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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.13569 of 2020
and
W.M.P.No.16827 of 2020

(Through Video Conferencing)

K.Gopi

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Home Department,
Secretariat, Chennai - 9.

2. The Director General of Police,
Mylapore, Chennai - 600 004.

3. The Superintendent of Police,
District Police Office,
Villupuram District, Villupuram.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the second respondent in Rc.No.399181/Rect.1(2)/2020 dated 08.08.2020 and to quash the same as illegal, incompetent and ultravires and consequently direct the respondents to select the petitioner for the appointment to the post Grade-II Police Constable with all consequential monetary and other service benefits.

For Petitioner : Mr.R.Jayaprakash
For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus, to call for the records pertaining to the proceedings of the second respondent in Rc.No.399181/Rect.1(2)/2020 dated 08.08.2020 and to quash the same as illegal, incompetent and ultravires and consequently direct the respondents to select the petitioner for the appointment to the



post Grade-II Police Constable with all consequential monetary and other service benefits.

2. This is a second round of litigation in this Court.

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3. Earlier, the petitioner had filed W.P.No.28489 of 2017 for a Writ of Certiorarified Mandamus, to call for the records of the third respondent therein in connection with the order passed on 28.10.2017 in his proceedings in Na.Ka.No.A2/4500/2017 and quash the same and to direct the respondents to select the petitioner as Police Constable Grade-II with all monetary and service benefits. The Writ Petition was disposed by an order dated 09.01.2020 to the following observations:-

"10. Considering the facts and circumstances of the case and the decisions rendered by the Hon'ble Supreme Court cited supra and the Division Bench of this Court, this Court is of the view that the employer is still have a right to consider the antecedents of the candidates and competent to take a decision with regard to the appointment of the candidate for the post of Grade II Police Constable in the department. However, considering the directions issued by the Hon'ble Supreme Court in Avtar Singh case (supra), the Court is inclined to direct the Director General of Police to consider afresh and pass orders in accordance with law. Therefore, this Court is inclined to pass the following order:-

(i) The impugned order, dated 28.10.2017 passed by the third respondent is quashed.

(ii) The Director General of Police, Mylapore, Chennai is directed to consider afresh, the petitioner's selection for appointment to the post of Grade-II Police Constable and pass orders in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order."

4. While disposing the above writ petition, this Court had considered the decision of the Hon'ble Supreme Court in Avtar Singh Vs Union of India, (2016) 8 SCC 471. Pursuant to the above said direction of this Court, the impugned order dated 08.08.2020 has been passed by the second respondent The Director General of Police, Chennai by concluding that the petitioner had suppressed his involvement in the crime in Crime No.120 of 2015 and therefore the respondents are justified in rejecting the application of the petitioner even though the petitioner has



successfully cleared the written examination including the physical test.

5. It is the case of the petitioner that a trivial complaint was filed by the petitioner's neighbour in the year 2015, wherein, all the members of the petitioner's family were rounded as accused persons, pursuant to which, FIR came to be lodged on 20.07.2015 in Crime No.120 of 2015 and the petitioner was unaware of the same.

6. The learned counsel for the petitioner submits that almost for two years, the criminal proceedings was in a cold storage and the charges were framed on only 03.10.2017 in C.C.No.160 of 2017 under Section 173 of Cr.P.C.

7. The learned counsel for the petitioner submits that the petitioner was unaware of the pendency of the criminal case/proceeding since no summons were issued to him by the Criminal Court in C.C.No.160 of 2017. It is therefore submitted that when the application was called for the post of Police Constable Grade-II by the respondents, the petitioner therefore did not disclose any details of the pending criminal case as he was aware of the same. The learned counsel for the petitioner further submits that eventually the aforesaid criminal proceeding was also dropped against the petitioner and other accused by the Criminal Court in C.C.No.160 of 2017 by order dated 12.10.2017. He therefore submits that there is no suppression by the petitioner. He further submits that as per the decision of the Hon'ble Supreme Court in Avtar Singh case (supra), the respondents cannot reject the candidature of the petitioner for appointment to the post of Grade-II Police Constable.

8. The learned counsel for the petitioner has relied on the following three decisions of this Court, wherein, the decision of the Hon'ble Supreme Court in Avtar Singh Case has been followed.

(i) C.Surendhar Vs The Director General of Police, Chennai and others in W.A.No.3877 of 2019 dated 13.11.2019.

(ii) K.Balachandran Vs The Chairman, Tamil Nadu Uniformed Service Recruitment Board, Chennai and others in W.P.No.8135 of 2020 dated 18.11.2020.

(iii) E.Sugumar Vs The State of Tamil Nadu, Represented by the Secretary to Government, Chennai and others in W.P.No.7229 of 2020 dated 16.12.2020.

