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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.09.2021
Pronounced On	15.11.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.21823 of 2019

(Through Video Conferencing)

M.Thayanithy

...Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
Home Department, Fort St.George,
Chennai - 600 009.

2.The Director General of Police cum
Inspector General of Prisons,
Venals Road, Egmore,
Chennai - 600 008.

3.The Member Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the second respondent in Proceedings No.48333/ES.3/2017 dated 01.04.2019 and order of the third respondent in Memorandum No.2195/OTD-D3/2015 dated 22.06.2019 and quash the same and to consequently direct the respondents to appoint the petitioner in any one of the existing post of Assistant Jailor with all service benefits arising thereto.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.K.K.Ramakrishnan

For R1 : Mr.L.S.M.Hasan Fizal, Govt. Adv.

For R2 : M/s.Hema babu

For R3 : Mr.M.Loganathan



O R D E R

This is the second round of litigation. The impugned orders and proceedings have been passed and issued pursuant to an order dated 27.11.2018 passed by the Madurai Bench of this Court in W.P.(MD) No.6579 of 2018

2. In this Writ Petition, the petitioner has prayed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 01.04.2019 of the second respondent in Proceedings No.48333/ES.3/2017 and the order dated 22.06.2019 of the third respondent in Memorandum No.2195/OTD-D3/2015, to quash the same and to consequently direct the respondents to appoint the petitioner in any one of the existing post of Assistant Jailor with all service benefits arising thereto.

3. By the impugned Proceedings No.48333/ES.3/2017 dated 01.04.2019, the second respondent has rejected the candidature of the petitioner.

4. The third respondent has issued the impugned Show Cause Notice in Memorandum No.2195/OTD-D3/2015 dated 22.06.2019.

5. The said impugned Show Cause Notice calls upon the petitioner to show cause as to why the application of the petitioner to the post of Assistant Jailor in Prison Department in Tamil Nadu Jail Subordinate Service, 1996-2010 should not be cancelled/rejected and why the provisional selection of the petitioner to the said post should not be cancelled and why the petitioner should also not be debarred in future from appearing in any of the examinations/selection to be conducted by the third respondent Commission for the period as decided by the Commission for having suppressed the criminal case registered against him.

6. The Petitioner had earlier filed W.P. (MD) No.6579 of 2018 for issuance of a Writ of Certiorarified Mandamus to call for the respondents therein in pursuance to an order dated 12.03.2018 passed by the third respondent vide Proceedings in No.48333/E.S.3/2017, to quash the same and to consequently direct the respondents to appoint the petitioner (Enrollment No.100003214) as an Assistant Jailor in Prison Department in pursuance of provisional selection order dated 11.12.2017.

7. The said Writ Petition was disposed by an order dated 27.11.2018 after taking note of the G.O.Ms.No.1410, Home (Pri-II) Department, dated 17.10.2008 and the decision of the Full Bench of the Hon'ble Supreme Court in Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 47 with the following observation:-



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5) A careful consideration reveals that the Writ Petitioner had wantonly suppressed relevant and vital information with reference to his involvement in a criminal case and had knowingly furnished a false declaration for getting appointment as Assistant Jailor. The fact of wanton suppression and false declaration reveals that the petitioner would not fit into a disciplined force where every member is expected to honestly and sincerely report the information coming to their knowledge, in the public interest. The members of the Prison Department are entrusted with an important responsibility of upholding the rule of law, maintenance of prison security, prevention of Crime etc. This petitioner who has wantonly suppressed the details regarding his involvement in Criminal Case and had furnished a false declaration becomes unworthy of becoming a member of the Prison Department. Hence, considering his bad antecedents and bad character in suppressing the truth and furnishing the false information, he could not be appointed to the post of Assistant Jailor.

6) I have perused the Judgment of IVth Additional District and Sessions Judge, Madurai dated:20.08.2013 in SC.No.47 of 2012 with due application of mind. The petitioner Thiru.M.Thayanithi, on 31.05.2011 at about 14.05 hours, Thiru.Rameshkumar who is working as driver in TNSTC, Madurai, Ellisnagar branch was driving the TNSTC Bus TN 58N 0946. At that time all the accused came in a death procession in a two wheeler bearing Regn No.TN 59 AM 4323 and stopped their vehicle in front of the bus and restrained to move. Then all the accused said that my friend senthilkumar died you drive the bus, and the accused Vinoth pelted stone on the bus and damaged the front side mirror. The accused Karthik and Thaya threatened the passengers to step out of the bus and also threatened to close the shops. And one passenger viz., Muthurakku sustained injury on her right eye because of the broken glass piece. And thus the accused caused occurred damage to the tune of Rs.8,000 /- to the bus. Thus, the Inspector of Police, D1 Thallakullam Police Station, Madurai laid the final report against all the



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accused u/s 323, 341 of IPC and section 3(1) of TNPPDL Act.

Further, PW1 Thiru.Ramesh Kumar, Driver and PW2 Thiru.Senthilmaran, Conductor of the bus deposed regarding the involvement of the petitioner in the said offence. PW3 Thiru.Manikandan and PW4 Thiru.Balakrishnan, PW5 Thiru.Pandi and PW6 Thiru.Murugan were treated as hostile witness and with the permission of the Court cross examined by the prosecution.

PW7 Tmt.Muthurakku, who is said to be the victim in this case also not adduced against the accused. Thus, this Court is of the considered view that the facts of the prosecution case was not established against the accused and the prosecution has miserably failed to prove its case, and the accused are liable to be acquitted. The petitioner was acquitted u/s 235 (1) of Cr.p.c. In this case, the petitioner was not Honorably acquitted. This case can't be considered as trivial in nature and petty offence.

