikumaran,
S/o C.Devan

.. Appellant/Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Department of Home Affairs,
Fort St.George,
Chennai-600 009.
2. The Director General of Police,
Kamaraj Salai,
Chennai-600 004.
3. Tamil Nadu Services Recruitment Board,
No.807, P.T.Lee.
Corporation Ltd.,
Chengalvarayana Naicker Maaligai,
Anna Salai,
Chennai-600 002.
4. The Superintendent of Police,
Dharmapuri,
Dharmapuri District.
5. The Inspector of Police,
Karimangalam Police Station,
Karimangalam,
Palacode Taluk,
Dharmapuri District-636 802.

.. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.02.2019 passed by the learned Single Judge, in W.P.No.15333 of 2018 on the file of this Court.

Prayer in W.P.No.15333 of 2018:

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the order passed by the 4th respondent in C.No.A3/21531/2013 dated 04.05.2018 and quash the same and to direct the respondent 1 to 4 consider the petitioner for appointment to the post of Grade-II Police Constable in the available vacancy in the office of the 4th respondent.

For appellant : Mr.G.Mutharasu for Mr.D.Gopal
For respondents : Mrs.A.Srijayanthi, Spl.G.P.

JUDGMENT

R.SUBBIAH, J

This Writ Appeal is filed by the appellant/writ petitioner as against the order, dated 21.02.2019 in W.P.No.15333 of 2018 passed by the learned Single Judge, dismissing the writ petition filed by the appellant herein.

2. The said Writ Petition No. 15333 of 2018 was filed by the appellant praying to quash the order passed by the fourth respondent in C.No.A3/21531/2013, dated 04.05.2018 and to direct the respondents 1 to 4 to consider the appellant/writ petitioner for appointment to the post of Grade-II Police Constable in the available vacancy in the Office of the fourth respondent.

3. Brief facts which are necessary to decide the issue involved in this Writ Appeal, are as follows:

(a) The appellant/writ petitioner had completed his B.A. Litt (Tamil) Degree in the year 2010 and also B.Ed. degree in the year 2012. He belongs to Adi Dravidar Scheduled Caste community. He registered his name in the Employment Exchange concerned. In the year 2012, the Tamil Nadu Uniformed Services Recruitment Board published a Notification calling for eligible candidates for appointment to the post of Grade-II Police Constable, Grade-II Jail Warders and Firemen through written examination as well as by physical fitness test. Pursuant to the said Notification, the appellant submitted his application for the post of Grade-II Police Constable with requisite details. On scrutiny of the application of the appellant, the third respondent sent a call letter to the appellant/writ petitioner and he also participated in a written examination conducted on 24.06.2012. The appellant passed the written examination and

therefore, the third respondent sent a call letter to the appellant calling upon him to appear for physical fitness test on 25.08.2012. The appellant also got selected in the physical fitness test, however, his grievance is that he had not received any appointment order.

(b) After such selection of the appellant/writ petitioner in the written test as well as physical verification test, the respondents caused an enquiry with respect to character and antecedents of the appellant. During such enquiry, it came to light that the appellant was involved in a criminal case in Karimangalam Police Station of Dharmapuri District, in Crime No.835 of 2012 under Sections 147, 323, 379 (NP) of IPC and therefore, he was not recommended for appointment to the post of Grade-II Police Constable. Since the appellant/writ petitioner's character and antecedents are not satisfactory, as per Rule 14 (b) (iv) Explanation-1 of the Tamil Nadu Special Police Subordinate Service Rules, 1978, the candidature of the appellant/writ petitioner was rejected.

(c) The respondents also, on verification of the application form filled by the appellant, at the time of his selection, inferred that in response to Question No.29 as to whether any criminal case is pending against him, the appellant omitted to fill up the column and left it blank without saying whether he was involved in a criminal case or not. Further, for Question No.29(a), he was asked to state the case number and the name of the Police Station, present stage of the case etc., if he was involved in any criminal case, for which, he did not answer and left the column blank. Similarly, in the verification roll for question No.15, as to whether "have you ever been concerned in any criminal case, he has filled it up with 'No'. Therefore, the respondents concluded that the appellant/writ petitioner had suppressed the material fact of his involvement in the criminal case and that is the reason as to why he had not been considered for appointment to the post of Grade-II Police Constable and his candidature was rejected by the respondents.

