



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.17239 OF 2020

AND

W.M.P.NO.21312 OF 2020
(THROUGH VIDEO CONFERENCING)

P.Baskaran

... Petitioner

Vs

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

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

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

... 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 order passed by the second respondent vide his proceedings in RC.No.572159/Rect.1(2)/2020 dated 25.09.2020 and to quash the same as illegal, incompetent and thereby consequently directing the respondents to appoint the petitioner in the post of Police Constable Grade - II.

For Petitioner : Mr.Arun Anbumani
for Mr.M.Guruprasad

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 with proceedings in RC.No.572159/Rect.1(2)/2020 dated 25.09.2020 on the file of the second respondent and quash the same as illegal, incompetent and consequently direct the respondents to appoint



the petitioner in the post of Grade - II Police Constable.

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

3. The petitioner had participated in the selection of Grade II Police Constable for the year 2016-2017 and cleared the written examination and physical test. Thereafter, during the police verification, it was found that the petitioner was involved in a crime as a criminal case was filed in Crime No.303 of 2013 by the Inspector of Police, Arcot Taluk Police Station, Vellore District and therefore his application for appointment was rejected vide order dated 26.10.2017.

4. Since the petitioner's name was rejected on the ground that he was involved in a criminal case, the petitioner filed a petition under Section 482 of Cr.P.C to quash the complaint in Crime No.303 of 2013. The Defacto Complainant was also made a party to the aforesaid proceedings before the High Court in Crl.O.P.No.23022 of 2017 dated 30.10.2017. The petitioner and the defacto complainant compromised the dispute between them and recording the same. The criminal proceedings pending against the petitioner in Crime No.303 of 2013 before the Inspector of Police, Arcot Taluk Police Station, Vellore thus stood quashed. Armed with the aforesaid order in Crl.O.P.No.23022 of 2017 dated 30.10.2017, the petitioner approached this Court in W.P.No.30779 of 2017 to quash the order dated 26.10.2017 rejecting the petitioner's application for being appointed as Grade II Police Constable.

5. By an order dated 28.01.2020 in W.P.No.30779 of 2017, order dated 26.10.2017 was quashed with the following directions:-

"9. 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 cannot give any positive direction for appointing the petitioner to the post of Police Constable, Grade II. However, considering the directions issued by the Hon'ble Supreme Court in Avtar Singh case (supra), this 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 26.10.2017 passed by the third respondent is quashed.



WEB COPY

(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, in the light of aforesaid discussion and pass orders in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order."

6. This Court while passing the order in the above writ petition took note the decisions of the Hon'ble Supreme Court in Avtar Singh Vs Union of India, (2016) 8 SCC 471 and in Commissioner of Police, New Delhi and another Vs Mehar Singh, (2013) 7 SCC 685 and few other decisions of this Court.

7. The petitioner has challenged the impugned order dated 25.09.2020 on the ground that the second respondent has reaffirmed the order which stood quashed by an order dated 28.01.2020. The learned counsel for the petitioner submits that a frivolous criminal case was filed against the petitioner in Crime No.303 of 2013 based on a complaint of the defacto complainant named Santhosh Kumar. The learned counsel for the petitioner further submits that in the complaint also, the name of the petitioner was not there as it is evident from a reading of the FIR in Crime No.303 of 2013 dated 17.08.2013.

8. The learned counsel for the petitioner submits that the Inspector of Police while recording the statement under Section 161(3) of Cr.P.C has added the petitioner's name. It is further submitted that the petitioner was aged about 19 years at the time and was unaware of the fact that his name was included in the aforesaid crime. He submits that at the time when the petitioner participated in the examination in the year 2016, the petitioner was aged about 23 years and had cleared examinations and when it came for verification, the petitioner's name was rejected on the ground that he was involved in Crime No.303 of 2013. The learned counsel for the petitioner submits that he was unaware of the pendency of the criminal proceedings. He also submits that even though a charge sheet had been filed, it was not taken on record as is evident from the impugned order dated 26.10.2017 impugned in W.P.No.30779 of 2017 which stood quashed by an order dated 28.01.2020. The learned counsel for the petitioner further submits that Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 is not applicable to the facts of the case inasmuch as there was no suppression by the petitioner.

9. The learned counsel for the petitioner further submits that it cannot be said that the petitioner involved in any criminal case inasmuch as the petitioner was not informed about the pendency of the criminal case in Crime No.303 of 2013. The



learned counsel for the petitioner submits that though the petitioner was aware that a criminal case in Crime No.303 of 2013 was filed before the jurisdictional police station, he was not aware that the aforesaid proceedings had been taken with any seriousness either by the State as the prosecutors or by the defacto complainant himself. Since he did not receive any notice from the criminal code nor a summon was served on him, he participated in the examination and therefore there was no suppression by the petitioner. The learned counsel for the petitioner submits that this issue has also been considered by a Division Bench of this Court in its order dated 13.11.2019 in the case of C.Surendhar Vs The Director General of Police & others in W.A.No.3877 of 2019. In this Connection, a reference was made to Paragraph Nos.34 & 35 of the said order reads as under:-

"34. The next question is whether such involvement would necessary 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 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



WEB COPY

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."