7) Further, as per the order of Hon'ble Madurai bench of Madras High Court dt:27.11.2018 in W.P(MD).No.6579 of 2018 and W.M.P.(MD).Nos.6370 and 6371 of 2018, I have perused the orders "to consider the case of the petitioner afresh in the light of the judgment rendered in S.C.No.47 of 2013, where the petitioner was tried as second accused and found not guilty. Besides for appropriate guidelines, the judgements of the Hon'ble Supreme Court has clarified the meaning and impact of the term "honourable acquittal" and the principle laid down to deal cases of suppression of facts at the time of application, shall be taken into consideration. The process of reconsidering the eligibility of the Writ Petitioner for the post of Assistant Jailor, as stated above, shall be completed within a period of three months from the date of receipt of this order.

Accordingly, the Writ Petition is partly allowed as directed above. No order as to costs. Consequently, connected Miscellaneous petitions are closed".



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8) It is very clear that a candidate who had suppressed the material fact at the initial stage of submitting the application for recruitment to the post of Assistant Jailor is not entitled for getting appointment to the said post. I consider that the petitioner's case is serious offence as per Judgment of IVth Additional District and Sessions Judge, Madurai dated:20.08.2013 in SC.No.47 of 2012. This apart, recruitment to the post of Assistant Jailor in the uniformed service and any leniency or displaced sympathy in this regard by the authorities will jeopardise the administrative system, more specifically, the uniformed service.

9) Taking into consideration, all the facts and the law points discussed above, the plea of the petitioner for appointment to the post of Assistant Jailor could not be accepted and his request is rejected.

9. After a lapse of three years, on 24.03.2016, the petitioner filed application for the post of Assistant Jailor in response to an advertisement of the third respondent Tamil Nadu Public Service Commission.

10. Appearing on behalf of the second respondent, the learned counsel submits that the petitioner was duty bound to comply with the instructions of the third respondent TNPSC while applying for the post. It is submitted that since the petitioner failed to disclose the details of the case in the application, there was a material suppression of fact and therefore the impugned order of rejection was justified. It is submitted that a person with criminal background cannot be allowed to be employed in a sensitive post of Assistant Jailor.

11. The learned counsel for the third respondent refers to Clause 19 of the Tamil Nadu Public Service Commission "Instruction to Applicants" (Revised w.e.f. 07.11.2016). The learned counsel for the third respondent submits that as per the Clause 19 of the Tamil Nadu Public Service Commission "Instruction to Applicants" (Revised w.e.f. 07.11.2016), the applicants are debarred or disqualified where the applicants furnish false particulars by suppressing information regarding the criminal cases, arrests, convictions debarment or disqualification by Union Public Service Commission / State Public Service Commission and therefore, the second impugned order passed by the third respondent TNPSC was liable to be confirmed and this Writ Petition deserves to be dismissed.



12. The learned counsel for the third respondent further relies on the decision of the Hon'ble Supreme Court in Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another Vs. Anil Kanwariya, 2021 SCC OnLine SC 739, wherein, in paragraph No.36, it was held as follows:-

36. Apart from the fact that at the time when the respondent applied in the month of October/November, 2013 though he was already convicted by the competent court and was given the benefit under Section 3 of the Act 1958 only, he did not disclose his conviction, but even at the time when he filed a declaration on 14.04.2015 he filed a false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and relying upon such a declaration the appellants gave him appointment. Only on police verification/receipt of the antecedent's report from the Superintendent of Police, Sawai Madhopur, the appellants came to know about the conviction of the respondent. Therefore, the appellants were absolutely justified in terminating the services of the respondent.

13. It is submitted that the above decision dealt with the situation where the applicant was not only convicted but also failed to declare the same both in the applications and at the time of verification. Therefore, the Hon'ble Supreme Court there held that the termination of the applicant by the Department was correct as he did not disclose his conviction.

14. I have considered the arguments advanced by the learned Senior Counsel for the petitioner, the learned Government Advocate for the first respondent, the learned counsel for the second respondent and the learned counsel for the third respondent.

15. I have perused the impugned order dated 01.04.2019 of the second respondent bearing reference Proceedings No.48333/ES.3/2017 and the impugned Show Cause Notice dated 22.06.2019 of the third respondent bearing reference Memorandum No.2195/OTD-D3/2015. I have also perused the order dated 27.11.2018 passed by the Madurai Bench of this High Court in W.P. (MD) No.6579 of 2018.

16. In the application, the petitioner however failed to disclose the details of the above criminal case. The petitioner cleared the Written Examination and was sent for medical fitness and during police verification, it came to the light of the respondents that the petitioner was earlier involved in the



above criminal case which fact was suppressed by the petitioner while applying for the post of the Assistant Jailer.

17. Therefore, an order dated 12.03.2018 was passed by the second respondent Director General of Police cum Inspector General of Prisons. The candidature of the petitioner was thus rejected which came be challenged in W.P.(MD) No.6579 of 2018 before the Madurai Bench of this Court. The said Writ Petition was partly allowed as mentioned above.

18. Under these circumstances, the second respondent has now passed the impugned order dated 01.04.2019 as detailed above. The second impugned Show Cause Notice dated 22.06.2019 has been issued by the third respondent Tamil Nadu Public Service Commission on the ground that the petitioner has violated the Para. 19(b)(ii)(b) of TNPSC Instructions issued to the candidates.

19. It was submitted that the petitioner has been acquitted of the crime in Crime No.1316/2011 by an order dated 20.08.2013 in S.C.No.47 of 2012.

20. It was submitted that Division Bench of this Court recently, while dealing with an identical situation in The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board and Ors. Vs. S.Jegan, in W.A.No.3363 of 2019, by its Judgment dated 03.11.2020, has granted relief. It was therefore prayed for quashing the impugned orders and to direct the respondents to appoint the petitioner in any one of the existing post of Assistant Jailor with all service benefits.