(d) It is the grievance of the appellant/writ petitioner that he was not aware of the criminal case pending against him. Further, a letter dated 22.11.2012 was sent by the fifth respondent to the Judicial Magistrate to remove his name in Crime No.835 of 2012. Even in the charge-sheet filed by the fifth respondent on 19.02.2013, the names of A4 and A6 alone were mentioned and his name did not find place in it. Therefore, the appellant would contend that he is innocent and has nothing to do with the case in Crime No. 835 of 2012. However, the fourth respondent, with ulterior motive, denied his opportunity to join the Police Service as Grade-II Police Constable and passed the order dated 08.01.2013. On 03.04.2013, the appellant/writ petitioner had sent a representation to the fourth respondent seeking for issuance of appointment order,

stating that he did not involve in any criminal case. As there was no response for his representation dated 03.04.2013, he filed the above W.P.No.20532 of 2013 challenging the said order dated 08.01.2013 of the fourth respondent.

(e) The said Writ Petition in W.P.No.20532 of 2013 was disposed of by this Court on 21.11.2017 without expressing any opinion on merits of the matter, however, a direction was issued by this Court to the respondents to re-consider the case of the writ petitioner and pass appropriate orders. Thereafter, the fourth respondent by the proceedings dated 04.05.2018, rejected the representation of the petitioner by quoting Rule 14(b)(iv) of the Special Rules for Tamil Nadu Special Police Subordinate Service. Challenging the said proceedings, dated 04.05.2018, the present Writ Petition in W.P. No.15333 of 2018 was filed by the appellant.

4. The learned Single Judge dismissed the Writ Petition stating that the appellant/writ petitioner had suppressed the material facts leading to his involvement in the criminal cases while submitting his application for the post of Grade-II Police Constable. The order of rejection came to be passed after the respondents collected material particulars regarding the involvement of the petitioner in a criminal case. The learned Single Judge therefore refused to interfere with the order of rejection passed by the respondents and dismissed the writ petition.

5. The learned counsel for the appellant/writ petitioner invited the attention of this Court to the application form for appointment to the post of Grade-II Police Constable and submitted that the appellant was not aware of the pendency of the criminal case against him or the FIR at the time of filling the application form. In fact, in the FIR, registered in Crime No.835 of 2012 for the alleged offences under Sections 147, 323, 379 (NP) IPC, one "Sakthi" was shown as suspected seventh person, and thus, his name does not figure in the FIR, whereas, his actual name is D.Sakthikumaran. After proper enquiry conducted by the fifth respondent, a report, dated 24.10.2012 was filed before the Judicial Magistrate, Palacode, in which, the name of A1 was shown as Kumar @ Sivakumar, S/o Kannur, Sornampatti and A2 was shown as one Vinothkumar, S/o Murugesan, Hanumanthapuram. The name of the appellant does not find place even in the said report. In connection with registration of the said case, A1 and A2 have been remanded to judicial custody.

6. It is the further submission of the learned counsel for the appellant/writ petitioner that in the report relating to deletion of the name of the accused, dated 22.11.2012, addressed by the fifth respondent to the Judicial Magistrate, Palacode, it

was stated that the appellant/writ petitioner's name had been falsely implicated in Crime No.835 of 2012. Therefore, there was no occasion for the appellant to know about the pendency of the criminal case against him. Without considering all these aspects, the fourth respondent has passed the order dated 04.05.2018, which was confirmed by the learned Single Judge. By reason of the order of rejection, a valuable opportunity for serving the police force has been taken away, even though the appellant is innocent. In support of his submissions, the learned counsel for the appellant/writ petitioner relied on the decisions of the Supreme Court reported in: (i) 2016 (8) SCC 471 (Avtar Singh Vs. Union of India and others); (ii) 1999 (1) SCC 246 (Commissioner of Police Vs. Dhaval Singh) and (iii) 2015 (2) SCC 377 (Joginder Singh Vs. UT of Chandigarh) and prayed to set aside the order of the learned Single Judge and to allow the Writ Appeal.

7. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that, it is incorrect on the part of the appellant/writ petitioner to state that he was not aware of the pendency of the criminal case against him. Though the appellant/writ petitioner claims that he was not aware of the pendency of the criminal case/registration of the said complaint at the time of submitting his application form, absolutely, there is no pleading/averment in support of the same in the Writ Petition. The learned Special Government Pleader relied on a decision of the Supreme Court reported in 2010 (14) SCC 103 (Daya Shankar Yadav Vs. Union of India), in particular, to paragraph 14 therein and submitted that even if a candidate answered the question in the negative and on verification, later, if it was found that the answer was false, the employer may still refuse to employ him in a disciplined force. In the instant case, it was found that the appellant/writ petitioner had indulged himself in a criminal case. Even the subsequent withdrawal of the complaint against the appellant/writ petitioner, has no significance in this matter. Thus, the learned Special Government Pleader prayed for dismissal of the Writ Appeal.

8. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

9. It is the submission of the learned counsel for the appellant/writ petitioner that the appellant herein had applied for the post of Grade-II Police Constable in the year 2012. He got qualified in the written test as well as physical test. In spite of the same, he was not appointed on the reason that, on verification about the character and antecedents, it was found that the appellant involved himself in a criminal case in Crime No.835 of 2012 in Karamangalam Police Station, Dharmapuri

District, under Sections 147, 323, 379 (NP) of IPC. It is the bone of contention of the respondents that, since he involved in a criminal case, his name was not recommended for appointment as Grade-II Police Constable.

10. According to the learned Special Government Pleader appearing for the respondents, the appellant did not give proper answer in the respective columns in the application which he was required to fill. The appellant, with full knowledge about the registration of the criminal case, suppressed it for the purpose of securing the employment. Therefore, he was not considered for appointment to the said post of Constable. As per Rule 14(b)(iv) Explanation (1) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, no person shall be eligible for appointment by direct recruitment, unless he satisfies the appointing authority regarding the character and antecedent.

11. However, it is the foremost submission of the learned counsel appearing for the appellant/writ petitioner that the writ petitioner was not aware of the pendency of the criminal case against him, as he had not received any notice from the Police regarding the registration of the criminal case against him. The learned counsel also drew the attention of this Court to the FIR registered in Crime No.835 of 2012 and demonstrated that in the FIR, a person by name Sakthi was shown as the suspected person in 7th place, whereas the appellant is D.Sakthikumaran. Moreover, now the respondents are connecting the writ petitioner's name with the said Sakthi.

12. We are not inclined to accept the above submission of the learned counsel for the appellant/writ petitioner, because, as contended by the learned Special Government Pleader appearing for the respondents, there is no pleading to that effect in the Writ Petition and only during the course of arguments, as an after-thought, on purusing the FIR, the above submission was made by the learned counsel for the appellant. Though the learned counsel for the appellant/writ petitioner submitted that the respondents have withdrawn the complaint as against the appellant/writ petitioner and deleted his name from the array of accused, on a perusal of the petition filed before the Magistrate for deleting the name of the appellant from the array of accused in the FIR, we find that in the said petition, it has been stated that a reference was also made with regard to the selection of the appellant/writ petitioner in the Police Department. Therefore, now we cannot place much reliance on the said petition filed by the fifth respondent for deletion of the name of the appellant so as to accept the submission of the learned counsel for the appellant/writ petitioner.

13. Above all, the judgment of the Apex Court relied on by the learned Special Government Pleader appearing for the respondents, reported in 2010 (14) SCC 103 (Daya Shankar Yadav Vs. Union of India), gives a fitting answer to the issue involved in this case and the relevant paragraph 14 therein reads as follows:

"14. Rule 14 of the Central Reserve Police Force Rules, 1955 relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below:

"14. Verification.--(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The verification roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The verification roll shall be in CRP Form 25 and after verification shall be attached to the character and service roll of the member of the force concerned."

The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service."

14. From the above said judgment, it is clear that if an applicant had answered the question in the negative and if on verification, it was found that the answer tendered by the applicant is false or even if the applicant had been cleared of the charges or is acquitted, still, he may not be considered for appointment to the post. Further, the judgments relied on by the learned counsel appearing for the appellants are distinguishable on facts and hence, they are not applicable to the facts of the present case.

15. The employer is the proper person to decide the issue with regard to the selection and appointment of the candidate, in this case, being the appellant/writ petitioner to the post of Grade-II Police Constable. When the respondents have come to the conclusion, based on the material evidence, that the appellant was involved in a criminal case and suppressed it at the time of

filling the application form, this Court cannot substitute its view to the view of the employer and direct them to take the appellant in employment. The learned Single Judge had passed the order by assigning well considered reasonings, with which we decline to interfere. We do not find any infirmity in the order under challenge. Accordingly, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Department of Home Affairs,
Fort St.George, Chennai-600 009.
2. The Director General of Police,
Kamaraj Salai, Chennai-600 004.
3. Tamil Nadu Services Recruitment Board,
No.807, P.T.Lee. Corporation Ltd.,
Chengalvarayana Naicker Maaligai,
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4. The Superintendent of Police,
Dharmapuri, Dharmapuri District.
5. The Inspector of Police,
Karimangalam Police Station,
Karimangalam, Palacode Taluk,
Dharmapuri District-636 802.

+1cc to Mr.D.Gopal, Advocate, SR.No.23055.
+1cc to the Government Pleader SR.No.23376.

NMI (CO)
CSR 30.04.2021

W.A.No.2811 of 2019