

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2021
DELIVERED ON : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.3056 of 2014

C.Ilayaraja

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Petitioner

Vs

1.Government of Tamil Nadu
Represented by Principal Secretary to Government,
Home (Police) Department,
Chennai - 600 009.

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

3.The Commandant,
Tamil Nadu Special Police,
Bn. VIII,
New Delhi - 64.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the First Respondent to consider on merits the Petition dated 15.11.2013 of the Petitioner regarding reinstatement in service as Police Constable Grade - II.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.S.Selvam, Govt. Advocate

ORDER

The prayer made in this Writ petition is to issue a mandamus directing the first respondent to consider the petitioner's Petition dated 15.11.2013 seeking reinstatement in service as Police Constable Grade - II.

2.The case projected in the writ petition is as follows:

2.1 The petitioner was selected for appointment to the post of Police Constable Grade - II and posted to Tamil Nadu Special Police VIII Bn, New Delhi and he joined duty on 06.12.2002.

2.2 While so, he was convicted for the offences under Sections 148 and 506(ii) IPC and imposed with fine of Rs.1000/- each in default to undergo three months rigorous imprisonment for each offence, by judgment dated 13.02.2003 passed by the learned Judicial Magistrate No.I, Namakkal, in CC.No.263 of 2002 arising out of a false case in Cr.No.425 of 1998, on the file of Belukurichi Police Station, wherein, he was implicated as ninth accused.

2.3 Due to the same, he was issued with a notice dated 26.04.2003 calling upon him to show cause as to why he should not be removed from service for the alleged wilful suppression of his involvement in the criminal case in the verification Roll. On receipt of the same, the petitioner submitted his explanation on 18.05.2003.

2.4 In the mean while, the petitioner filed Crl.A.No.22 of 2003 as against the judgment of conviction passed by the trial Court, which was allowed and he was acquitted from the charges, vide judgment dated 06.06.2003 by the learned Additional Sessions Judge, Namakkal.

2.5 However, the third respondent, by proceedings dated 08.10.2003, passed an order, removing the petitioner from service.

2.6 Challenging the said order of removal, the petitioner filed WP.No.27863/2004, which was disposed of by this Court, vide order dated 29.09.2004, directing him to make a representation to the third respondent with a copy of the judgment passed in the Criminal Appeal and also directing the third respondent to consider the said representation and pass orders. Accordingly, the petitioner submitted a representation on 14.10.2004, which was rejected by the third respondent on 04.11.2004.

2.7 At the same time, Crl.RC.No.1407 of 2003 filed against the judgment of acquittal passed by the Appellate Court in favour of the petitioner, was dismissed by this Court.

2.8 In the said circumstances, the petitioner made a petition dated 15.11.2013 to the first respondent requesting to reinstate him in service as Police Constable Grade -II. Finding no response on the said petition, he has come up with this writ petition for the aforesaid relief.

3. Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner was selected to the post of Grade II Police Constable; however, after examination about his past conduct, it was found that he was implicated as one of the accused in criminal case viz., Cr.No.425 of 1998 registered on the file of Belukurichi Police Station, for the offences punishable under Sections 147, 148, 506(2) and 387 IPC, which was wantonly suppressed by him in the verification Roll and such act was serious in nature and against the rules in force; and hence, he was removed from service. It

is further stated therein that the members of the Police force are entrusted with an important responsibility of upholding the rule of law, maintenance of public order, prevention and detection of Crime, collection of intelligence, etc and they are expected to do the same with honesty and sincerely in the public interest, whereas the petitioner, who has wantonly suppressed the details regarding his involvement in criminal case and furnished a false declaration, becomes unworthy of becoming a member of the Police force; and therefore, he is not eligible for continuance of his service in the Tamil Nadu Police Department.

4.The learned counsel for the petitioner submitted that the petitioner was implicated in a false criminal case due to rivalry, however he was subsequently acquitted by the Appellate Court and the same was also confirmed by this Court in the Criminal Revision. Without considering the same in a proper perspective, the third respondent passed the order of removing the petitioner from service. Placing reliance on the order dated 17.03.2011 passed by the Supreme Court in Civil Appeal No.1430 of 2007 [Commissioner of Police v. Sandeep Kumar], the learned counsel submitted that the non disclosure of his involvement in the criminal case in the Verification Roll by the petitioner is not an intentional one, but out of ignorance and fear. Therefore, the petition submitted by the petitioner seeking reinstatement in service may be directed to be considered by the first respondent favourably.