21. It is also relied on the decision of this Court in W.P.No.17694 of 2021, dated 24.08.2021 and the decision of the Hon'ble Division Bench of this Court in The Chairman, Tamil Nadu Uniformed Services Recruitment Board and Ors. Vs. V.Bharathan, in W.A.No.741 of 2017 etc., batch, dated 23.11.2017. A reference was made to paragraph Nos.12, 13 and 14 which reads as under:-

12. On a cursory glance at the files produced on the side of the appellants, particularly, the OMR Application Form for Grade II PC, JW and Fireman-2012, it would reveal that it was drafted in the form of objective and the questions were asked both in Tamil and English languages. Sl.Nos.29 and 29(a) pertain to the information about the involvement of the criminal cases by the candidates, which reads as follows:

29. உம் மீது குற்றவழக்கு நிலுவையில் இருக்கிறதா?



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Whether any criminal case is pending against you?

ஆம்./Yes இல்லை/No

29(a) ஆம் எனில் வழக்கு எண், நாள், காவல் நிலையத்தின் பெயர், வழக்கின் தற்போதைய நிலையைக் குறிப்பிடவும் ?

The perusal of the files would further reveal that there was a declaration form relating to Tamil Nadu Police, Annexure-III, Verification Roll, in which, Serial Nos.15 and 16 sought the information about the involvement of the criminal cases by the candidates, which read as under:

"15. Have you ever been concerned in any criminal case as defendant?

- நீர் கிரிமினல் வழக்கில் எப்போதாவது சம்பந்தப்பட்டது உண்டா ?

16. Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any - criminal or other offence? If so, give details with CC No. and Court.

- நீர் எப்போதாவது கிரிமினல் அல்லது பிற குற்றங்களில் ஆம், எனில், தண்டனை, சி சி எண் மற்றும் நீதிமன்றம் விவரம் ?

When the application form was drafted in such a fashion i.e., answering the questions in 'yes' or 'no' type, how is it expected from the respondents to mention about all the material facts about their involvement in the criminal cases. Obviously, the respondents have to answer the same either 'yes', if any criminal case is pending at the time of filling up the application form or 'no', if there is no criminal case is pending. Further, there was no serial number, about the past or previous involvement of the criminal cases by the candidates in the said application form. When such being the case, this Court is of the view that the argument of the learned Additional Advocate General that the respondents did not disclose their past or previous antecedents about their involvement in the criminal cases at the time of filling up the application form, does not have legs to stand.



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13. Admittedly, all the respondents have furnished about their past antecedents relating to their involvement in the criminal cases in the declaration form. As such, there is no suppression of material facts on the part of the respondents, as alleged by the learned Additional Advocate General. Even there is no disclosure or suppression about the past antecedents of the involvement of the respondents in the criminal cases, the perusal of the records would reveal that there is no criminal case pending against the respondents at the time of applying the post in question. In that event, the question of suppression of material facts or non-disclosure about the past antecedents of the involvement of the respondents in the criminal cases, does not arise.

14. We are of the opinion that verification of character and antecedents is one of the important criteria to assess suitability, at the same time, the minor indiscretions made by young people required to be condoned rather than to brand them as criminals for the rest of their lives and it is open to the employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects, whereas, in the present case, the appellants, without looking into the materials in a proper perspective, have mechanically acted upon. The learned Single Judge after noticing all the facts and on analysing the factual and legal position, has rightly passed the order, which is impugned in these writ appeals. We find no error or irregularity in the order so passed by the learned Single Judge.

22. The uncontroverted facts of the case are that the petitioner was arrayed as a second accused in Crime No.1316/2011. Later, a charge sheet was also filed in Crime No.1316/2011 under Sections 323, 341 of IPC and Section 3(1) of TNPPDL Act.

23. The case was therefore taken on the file of the IV Additional District and Sessions Judge's Court, Madurai in S.C.No.47 of 2012 and tried.



24. The IV Additional District and Sessions Judge's Court, Madurai by a Judgment dated 20.08.2013 in S.C.No.47 of 2012 acquitted the petitioner and other accused with the following observations:-

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13. In this case, as many of 12 witnesses were examined and 7 documents were marked on the side of prosecution. Though P.W.1 the defacto complainant deposed about the occurrence, he does not know the identity of the accused. He did not support his own complaint which is marked as Ex.P1. Even as per complaint, the alleged time of occurrence was 2.05 PM whereas the alleged injured witness Muthurakku herself stated the time of occurrence was 12.30 or 1 PM. Hence, this is a material contradiction. Further, she was not given treatment and no medical proof either by way of accident register or by examining the doctor. Hence, injury to P.W.7 also not proved.

14. Even P.W.2 conductor also not identified the accused. And the prosecution has not taken any steps to conduct identification parade. No other witnesses spoken in support of prosecution case.

15. P.W. 7 Muthurakku who is said to be the victim in this case also not adduced against the accused.

16. P.W.9 Sub Inspector deposed about the registering of the case. P.W.11 Inspector deposed about the arrest of the first accused. Though P.W.10 assessed the damage of the bus and issued damaged certificate the occurrence as alleged by the prosecution has not been proved. Hence, in the absence of evidence against the accused, the accused are liable to be set at liberty. And the occurrence as alleged in the charge sheet is doubtful. Thus, this Court is of the considered view that the facts of the prosecution case was not established against the accused and the prosecution has miserably failed to prove its case. And the accused are liable to be acquitted. Accordingly, point is answered.

