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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.23116 OF 2021

AND

W.M.P.NOS.24365, 24368, 24369 & 24370 OF 2021

(THROUGH VIDEO CONFERENCING)

D.Syed Malick

... Petitioner

.Vs.

1. The Home Secretary (Police),
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai.

2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner Office,
Pantheon Road, Egmore,
Chennai - 600 008.

3. The Director General of Police,
Office of the Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004.

4. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore, Cuddalore District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus directing the second to fourth respondents to call for the records pertaining to the impugned order of the proceedings in C.No.A4/14450/2019 dated 09.03.2020 and quash the same as illegal and further direct the respondents to appoint the petitioner as Grade-II Police Constable and grant him all consequential benefits.



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

ORDER

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Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner participated in the recruitment called for by the second respondent Tamil Nadu Uniformed Services Recruitment Board for the post of Police Constable Grade-II. The petitioner successfully completed the written examinations and in the Physical Endurance Test. Thereafter, he was called for certificate verification. At that stage, a criminal complaint appears to have been filed by one Sowfiya Parvin against the petitioner's brother, sister and the petitioner. Under these circumstances, the fourth respondent has passed the impugned order dated 09.03.2020 by placing reliance of Rule 14 (2) of the Tamil Nadu Special Police Subordinate Service Rules, 1978.

3. The learned counsel for the petitioner submits that the petitioner was wrongly indicted in the complaint filed by the said Sowfiya Parvin merely because the petitioner's brother was supposed to get married to her but later refused to marry her. The learned counsel for the petitioner further submits that after the enquiry in the final report under Section 173 of Cr.P.C before the Additional Mahila Court, Coimbatore, the Police decided to drop the name of the petitioner in FIR No.6 of 2019 dated 08.06.2019 in the complainant filed by the said Sowfiya Parvin.

4. The learned counsel for the petitioner further submits that though the petitioner's name was wrongly included in the complaint even though the petitioner actually was not involved in any crime so as to attract the string under Rule 14(2) of the Tamil Nadu Special Police Subordinate Service Rules, 1978.

5. The learned counsel for the petitioner has placed reliance on the decision of this Court rendered in W.P.No.11442 of 2020 pronounced on 23.12.2020.

6. Appearing on behalf of the respondents, the learned Government Advocate submits that the impugned order cannot be interfered as indeed the petitioner was involved in a criminal case before the police verification inasmuch as case in FIR No.6 of 2019 came to be registered by the complainant Sowfiya Parvin on 08.06.2019 against the petitioner and his family members



before the jurisdictional police station.

7. The learned Government Advocate further submits that notwithstanding the fact that the petitioner's name was subsequently dropped in the final report dated 15.10.2020 along with Statements under Section 161(3) of Cr.P.C and Memo of Evidence, the fact of the matter is that the petitioner was indeed involved in a criminal case and since the petitioner's case ended in an honourable acquittal or treated as mistake of fact, it is open to the petitioner to participate in the next round of recruitment and therefore prays for dismissal of the writ petition.

8. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned order rejecting the candidature/application of the petitioner on account of the fact that the petitioner's name features in FIR No.6 of 2019 dated 08.06.2019.

9. The fact on records indicates that though the petitioner was arrayed as one of the accused person in the complaint and in the FIR registered at the behest of the complainant Sowfiya Parvin. The fact however remains that the petitioner's name was dropped in the final report filed under Section 173 of Cr.P.C along with statements under Section 161(3) of Cr.P.C and therefore it cannot be said that sting under Rule 14(2) of Tamil Nadu Special Police Subordinate Service Rules, 1978 is not attracted.

10. Rule 14(2) of the of the Tamil Nadu Special Police Subordinate Service Rules, 1978 reads as under:-

"Rule 14(2) in sub-rule (b) (iv):

that he/she has not involved in any criminal case before Police Verification.

Explanation-1: A person who is acquitted or discharges on benefit of doubt or due to the fact the complainant "turned hostile" shall be treated as 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 a criminal case and he/she can claim right for appointment only be participating in the next recruitment."

11. A mere inclusion of the name of a person in the complaint and in the FIR per se cannot mean that the petitioner is involved in any criminal case for the purpose of Rule 14(2)



of the aforesaid Rule since the name of the petitioner was dropped when the final report was filed.

12. This is not a case where the petitioner was acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile or that at the time of police verification. The case has also cannot said it has been disposed and had subsequently ended in a honourable acquittal or by treating the case as mistake of fact.

13. This is the case where the petitioner's name was wrongly included in the criminal complaint filed by the complainant Sowfiya Parvin. The Jurisdictional Police Station has also dropped the name of the petitioner in their final report under Section 173 of Cr.P.C. Though the learned Government Advocate for the respondents has shown the status of the case in the e-Courts official website of the District Courts wherein, the name of the petitioner has been shown as A2 in C.C.No.1116 of 2021 on the file of the Chief Judicial Magistrate at Coimbatore, the fact remains that no case has been made against the petitioner. The petitioner's name ought to have been dropped and ought to have been arrayed as an accused in the aforesaid case in the light of the final report dated 15.02.2020. Under these circumstances, the Writ Petition filed by the petitioner deserves to be allowed and is accordingly allowed.

14. The respondents are therefore directed to implement this order by issuing order of appointment to the petitioner and send the petitioner for training. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order. No Costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The Home Secretary (Police),
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai.



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2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
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3. The Director General of Police,
Office of the Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004.

4. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore, Cuddalore District.

+1cc to M/s.M.Jothikumar, Advocate, S.R.No.55920

+1cc to the Government Pleader, S.R.No.55833

W.P.No.23116 of 2021
and

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CP(CO)
PM/26/11/2021