9. The learned counsel for the petitioner has specifically drawn attention to Paragraphs 38.4 and 38.8 from the said decision of the Hon'ble Supreme Court and submits that this is a



fit case for interfering with the impugned order rejecting the candidature of the petitioner. It is further submitted that though the petitioner's name was included in FIR and a Charge Sheet was filed 03.10.2017, the petitioner was unaware of the criminal complaint in Crime No.120 of 2015 in FIR dated 20.07.2015. He submits that the petitioner bona fide filed application for appearing in the competitive examination on 07.02.2017 as he was unaware of the same and only after clearing the written examination during the physical test, the petitioner came to know that charge sheet came to be filed on 03.10.2017 and that a criminal case in C.C.No.160 of 2017 is pending against the petitioner and his family members before the Judicial Magistrate Court, Gingee. It is further submitted that the defacto complainant has admitted that she did not know whether the petitioner was involved in the alleged assault.

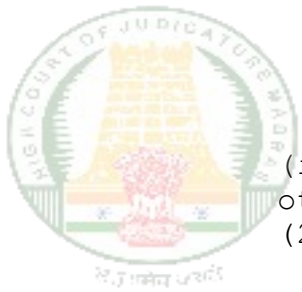
10. The learned counsel for the petitioner submits that the complaint against the petitioner in Crime No.120 of 2015 under Sections 147, 294(b), 323, 354 and 506(i) of IPC was ultimately narrowed down to Sections 147, 323 and 506(i) of IPC. The learned counsel for the petitioner further submits that the decision of the Hon'ble Supreme Court in Avtar Singh case has been explained by the Division Bench of this Court in the case of C.Surendhar Vs The Director General of Police, Chennai and others in W.A.No.3877 of 2019 dated 13.11.2019 and also drew attention of this Court to Paragraphs 32 to 35 which forms the basis of the earlier order of this Court asking the respondents to consider and pass appropriate orders in accordance with law.

11. Paragraphs 32 to 35 of the aforesaid Judgment reads as under:-

"32. However, the march of law does not rest there. The issues raised came to be considered later on and as per the judgments that have been cited at the bar, we find that they have been settled to the effect that the acquittal in a criminal case is not conclusive of the suitability of a candidate for a particular post. The antecedents of a candidate have to be verified and more particularly, in a case where it is a matter of Uniformed Service of the State Police. The judgments that have been cited at the bar are as follows:

(i) Avtar Singh v. Union of India and others, reported in (2016) 8 SCC 471

(ii) Vithal Waman Shelke v. The High Court of Bombay, reported in 2017 (4) BomCR 145;



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(iii) Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another, reported in (2018) 1 SCC 797;

(iv) Ashutosh Pawar v. High Court of Madhya Pradesh, reported in 2018 (1) CTC 353;

(v) State of Madhya Pradesh and others v. Abhijit Singh Pawar, reported in (2018) 18 SCC 733; and

(vi) V. Jayavarthanam v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board and others, reported in 2018 5 LW 150.

33. The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is involvement. The word involvement, therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether he was involved in a criminal case or not.

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 v. 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 peculiarity of the material and its 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



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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 appellant.

35. We, accordingly, allow the appeal and set aside the impugned judgment dated 27.4.2019 as well as the impugned order dated 8.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today."

12. The learned counsel for the petitioner submits that in another writ petition in W.P.No.8135 of 2020 vide order dated 04.12.2020, the learned Single Judge of this Court has concluded as follows:-

"26. To hold every person involved in a criminal case as a criminal across the spectrum, regardless of the nature of offence charged, is a sordid reflection of a warped understanding of the jaded administration, branding someone a criminal and barring him from seeking public employment for his



life time, even if the offences were trivial in nature, amounted to integrating "Mccarthyism" into the decision making process in the police administration.

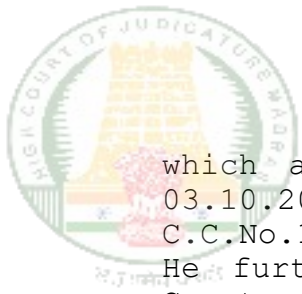
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27. As far as the case on hand is concerned, the selection of the petitioner is not disputed by the respondents. The only objection against the ultimate appointment is what they have stated in the impugned order. This Court is of the considered view that the reasons set forth in the impugned order cannot be countenanced both in law and on facts. Since the authority failed to appreciate the circumstances and the facts which led to the acquittal of the petitioner, this Court has undertaken the said exercise and finds that ultimately, the petitioner was acquitted of the charges on merits. Moreover, this Court has also taken into consideration how the petitioner was maliciously prosecuted by his former friend which fact was also recorded by the Inspector of Police in his report which is referred to supra. Unfortunately, the third respondent has not appreciated the crucial factors for consideration while deciding the suitability of the petitioner in terms of the law laid by the Courts.

28. In the above circumstances, the impugned order in Na.ka.No.A2(3)/171/18801/PV/2019 dated 24.03.2020, is hereby set aside. The third respondent is directed to process the candidature of the petitioner and if he is found otherwise fit for appointment to the post to which the petitioner is eligible, grant him appointment on the basis of his selection in pursuance of the notification of the first respondent Board in 2019. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order."

He submits that this view has to be accepted as neither the petitioner was involved in any heinous/serious crime nor the petitioner was aware of his name being involved in any criminal case.