17. In the result, the first accused is found not guilty of the charges under section 332 of IPC, under section 3(1) of TNPPDL Act and



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under section 5 of TNPPDL Act and the 2nd and 3rd accused are found not guilty of the charges under section 332 of IPC, under section 3(1) of TNPPDL Act and under section 5 of TNPPDL Act r/w section 34 of IPC, and section 5 of TNPPDL Act r/w 34 of IPC and the accused are acquitted u/s. 235(1) of Cr.P.C. The bail bond if any executed by the accused shall stand cancelled. No material object marked in this case.

25. The question therefore that arises for consideration in this writ petition is whether failure to disclose the details of Crime No.1316/2011, which ultimately culminated in an acquittal order dated 20.08.2013 in S.C.No.47 of 2012 of the IV Additional District and Sessions Judge, Madurai, in the application filed by the petitioner on 24.03.2016 for the post of Assistant Jailer in the Prison Department pursuant to Notification No.6/2016 of the third respondent TNPSA was fatal and could be construed against the petitioner to deny appointment to him to the post of an Assistant Jailer?

26. The Hon'ble Supreme Court in Deputy Inspector General of Police Vs. S.Samuthiram, (2013) 1 SCC 598, observed that the expression "Honourable Acquittal", "Acquitted of Blame," and "Fully Exonerated" are unknown to the Code of Criminal Procedure or Penal Code and that these expressions have been coined only by Courts through their judicial pronouncements and it is difficult to define what these expressions precisely mean.

27. The Court further observed that when an accused is acquitted after full consideration of prosecution evidence and when the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was "Honourably Acquitted". If the above views are applied to the facts of the case, it can be said that the petitioner was "honourably acquitted".

28. Noting the above views, the Hon'ble Supreme Court in Joginder Singh Vs. Union Territory of Chandigarh, (2015) 2SCC 377, held that the alleged past conduct in relation to a criminal case did not debar the appellant therein from qualifying to the post of constable for which he was selected after qualifying in the Written Test, Medical Test and an Interview conducted by the Selection Authority.

29. The views of the Hon'ble Supreme Court in the above case was also recently followed under a somewhat identical situation by a Bench of 3 Judges in the case of Mohammed Imran Vs. State of Maharashtra, (2019) 17 SCC 696.



30. The Hon'ble Supreme Court further noted the observation in Joginder Singh's case referred to supra that a small dent in the name in the criminal case in which a person has been "Honourably Acquitted" and in absence of any other antecedents conduct in the criminal case cannot be put against such applicant.

31. In Avtar Singh Vs. Union of India, (2016) 8 SCC 471, the Hon'ble Supreme Court, on a reference in view of conflicting views, in Paragraphs 30, 31 & 38.4 summarised as follows:-

30. The employer is given "discretion" to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a



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person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

"31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects".

38.4.0. 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:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.



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38.4.2. Where conviction has been recorded in 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."

32. The Court also quoted few passages of Lord Denning from his book "Due Process of Law". The Court also held that suppression of material information pre-supposes that what is suppressed that matters and not every technical or trivial matter. It further held that the employer has to act on due consideration of the rules/instruction, if any, in the exercise of powers in order to cancel candidature or for terminating the services of such employees.

33. The Court also held that a person who has suppressed the material information cannot claim unfettered right for appointment or to be continued in service and he has a right not to be dealt with arbitrarily and exercise of power has to be in a reasonable manner with objectivity, having due regard to the facts of the case.

34. Again in C.Surendhar Vs. The Director-General of Police, 2019 (6) CTC 465, a Division Bench of this Court after considering all the decisions held as under:

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



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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 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

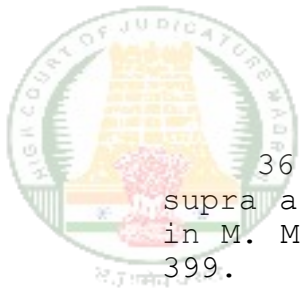


that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. In Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another Vs. Anil Kanwariya, 2021 SCC OnLine SC 739, the Hon'ble Supreme Court reiterated the above views with the following observations:-

39. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.

40. In view of the afore-stated facts and circumstances of the case, both, the learned Division Bench as well as the learned Single Judge have clearly erred in quashing and setting aside the order of termination terminating the services of the respondent on the ground of having obtained an appointment by suppressing material fact and filing a false declaration. The order of reinstatement is wholly untenable and unjustified.



36. The Division Bench in the C.Surendar's case referred supra also referred to the decision of the Hon'ble Supreme Court in M. Manohar Reddy and another Vs. Union of India, (2013) 3 SCC 399.

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37. It is noticed that though the petitioner was arrayed as a second accused in Crime No.1316/2011 pursuant to a complaint filed by the de-facto complainant, the de-facto complainant however failed to identify the petitioner as an accused in Crime No.1316/2011.

38. The Trial Court in S.C.No.47 of 2012 has also categorically concluded that occurrence in the Charge Sheet was doubtful and that the prosecution had miserably failed to prove the case. Thus, it cannot be said that either the witnesses turned hostile or the acquittal of the petitioner was not a "honourable acquittal".

39. Reference made to Note to Clause 15(g) of the Tamil Nadu Public Service Commission "Instruction to Applicants" (Revised w.e.f. 07.11.2016) is not relevant as it applies to persons already in service of the Indian Union or a State in India or in the employment of Local Bodies or Universities, or Quasi Government Organizations constituted under the authority of the Government of India or of a State in India whether in regular service or in a temporary service. For the sake of clarity, Clause 15(g) of the Tamil Nadu Public Service Commission "Instruction to Applicants" reads as under:

15. PRODUCTION OF EVIDENCE FOR CLAIMS MADE IN THE APPLICATION:

The Original Certificates in support of the claims made in the on-line application, should be produced at the time of the Certificate Verification - Oral Test or when called for by the Commission. One set of xerox copies of all certificates along with a copy of photograph identical to the one that was submitted in the application, should also be produced while attending the Certificate Verification - Oral Test or when called for. An applicant who has applied to the Commission on a previous occasion should produce the required documents even though they might have produced the same on a previous occasion and were returned to him.

