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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM

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

W.A.NO.2331 OF 2021

&

C.M.P.NO.14761 OF 2021

- 1.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police
Officer Campus,
Pantheon Road,
Chennai - 8.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.
- 3.The State of Tamil Nadu,
rep. by its Secretary,
Home Department,
Secretariat, Chennai - 9.
- 4.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

...Appellants / Respondents

Vs.

A. Balaji

...Respondent / Petitioner

Prayer : Writ Appeal as against the order dated 04.09.2020
passed in W.P. No. 8284 of 2020.

Prayer in W.P.No.8284 of 2020 : Writ of Certiorarified Mandamus,
to call for the records in the impugned order in Na.Ka.No.A3/
02600/2020 dated 09.04.2020 on the file of the fourth respondent
and quash the same and direct the respondents to appoint the
petitioner for the post of Grade II Police Constable.

For Appellants

:: Mr.K.Tippu Sultan,
Govt. Advocate



J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYANATHAN, J.)

The present writ appeal has been preferred challenging the order dated 04.09.2020 passed in W.P. No. 8284 of 2020.

2. The 1st respondent, who was successful in the written test and physical examination and had reached the final stage of selection process conducted for recruitment to the post of Police Constable Grade II, Jail Warder and Firemen, was issued with an order dated 09.04.2020 stating that his name would not be considered for appointment as he had failed to disclose his involvement in a criminal case in the application form. The rejection order was the subject matter of challenge in the writ petition.

3. It was contended on behalf of the respondent/writ petitioner that non-disclosure of information about the involvement of the writ petitioner in criminal case was not intentional as he himself was not aware of the same. It was further contended that the offence alleged against the writ petitioner, namely, bursting of crackers on a Diwali day, being too trivial in nature, the non-disclosure of the said offence, when he had no knowledge about the same, would not disentitle the writ petitioner from being considered for appointment. Moreover, the suitability of the writ petitioner should have been assessed fairly and properly by the authority concerned and the order under challenge suffers from non-application of mind on the part of the authority concerned.

4. Elaborate submissions were made on behalf of the appellants/respondents therein to sustain the impugned order stating that there was deliberate suppression of material fact and information by the writ petitioner of his involvement in the criminal case in the application form submitted before the Board and that the writ petitioner cannot feign ignorance of the criminal case against him as he was facing trial before the learned Judicial Magistrate, Pappireddypatti and such a conduct on the part of the writ petitioner itself would non-suit him to be considered for appointment to the post in question. The appellants/respondents therein tried to impress upon the Court not to be guided by the nature of the offence alleged against the writ petitioner, as it is the conduct of the writ petitioner, which would be material. Since the recruitment is to the Police Force, which is based on stringent norms conforming to the highest standards of discipline and conduct, the appellants/respondents therein sought dismissal of the writ petition.



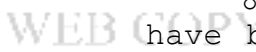
5. The learned Single Judge, after giving anxious consideration to the submissions on both sides, allowed the writ petition by a comprehensive order, referring to various decisions of the Hon'ble Apex Court as well as this Court. Challenging the same, the present writ appeal has been filed.

6. Heard both sides.

7. For bursting of crackers on a Diwali Day, causing public nuisance, it appears that an FIR was registered under Section 285 Cr.P.C. against the respondent, which is a bailable offence and this fact was not known to the respondent/writ petitioner. Hence, the same was not disclosed by him when he applied for a job in the Uniformed Services. As rightly observed by the learned Single Judge, bursting of crackers is an integral part of Diwali Festival and it is celebrated throughout the nation and everyone will be in festive mood during the celebration. Quoting various judgments of the Honourable Apex Court as well as this Court, the learned Single Judge found fault with the approach of the appellants in disqualifying the respondent/writ petitioner for non-disclosure of a trivial offence, about the registration of which he was not aware of, at the time of applying for the job. The relevant portion of the observation made by the learned Single Judge, at paragraph No.19, is as hereunder:

"19.In this regard, the submissions made by the learned Additional Advocate General may look attractive, apparently though. But the said submission pales into insignificance, when the facts of this case are juxtaposed with the application of the Rule with the fossilized mind set of the jaded authority. It looks like, the Recruitment Board is only looking for candidates conforming to the Victorian standards of conduct and discipline. Such utopian expectation is a matter of pretentious and wishful idealism, divorced from mundane pragmatism. Bursting of crackers is an integral part of Diwali Festival, having its roots to a hoary and hallowed civilization unique to this land, and is celebrated by all age groups across the nation with great fervour and ardour. If display of festive mood and exhilaration during the celebration would amount to attracting disqualification in the understanding of the authority, it only exposes his hollowness and in that view of the matter, the rejection, is nothing but a caricaturing of fair play in administrative action."

The learned Single Judge had also found that no case was registered against one another person involved in bursting of crackers, who happened to be the son of Sub Inspector of Police,

[illegible]

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

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.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:-

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ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in a 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 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 to the candidate at the time of filling the form, still it may have adverse impact and the appointing 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



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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 suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him..."

9. In the light of the judgment of the Honourable Apex Court in Avatar Singh's case, cited supra, we find that there is no reason to interfere with the well-considered order passed in the writ petition. Hence, the writ appeal stands dismissed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

- 1.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Officer Campus,
Pantheon Road, Chennai - 8.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.
- 3.The Secretary,
Home Department,
Secretariat, Chennai - 9.
- 4.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

W.A.No.2331 of 2021

CA (CO)
RVM(25/11/2021)