10. The learned counsel for the petitioner further submits that under similar circumstances, this Court had interfered and had given relief to persons whose names were wrongly included in criminal cases in the following cases:-

(i) L.K.Starnesh Vs The Superintendent of Police in W.P.No.17530 of 2019.

(ii) K.Sneha Vs The Director General of Police & Others in W.P.No.10788 of 2020.

(iii) K.Balachandran Vs The Chairman of Tamilnadu Uniformed Service Recruitment Board & Others in W.P.No.8135 of 2020

(iv) E.Sugumar Vs The State of Tamilnadu & Others in W.P.No.7229 of 2020.

11. Defending the order of the second respondent, learned counsel for the respondents submits that a contra view has been taken by this Court in the case of M.Nithyanandam Vs The Director General of Police, Chennai and another, vide order dated 31.08.2020 in W.A.No.2059 of 2019 authored by Hon'ble Mr.Justice.R.Subbiah where I was a companion Judge.

12. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the order which stood quashed by an order dated 26.10.2017. It is categorically stated that even though the charge sheet had been filed in Crime No.303 of 2013 dated 17.08.2013, it was not taken before the concerned Court.



13. The alleged crime is said to have taken place on 16.08.2013 and FIR was registered on the following date i.e., on 17.08.2013. When the FIR was registered under Section 154 of Cr.P.C, the name of the petitioner was not there. Subsequently, at the time of recording of statement under Section 161(3) of Cr.P.C, the petitioner's name was included as one of the co-accused.

14. There is also a dispute that the petitioner obtained bail after he came to know that his name was included in Crime No.303 of 2013. However, after the petitioner obtained bail, there were no further development in the proceedings. In the mean while, the petitioner participated in the examination for Grade II Police Constable in the year 2016-2017 recruitment. The petitioner also cleared the examination and the physical test and at the time of police verification, he came to know that a criminal case was pending against him in Crime No.303 of 2013. It is under these circumstances, the petitioner approached this Court in Crl.O.P.No.23022 of 2017 and obtained an order dated 30.10.2017, whereby the criminal complaint against the petitioner was stood quashed.

15. Though a criminal complaint had been lodged, it was not pursued further either by the State or by the defacto complainant seriously against the petitioner. Rule 14(B) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 reads as under:-

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

.....

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

.....

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



16. In W.A.No.3363 of 2019, this Court had under a somewhat similar circumstance set aside the order with liberty to the respondents to pass a fresh order in the light of the observation made therein. In Paragraph 38.8, the Hon'ble Supreme Court in Avtar Singh Vs Union of India, (2016) 8 SCC 471 held as under:-

"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."

17. Considering the fact that there is no conclusive evidence of the petitioner's involvement in the crime barring an uncorroborated statement recorded under Section 161(3) of the Cr.P.C., and considering the fact that no charge sheet was taken on the file of the concerned magistrate's Court, the benefit of doubt has to go to the petitioner as right of getting employment with the employed would stand get deprived even though the criminal case against the petitioner stands quashed post facto.

18. The fact that neither the defacto complainant pursued with the complaint given against the persons named therein which led registration of FIR in Crime No.303 of 2013 dated 17.08.2013 and since charge sheet was taken on record shows that the complaint was filed without any seriousness as is evident from a reading of order dated 26.10.2017. It cannot be said that a person was involved in a crime for the purpose of Rule 14(B) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 merely because a complaint was filed but not pursued.

19. On perusing the complaint in C.C.No.303 of 2013 what is evident is that there was a commotion during a temple festival on 16.03.2015, where few persons had allegedly assaulted the defacto complainant and uttered castiest slur. Though in the complaint, the defacto complainant had named few persons, he had not named the petitioner. Only in the 161(3) statement, the petitioner's name was included as one of the person. While behaviours of person indulging in castiest slur is to be rebuked, fact remains the criminal complaint was not proceeded. Therefore, benefit of doubt is to be extended to the petitioner.

20. The respondents are therefore directed to absorb the petitioner into service, within a period of three months from the date of receipt of a copy of this order. The petitioner may be kept under observation and if any instance of his involvement



in castiest slur is noticed, he may be sternly dealt departmentally.

21. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

s/d
Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

arb

To

- 1.The Secretary,
Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 9.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.
- 3.The Superintendent of Police,
District Police Office,
Vellore District, Vellore.

+1cc to M/S.Guruprasad, Advocate, SR.No.40493
+1cc to Government Pleader, SR.No.40758

W.P.No.17239 of 2020
and
W.M.P.No.21312 of 2020

MG(CO)
PM(07/09/2021)