(a)

(g) No Objection Certificate

Persons who are in the service of the Indian Union or a State in India or in the employment



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of Local Bodies or Universities, or Quasi Government Organizations constituted under the authority of the Government of India or of a State in India whether in regular service or in a temporary service need not send their applications through their Head of Department or Employer. Instead, they may directly apply to the Commission after duly informing their Employer in writing that they are applying for the particular recruitment and with the condition that they should produce "No Objection Certificate" in the form prescribed below, from an authority not below their Officer / Division Head at the time of attending the Certificate Verification.

NO OBJECTION CERTIFICATE BY THE HEAD OF DEPARTMENT OR OFFICE OR EMPLOYER

1. Name of the applicant
 2. Name of the Post held
 3. Whether the applicant is employed temporarily under the emergency provisions or whether the applicant is a probationer or an approved probationer or a full member of any of the subordinate/State Services?
 4. Period of Employment From (date) To (date)
- Endorsement No. _____ Dated _____

(a) I have no objection to the applicants' application being considered for the post of / recruitment of _____

(b) Certified that Thiru/Tmt/Selvi
..... has the following punishment / has no punishment to his credit.

(c) It is also certified that no charge or / and criminal case is pending against him. (If there is pending copy of documents to be enclosed)

Place	Office Seal & Date	Signature
		Designation

Note :

(i) Persons who get employment after the submission of their applications and before the receipt of intimation admitting them to the Certificate Verification / Oral Test / requiring to produce original documents for verification



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should also produce the "No objection Certificate".

(ii) In case any Criminal / Disciplinary action is taken against or if any punishment is imposed against such persons after the production of "No objection Certificate" and before the actual appointment, such applicants should report this fact forthwith to the Commission indicating their Register Number. Any violation or failure to comply with these instructions will end in rejection of candidature.

40. Note (ii) also only applies to a situation where Criminal / Disciplinary action is taken against or if any punishment is imposed against such persons after the production of "No Objection Certificate" and before the actual appointment. Only such of those applicants should report this fact forthwith to the Commission indicating their Register Number. As Instruction in Clause 15 is not applicable, it cannot be relied upon to situation under consideration. Further, this was also not the basis on which the candidature of the petitioner has been rejected by the second respondent.

41. In Page 2 of the application dated 24.03.2016, as against the entry "Criminal Case Registered", the petitioner has answered as "No". Para 19 of the Instructions of the third respondent TNPSC reads as under:-

19. DISQUALIFICATION / DEBARMENT:

The following acts will end in disqualification or debarment:

i. If an applicant attempts to canvas and bring influence on the Chairman or any of the Member of the Commission personally / by letter / through relatives, friends, patrons, officials or other persons.

Debarment:

a) If an applicant attempts any tampering, alteration with the documents or certificates, he is liable to be debarred from appearing for any of the selections and examinations conducted by the Commission and consequently from entry into public service itself.



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b) (i) Applicants furnishing false particulars in the matter of qualification medium of instruction or the nature of pass in various subjects, experience gained, their religion or community, disciplinary proceedings, punishment, etc.,

(ii) Suppression of material information regarding:-

(a) Previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations etc.,

(b) Criminal Cases, Arrests, convictions debarment or disqualification by Union Public Service Commission / State Public Service Commissions.

(c) Participation in agitation or any political organization.

(d) Candidature in election for Parliament / State Legislature / Local bodies etc.,

(iii) Making false or vexatious allegations against the Commission in petitions addressed to it or any other authority will be viewed seriously and that the applicant responsible for such act will be debarred from appearing for the examinations and selections held by this Commission permanently or for such period of years as the Commission may decide.

42. Failure to disclose information regarding the criminal case is a material suppression within the meaning of Para 19 of the Instruction. Therefore, the failure to disclose the details of criminal case was a material information by the petitioner within the meaning of Instruction 19.

43. However, Para 19 has to be in tune with Rules governing the appointments to the post of an Assistant Jailer. The appointment of an Assistant Jailer is governed by the Special Rules for the Tamil Nadu Jail Subordinate Service. The said Rule provides the methods of appointment and qualification to various posts in various branches of Jail Services i.e., Central Jail, District Jail, Special Jail, Special Sub Jail and Borstal School etc.



44. Post of Assistant Jailors is an Executive Post under the aforesaid Rules. The Assistant Jailors post is Class I, Category 2 of Branch I of the Special Rules for the Tamil Nadu Jail Subordinate Service. There is no differentiation as Grade I and Grade II for the post of Assistant Jailors under the aforesaid Rules.

45. As per the Special Rules for the Tamil Nadu Jail Subordinate Service, recruitment to the post of Assistant Jailors, Sub-Assistant, Superintendent in the Borstal Schools and Jailors in Sub-Jail, Grade I are as follows:-

- i. Direct recruitment; or
- ii. Recruitment by transfer from any other service; or
- iii. Promotion from Jailors in Sub-Jails, Grade II, Gate-Keepers and Chief Head Warders in Jails.

46. In the present case, the recruitment was "by Direct Recruitment". Rule 6 of the Special Rules for the Tamil Nadu Jail Subordinate Service prescribes the qualifications. Rule 6 of the Rules reads as under:-

Rule 6: Other qualifications. -

No person shall be eligible for appointment to the posts and by the method specified in column (1) and (2) of the Annexure unless he possess the qualifications specified in corresponding entries in column (3) thereof.