5.Per contra, the learned Special Government Pleader appearing for the respondents submitted that in a matter of public employment, the applicant should be vigilant and has to fill up the application in a proper manner, whereas the petitioner did not disclose his bad antecedents in the verification roll, which is suppression of material fact. On coming to know about the same and after enquiry, the third respondent rightly passed the order dated 08.10.2003 removing the petitioner from service in terms of the rule position. He further submitted that as the police force is a disciplined force, honesty and integrity are inbuilt requirements of the police personnel and therefore, the petitioner, having criminal antecedents and bad character, does not deserve to enter into the police force.

6.Heard both sides and perused the materials placed before this Court.

7.The admitted facts emerged from the pleadings and documents placed by the parties, are that the petitioner was selected and appointed as Grade II Police Constable on 06.12.2002. After examination about his past conduct, it was

found that he was implicated as one of the accused in Cr.No.425 of 1998 registered on the file of Belukurichi Police Station, for the offences punishable under Sections 147, 148, 506(ii) and 387 IPC. Subsequently, he was convicted for two offences and was imposed with fine in default to undergo rigorous imprisonment, by judgment dated 13.02.2003 in CC.No.263 of 2002. However, he was acquitted in the appeal in Crl.A.No.22 of 2003 dated 06.06.2003, which was also confirmed in Crl.RC.No.1407 of 2003. In the mean while, on enquiry and after providing an opportunity to the petitioner, the third respondent passed the order dated 08.10.2003 removing him from service, for the alleged wilful suppression of his involvement in the criminal case at Sl.Nos.15, 16 and 18 of the verification Roll. The representation made by the petitioner, as per the direction of this Court dated 29.09.2004 in WP.No.27863 of 2004, enclosing a copy of the judgment of acquittal passed by the Appellate Court, was rejected by the third respondent. Feeling aggrieved, the petitioner approached the first respondent with a petition dated 15.11.2013 for reinstatement in service, which was not considered. Hence, this writ petition.

8.The arguments of the learned counsel for the petitioner are two folds: (i) Based on the false complaint, the petitioner was implicated in the criminal case, which ultimately ended in acquittal, however, the third respondent without considering the said aspect, removed the petitioner from service; and (ii) the suppression of the bad antecedents is not an intentional one, but out of ignorance and fear of the petitioner. In support of the same, he referred to the order of the Supreme Court in Sandeep Kumar (cited supra), wherein it was observed as follows:

"It is true that in the application form, the respondent did not mention that he was involved in a criminal case under Section 325 and 34 IPC. Probably, he did not mention this out of fear that if he did so, he would automatically be disqualified. In any event, it was not such a serious offence like murder, decoity or rape and hence, a more lenient view should be taken in the matter."

9.Such arguments advanced on the side of the petitioner do not inspire the confidence of this Court. The recruitment has to be done as per the guidelines as well as the Standing Order governing the recruitment of constables. As per Rule 14(b)(ii) of Special Rules for Tamil Nadu Special Police Subordinate Services, no person shall be appointed to that service, unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service. It is an admitted fact that the petitioner failed to disclose his involvement in the criminal case at the earliest point of time, which amounts to suppression of material fact. The petitioner

being a police constable, needs to exhibit higher degree of conduct and discipline, besides maintaining impeccable integrity and track record and the acquittal of him from the criminal case is in no way change his bad antecedents. Therefore, the respondent authority has got every right to remove the petitioner from service on the ground of concealment of material fact, irrespective of outcome of the criminal case.

10. At this juncture, it is worthwhile to refer to the decision of the Supreme Court in Commissioner of Police, New Delhi and Another v. Mehar Singh, (2013) 7 SCC 685], wherein, emphasizing upon the importance of character and integrity required for joining police force/discipline force, it was observed as under:

"The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force."

From the aforesaid observation, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity and a person having criminal antecedents will not fit in this category.

11. In Avtar Singh v. Union of India and Others (2016) 8 SCC 471, while considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, three-Judges Bench of the Supreme Court summarized its conclusion in paragraph 38. As per the said decision in paragraph 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". Thus, it is well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post.

12. In a recent decision in *State (UT of Chandigarh) v. Pradeep Kumar* [2018(1) SCC 797], it was held by Supreme Court as follows:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh and Parvez Khan* cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

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15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

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17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in *Mehar Singh* case, the

decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

13. Applying the aforesaid legal principles to the facts of the present case, this Court is of the opinion that the petitioner is not eligible for continuance of his post as Grade II Police Constable and hence, no mandamus can be issued to the first respondent to consider the petitioner's petition seeking reinstatement in service.

14. In fine, the writ petition deserves to be dismissed and is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. Principal Secretary to Government,
Home (Police) Department,
Chennai - 600 009.

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

3. The Commandant,
Tamil Nadu Special Police, Bn. VIII,
New Delhi - 64.

+1cc to the Government Pleader, S.R.No.25685

W.P.No.3056 of 2014

BR(CO)
CB(07/07/2021)