13. Defending the impugned order, the learned Government Advocate for the respondents submits that the impugned order has correctly rejected the petitioner's candidature as the petitioner was involved in Crime No.120 of 2015 in respect of



which a charge sheet was filed before the Criminal Court on 03.10.2017. Pursuant to which, the case was numbered as C.C.No.160 of 2017 before the Judicial Magistrate Court, Gingee. He further submits that the decision of the Hon'ble Supreme Court in Avtar Singh case has to be applied carefully in sensitive post of Police Department and therefore the same cannot be applied in the case of appointment of a person who was involved in a criminal case in a police force.

14. The learned Government Advocate for the respondents further submits that Explanation 1 to Rule 13 of the Special Rule for Tamil Nadu Special Police Subordinate Service Rules makes it very clear that a person who is acquitted or discharged on account of either benefit of doubt or due to the fact that the complainant turned hostile shall be treated as a person involved in a criminal case and therefore the impugned order passed by the respondents was sustainable. He further submits that acquittal of the petitioner was not honourable acquittal since the P.W1 to P.W4 turned hostile before the said Court. He therefore submits that the writ petition was liable to be dismissed.

15. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

16. I have perused the impugned order which has been passed pursuant to the direction of this Court in W.P.No.28489 of 2017 dated 09.01.2020. The said order was passed after considering the decision of the Hon'ble Supreme Court in Avtar Singh Case and that of the Division Bench of this Court in W.A.No.3877 of 2019 dated 13.11.2019. The relevant portion from the said order has also been extracted above.

17. As per rule 13(e) of the Tamil Nadu Special Police Subordinate Service Rules, a person should not involved in any criminal case before Police verification. Rule 13 of the Tamil Nadu Special Police Subordinate Service Rules reads as under:-

"Rule 13. Qualifications- No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

(a) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service;

(b) that his character and antecedents are such as to qualify him for such service;



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(c) that such person does not have more than one wife living; or if such person is a woman, that she is not married to any person who has a wife living;

(d) that he does not have knock knees or bow legs or flat feet; and

(e) that he has not involved in any criminal case before Police verification:

Explanation (1) - A person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved in a criminal case.

Explanation (2) - A person involved in a criminal case at the time of Police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in criminal case and he can claim right for appointment only by participating in the next recruitment."

18. A strict reading of Rule 13 of the Tamil Nadu Special Police Subordinate Service Rules makes it clear that even a person who is acquitted or discharged on account of benefit of doubt or due to the fact that the complainant has turned hostile shall be treated as a person involved in a criminal case and shall not be eligible for appointment to the service by direct recruitment unless he/she satisfies the conditions specified therein.

19. In W.A.No.3877 of 2019, in the case of C.Surendhar Vs The Director General of Police, Chennai and others, the Hon'ble Division Bench has considered M.Manohar Reddy and another Vs Union of India and others, (2013) 3 SCC 99 and held 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. Therefore, a considered decision has to be taken by the Appointing Authority.

20. The facts on record indicates that the alleged offence is said to have been taken place on 20.07.2015. Based on the complaint of the defacto complainant, charges were framed under Sections 147, 294(b), 323, 354 and 506(i) of IPC only on 03.10.2017. After the complaint was filed, the fact that the petitioner was actually involved in any criminal case was not



brought to the knowledge the petitioner. The Jurisdictional Police Station also took almost two years to complete the investigation and filed charge sheet before the Criminal Court in C.C.No.160 of 2017 on 03.10.2017 by which time, the petitioner had already filed an application for participating in the competitive examination held by the respondents.

21. From the tenor of the charge sheet filed by the Jurisdictional Police, it is evident that the complaint was not pursued with any seriousness by either the defacto complainant while registering FIR in Crime No.129 of 2015. Charges were levelled against the petitioner, his grand father, grand mother and parents under various provisions of IPC. Therefore, it was narrowed down to Sections 147, 323 and 506(i) of IPC.

22. To apply explanation 1 to Rule 13 of the Special Rule for Tamil Nadu Special Police Subordinate Service Rules, strictly would be put a person like the petitioner at a disadvantage merely because frivolous complaints were lodged and not perused with any seriousness either by the defacto complainant or by the law enforcement authority.

23. The Hon'ble Supreme Court in Avtar Singh case has also categorically stated in Paragraph 38.8 that if a criminal case was pending but not known to the candidate at the time of filling up the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

24. Considering the over all facts and circumstances of the case, this Court is inclined to interfere by setting aside the impugned order inasmuch as there is no evidence to substantiate that the petitioner was involved in any of serious crime/offence. The respondents are directed to appoint the petitioner as Grade II Police Constable within a period of six weeks from the date of receipt of a copy of this order.

25. In view of the above, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



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To

1. The Secretary,
Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 9.
 2. The Director General of Police,
Mylapore, Chennai - 600 004.
 3. The Superintendent of Police,
District Police Office,
Villupuram District, Villupuram.
- +1 CC to Mr.R.Jayaprakash, Advocate, Sr.No. 41022.
+1 CC to The Government Pleader, Sr.No. 41076.

W.P.No.13569 of 2020
and
W.M.P.No.16827 of 2020

SJ(CO)
LS(03/09/2021)