47. Annexure to Rule 6 of the Rules reads as under:-

Post	Method of Recruitme nt	Qualification
(1)	(2)	(3)



Class I

General

Section

Deputy

Jailors in

Jails

including

Superintende

nts in

Special Sub-

Jails and

Assistant

Superintende

nts in

Borstal

School

Direct
recruitm
ent

(i) A degree of B.A., or B.Sc., or B.Com.,

(ii) a) Every male candidate must be not less than 168 centimeters in height and must not be less than 86 centimeters round the chest with a minimum expansion of 5 centimeters on full inspiration. Every female candidate must be not less than 155 centimeters in height. The chest measurement shall not apply to a female candidate:



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Assistant
Jailors,
Sub-
Assistant
Superintende
nt in
Borstal
School and
Jailors in
SubJail,
Grade I.

Provided that the male candidates belonging to Scheduled Castes and Scheduled Tribes must be of not less than 160 centimeters in height and not less than 79 centimeters round the chest on full expiration with an expansion of not less than 5 centimeters on full inspiration and the female candidate who belongs to Scheduled Castes or Scheduled Tribes must be of 150 centimeters in height.

- b) Must satisfy the Medical Board in Tamil Nadu as to the physical fitness and capacity for active outdoor work.
- c) Must be certified by the Superintendent of Government Ophthalmic Hospital, Chennai that the vision comes upto the requirement prescribed as follows:-

STANDARD I

Right Eye -	Left Eye -
Distant vision v-6/6	v-6/6
(withoutglasses)	(without glasses)
Near Vision	Near Vision
0.5 (sn)	0.5 (sn)

Promotion (i) Minimum general educational qualification prescribed in the Schedule I to the General rules.

Preference shall be given to person who possess the B.A., or B.Sc., or B.Com., degree.



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- (ii) Must be not less than 168 centimeters in height and not less than 86 centimeters round the chest on full inspiration with a minimum expansion of 5 centimeters.

Candidates belonging to Scheduled Castes and Scheduled Tribes must have a height of not less than 160 centimeters and the chest measurement of not less than 79 centimeters with an expansion of not less than 5 cm:

Provided that persons recruited to the category from which promotion is made before the date of revision of the physical measurements, namely 3rd July 1963 must have a height of not less than 160 centimeters and not less than 79 centimeters round the chest with an expansion of not less than 5 centimeters.

- (iii) Must have served for a period of one year in the category from which promotion is made.

- | | |
|-------------------------|--|
| Recruitment by transfer | <ul style="list-style-type: none">(i) Minimum general educational qualification prescribed in the Schedule I to the General rules in the case of candidates for appointment by recruitment by transfer from among members of the Tamil Nadu Ministerial Service employed in the Jail Department; or A degree of B.A., or B.Sc., or B.Com.,(ii) Must be not less than 168 cms. in height and not less than 86 centimeters round the chest on full inspiration with a minimum expansion of 5 cms. |
|-------------------------|--|



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Candidates belonging to Scheduled Castes and Scheduled Tribes must have a height of not less than 160 centimeters and a chest measurement of not less than 79 cms with an expansion of not less than 5 centimeters.

48. By G.O.Ms.No.1410, Home (Pri-II) Department, dated 17.10.2008, amendments were made to the Special Rules for Tamil Nadu Jail Subordinate Service. It inserted entry (b), (e) and (f) in Part II, in Branch I - Executive Staff, in Annexure, under "Class I-General Section", in column (3), against the post "Grade II Warders", in column (1) and "by Direct Recruitment" in Column (2) thereof:-

(1).....

(2) After the entry (d), the following entries shall be added, namely:-

(e) (1).....

(2).....

(f) A person has not involved in any criminal case before Police verification.

Explanation(1): A person who is acquitted or discharged on 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 a criminal case and he can claim right for appointment only by participating in the next recruitment"

49. This amendment was referred by the learned Single Judge while passing the order dated 27.11.2018 in W.P.(MD) No.6579 of 2018. After amendment, the relevant portion of Annexure 6 to the Special Rules for Tamil Nadu Jail Subordinate Service reads as under:-



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Post (1)	Method of Recruitment (2)	Qualification (3)
Warders in Central, District and Special Jails, Special Sub-Jails and Petty Officers in Borstal School - I Grade.	Recruitment by transfer	(i) Must possess the minimum general educational qualification prescribed in the Schedule I to the General rules: Provided that preference shall be given to candidates possessing higher educational qualifications and must be able to read and write one of the following languages, namely:- Tamil, Telugu, Malayalam, Kannada, Urudhu and Hindi and must be atleast 86 centimeters round the chest on full inspiration with a minimum expansion of 5 centimeters. Candidates belonging to Scheduled Castes and Scheduled Tribes must have a height of not less than 160 centimeters and atleast 79 centimeters round the chest with an expansion of not less than 5 centimeters: Provided that persons recruited to the category from which promotion is made before the date of revision of physical measurements, i.e. 3rd July 1963, shall have a height of not less than 160 centimeters and atleast 79 centimeters round the chest on full expiration with an expansion of not less than 5 centimeters.
	Promotion	(i) Must satisfy the Superintendent of the Jail concerned that he possesses the ability to drill the warder guard in accordance with the Instructions in the Manual of Drill for Jail and to instruct such guard in musketry and bayonet exercises; and



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- (ii) Must have passed III Form or VIII standard
- (iii) Must be atleast 168 centimeters in height and atleast 86 centimeters round the chest on full inspiration with a minimum expansion of 5 centimeters.

Candidates belonging to Scheduled Castes and Scheduled Tribes must have a height of not less than 160 centimetres and atleast 79 centimetres round the chest with an expansion of not less than 5 centimeters:

Provided that persons recruited to the category from which promotion is made before the date of revision of the physical measurements, namely 3rd July 1963, shall have a height of not less than 160 centimeters and at least 79 centimeters round the chest with an expansion of not less than 5 centimeters;

II Grade

Direct
recruitment

(a) Educational qualification:-

Must have passed Tenth standard or S.S.L.C. (old pattern)

(b) Physical standard-

The height shall not be less than 170 centimeters and the chest measurement must not be less than 81 centimeters on normal condition (on expiration) and must not be less than 86 centimeters round the chest on full inspiration with a minimum expansion of 5 centimeters: DepProvided that candidates belonging to Scheduled Castes and Scheduled Tribes shall be of not less than 167 centimeters in height.



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(c) Physical efficiency test-

Must pass the endurance test of running 1500 meters in 7 minutes. The successful candidate has to undergo physical efficiency test which shall consists of 3 events with a minimum qualifying marks of 6 (1 star in each event) (3 stars) and a maximum of 15 marks allotted (6 stars) as shown in the table below:

TABLE			
Sl. No	Events	One Star = 2 marks	Two Star = 5 marks
(1)	(2)	(3)	(4)
(a)	Rope climbing	5.00 meters	6.00 meters
(b)	Long Jump	3.80 meters	4.50 meters
	(or) High Jump	1.20 meters	1.40 meters
(c)	Running 100 meters	15.00 seconds	13.50 seconds
	(or) 400 meters	80.00 seconds	70.00 seconds
	Test		

The candidate who secures a minimum of one star in each of the three events shall qualify to move to the next phase of selection, that is, written test:

Provided that the Ex-Servicemen served as Drivers, Auto Mechanics, Auto Electricians and Armourers are exempted from undergoing physical measurement test and physical efficiency test.



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(d) Written test-

Must have passed the written test with a minimum qualifying marks of 40 as shown in the table below:

TABLE		
Sl.No.	Test	Maximum
1	General Knowledge	50
2	Psychology	30
	Extra qualification National Service Scheme / National Cadet Corps / Sports / Games	5
3		
Total		85

Only those candidates who secure fifty percent in the written test will be qualified and considered for further recruitment process.

(e) (1) The Director of Medical Education and Director of Medical and Rural Health Services shall constitute Medical Boards consisting of an Ophthalmologist and two other Medical Officers, and also by nominating one of them as Chairman of the Board to conduct Medical Examination for the selected candidates for the post of II Grade Warders free of cost at the following Hospitals:-

- i. Kilpauk Medical College Hospital, Chennai. 10;
- ii. District Head-quarters Hospital, Cuddalore;



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- iii. District Head-quarters Hospital, Vellore; District Head-quarters Hospital, Salem; Coimbatore Medical College Hospital, Coimbatore;
- iv. District Head-quarters Hospital, Tiruchirappalli now functioning as Medical College Hospital;
- v. Madurai Medical College Hospital, Madurai ; and
- vi. Tirunelveli Medical College Hospital, Tirunelveli.

(2) The Medical Board so constituted shall ensure that those candidates are physically fit to perform efficiently with particular reference to the following standards:-

- i. The candidates must be free from any bodily defect or infirmity.
- ii. Candidates having Knock knees or flat foot should be disqualified;
- iii. Those suffering from stammering should be disqualified;
- iv. The candidates must possess the visual standards, specified below, without wearing glasses:

	Right Eye	Left Eye
(a) Distant vision (snellan)	6/6	6/6
(b) Distant vision (snellan)	0.5	0.5

- v. Each eye must have full field of vision;
- vi. Colour blindness, night blindness, squint or any morbid conditions of the eyes or lids of either eye shall be a disqualification;



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- vii. Those suffering from chronic incurable ailments like cancer, AIDS, heart / lung diseases, epilepsy, varicose veins will be declared as medically unfit and be disqualified; and
- viii. Lasik or Laser surgery or Excimer laser surgery in either of the eye shall be deemed to be a disqualification.

(f) A person has not involved in any criminal case before police verification.

Explanation(1).—A person who is acquitted or discharged on 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 a criminal case and he can claim right for appointment only by participating in the next recruitment.

50. The Clause (f) in bold was referred by the learned Single Judge of this Court while disposing W.P. (MD) No.6579 of 2018 vide order dated 27.11.2018. However, it is relevant only for direct recruitment of Grade II post under the Rules. It is not applicable to direct recruitment of Class I, Category 2 of Branch I of the Special Rules for the Tamil Nadu Jail Subordinate Service.

51. The above restriction / disqualification is not applicable to appointment of a Assistant Jailer. Only Rule 8B of the Special Rules for the Tamil Nadu Jail Subordinate Service is common for Assistant Jailor and Matron.



52. It pertains to execution of agreement in proper form with Rule 8B of the Special Rules for the Tamil Nadu Jail Subordinate Service. Rule 8 B of the Special Rules for the Tamil Nadu Jail Subordinate Service reads as under:

8B.Appointment of Assistant Jailor or Matron by direct recruitment.-

Every candidate selected for appointment to the post of Assistant Jailor or Matron by direct recruitment shall, before undergoing the training prescribed in rule 8, execute an agreement in proper form with two sureties binding himself or herself-

- i. to undergo, in full, the training prescribed in rule 8;
- ii. to serve in the Prison department for a period not less than five years; and
- iii. to refund to the State Government the entire amount drawn by him or her as pay and allowances during the period of training, if he or she fails to fulfill either of the conditions in clauses (i) and (ii);

53. Notwithstanding the above, as an applicant aspiring to be appointed as an Assistant Jailor, the petitioner was required to disclose all information that were required to be filled up as per the application.

54. The decision of the Division Bench of this Court in The Chairman, Tamil Nadu Uniformed Services Recruitment Board and Ors. Vs. V.Bharathan, in W.A.No.741 of 2017 and etc. batch, dated 23.11.2017 relied in support of the petitioner is not relevant as there was a disclosure in the said case.

55. The decision in Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another Vs. Anil Kanwariya, 2021 SCC OnLine SC 739 cited on behalf of the third respondent is not relevant as there was a conviction in the said case.

56. The Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar, 2018 (18) SCC 733 has held that even if there is a disclosure of antecedents by a candidate, it is well within the ambit of the employer to consider the same as well as the suitability of the candidate. It was also made clear in the judgment that the employer has



every right to take into account the severity of charges, nature of acquittal, etc., the suit the job profile, for which the selection is undertaken.

57. In Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471, also it has been held that if on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects and 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.

58. The petitioner was charged under Sections 323, 341 of IPC and Section 3(1) of TNPPDL Act. Section 323 of IPC deals with whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Section 341 of IPC deals with whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

59. As per Section 3(1) of TNPPDL Act, whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

60. However, facts on record show that no case was made out before the Trial Court against the petitioner. The petitioner was acquitted. The petitioner was not discharged on account of benefit of doubt or was discharged / acquitted on account of the complainant having turned hostile. On the other hand, the Trial Court given a clean chit to the accused and has held that the prosecution had miserably failed to prove the case.



61. Question of examining suitability of the petitioner in terms of the decision of the Hon'ble Supreme Court in State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar, 2018 (18) SCC 73 arises only where there was a duty to disclose and even if there was a disclosure, the appointing authority can exercise the discretion judiciously. However, in the present case, there is no occasion for exercising such discretion. In absence of a proper provision in the Rule, it cannot be said that the petitioner has violated any Statutory Rules though has failed to follow Instruction 19 as discussed above.

62. As mentioned elsewhere in this order, the Hon'ble Supreme Court in Joginder Singh's case referred to supra held that a small dent in the name in the criminal case in which a person has been "honourably acquitted" and in absence of any other antecedents conduct in the criminal case cannot be put against such an applicant.

63. The above Rule for appointment of Assistant Jailor does not deal with any other disqualification. The disqualification applicable to Warders is not conspicuously absent in the case of appointment of Assistant Jailor.

64. The above clause which has been referred by the learned Single Judge of this Court while disposing W.P.(MD) No.6579 of 2018 vide order dated 27.11.2018 is relevant only for direct recruitment of Warders in Central, District, Special Jails and Petty Officers in Borstal Schools as Grade II which is a Category 6, in Class I. Therefore, one of the other reasons given in the said order for remanding the case to the second respondent to pass fresh order was also apparently not there.

65. Thus, the amendment to Special Rules for the Tamil Nadu Jail Subordinate Service as notified in G.O.Ms No.1410 Home (Pri-II) Department dated 17.10.2008 is not relevant.

66. Notwithstanding the above, the petitioner as an applicant aspiring to be appointed as a Assistant Jailor was required to disclose all information that were required to be filled up as per the application.

67. In the facts of the present case, the petitioner was acquitted. The petitioner was not discharged on account of benefit of doubt or discharged/ acquitted on account of the complainant turning hostile. On the other hand, the Criminal Court has held that the prosecution had miserably failed to prove the case against Accused.



68. The respondents ought to have appointed the petitioner after the case was remanded back for fresh examination on merits by the Madurai Bench of this Court in W.P. (MD) No.6579 of 2018 vide order dated 27.11.2018 in the light of the above position of law.

69. Therefore, the petitioner cannot be denied appointment though it was incumbent on the part of the petitioner to have disclosed the information in the application notwithstanding a gap in the Rules.

Though the suppression of fact was the material suppression within the meaning of the Clause 19 of the Instructions of the third respondent to applicants, yet it was not fatal to the case of the petitioner as the petitioner was not charged with a serious offence and was in any event was acquitted by the Criminal Court.

70. Even otherwise, the petitioner would have been aged about 25 years at the time of his alleged involvement in the crime. Such in discretion on the part of the petitioner can be ignored.

71. Since information suppressed by the petitioner was not a material suppression for the purpose of the Rules in view of the vacuum in the Rules and considering the nature of offence and the acquittal of the petitioner, the reasons given to disqualify the petitioner from being appointed as Assistant Jailor cannot be sustained although the petitioner is to be held responsible for the delay.

72. Therefore, the impugned order dated 01.04.2019 of the second respondent bearing reference Proceedings No.48333/ES.3/2017 and the impugned notice dated 22.06.2019 of the third respondent bearing reference Memorandum No.2195/OTD-D3/2015 are liable to be quashed.

73. In the result, the impugned orders of the second and the third respondents stand quashed. The second respondent shall issue an appointment order to the petitioner, within a period of thirty (30) days from the date of receipt of a copy of this order and shall thereafter send the petitioner for training.

74. At the same time, since the petitioner had failed to disclose the details required in the application, the delay in appointment of the petitioner is solely attributable to the petitioner only. Therefore, it is made clear that the petitioner shall not claim any seniority on par with his batch mates or any seniority along with them in future who were sent for training



earlier. The petitioner shall be treated as having successfully selected only in the current selection.

75. This Writ Petition stands allowed with the above observations. No cost.

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s/d-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

jen

To

- 1.The Secretary,
The State of Tamil Nadu
Home Department, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Police cum
Inspector General of Prisons,
Venals Road, Egmore, Chennai - 600 008.
- 3.The Member Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai - 600 003.

+1cc to Mr.K.K.Ramakrishnan, Advocate SR.No.58737

W.P.No.21823 of 2019

KSM(CO)
SP(23/12/2021)