



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.5931 of 2020

and

WMPMD) Nos.5123,5125 and 7291 of 2020

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C. Vinoth Kumar

... Petitioner

versus

1. The Chairman

Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Office Campus
Pantheon Road, Egmore, Chennai.

2. The Director General of Police

Kamarajar Salai, Chennai- 600 004.

3. The Commissioner of Police

Law and Order, Commissioner of Police
Trichy City

4. The Inspector of Police

Golden Rock Police Station
Ponmalai, Trichy City

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus call for the entire records relating to the impugned order passed by the 3rd respondent in Na.Ka.No. A2/11059/2020 dt. 13.03.2020 and quash the same and consequently directing the respondents to issue a appointment order to the petitioner to the post of Gr-II Police constable.

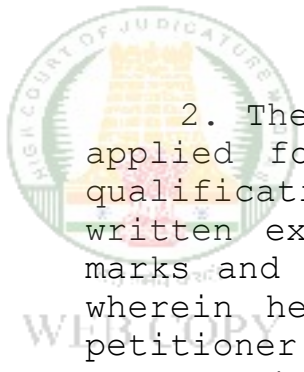
For Petitioner : Mr.R. Maheshwaran

For Respondents : Mr. R.Suresh Kumar

Government Advocate (Civil)

ORDER

This writ petition is filed against the order passed by the third respondent in Na. Ka. No.A2/11059/2020 dated 13.03.2020 rejecting the candidature of this petitioner on the ground that a criminal case is pending against the petitioner at the time of filing application



2. The learned counsel for the petitioner submits that he has applied for the post of Gr.II Constable and he is having all qualifications to be appointed as Gr.II Constable. He attended the written exam held on 25.08.2019 and secured 57 marks out of 80 marks and thereafter he was subjected to physical endurance test, wherein he has secured 12 marks out of 20 marks, in total the petitioner has secured 69 marks out of 100 marks. Therefore, he is fully eligible for appointment to the post of Gr.II constable post.

3.The learned Counsel for the petitioner further submits that in the year 2019 a criminal case was registered against the petitioner at the instance of his neighbour, on a petty wordy quarrel and that case also ended in acquittal on 11.11.2019. The petitioner has also informed about the criminal case pending against him in his application dated 28.03.2019 and there is no suppression. The case pending against him also ended in acquittal during the course of selection process itself. However, the respondent has rejected the candidature of the petitioner stating that the acquittal of the petitioner is not a honorary acquittal. The learned counsel in support of his contention relied on the judgment of the Hon'ble Apex Court in **Avtar Singh .vs.Union of India and others reported in (2016)8 SCC 471.**

4.The learned Government Advocate appearing for the respondents submits that as per Rule 14(b) of the Tamil Nadu Special Police Service Rules, the following criteria have to be fulfilled by the candidates for appointment under the Tamil Nadu Special Police Subordinate Services :

i) That he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and

ii) That his character and antecedents are such as to qualify him for such service

iii) That such a person does not have more than one wife living and

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 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 Third honourable acquittal or treated a 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.

5.The learned Government Advocate further submits that as per Rule 14(b) of TNPSS Rules, in Explanation (2) it is clearly stated that only if the case ended in honourable acquittal or treated as Mistake of Fact the candidate shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment. But the petitioner has been acquitted of the charges in C.C. No. 145 of 13 only on benefit of doubt. As per explanation (1) of Rule 14(b) of TNPSS Rules, since the petitioner is acquitted on benefit of doubt, he shall be treated as a person involved in a criminal case.

6.The learned Government Pleader further submits that the provisions of Rule 14(b) of the Special Rules for Tamil Nadu Special Police Subordinate Services have been followed both in forum and in substance and while rejecting the claim of the petitioner, the respondents have scrupulously followed Rule 14(b) of the Special Rules for Tamil Nadu Special Police Subordinate Services and that there is no violation at all as alleged the petitioner. More over, the petitioner has suppressed the registration of case, against him in Crime No.387 of 2015 under Section 75(1)(C) of the Tamil Nadu City Police Act in the application.

7.In response to the above, the learned counsel for the petitioner submitted that this petitioner has mentioned about the case pending against him in Crime No.60 of 2019 for the offences under Sections 294(b), 324 and 506(ii) of IPC. The case has been taken on file in C.C. No.993 of 2019 on the file of the learned Judicial Magistrate No.V and during trial none of the witnesses has spoken against the petitioner and the order of acquittal has been passed in favour of the petitioner by the Trial Court on 11.11.2019. However the trial Court while recording the findings, has not recorded it as a honourary acquittal. Insofar as Crime No.387 of 2015 is concerned it is only for the offence under Section 75(1)(C) of TNCP Act, it has been closed on payment of fine amount and it is only for a trivial offence. Therefore, the same need not be mentioned, in view of the dictum laid down by

<https://hccases.hccourt.gov.in/hccases/Avtar Singh .vs.Union of India and>



others reported in (2016)8 SCC 471.

8. This Court paid its anxious consideration to the rival submissions and perused the materials placed before this Court.

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9. Similar issue has been dealt with by the Hon'ble apex Court in **Avtar Singh .vs.Union of India and others reported in (2016)8 SCC 471**, wherein the Hon'ble Apex Court has held as follows:

"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:

38.1.Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information

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.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 : -

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.

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

<https://hcservices.ecourts.gov.in/hcservices/>



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.

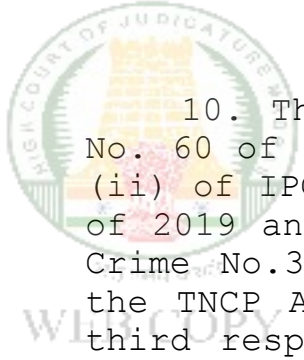
38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases 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 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".



10. The petitioner had involved in two cases namely in Crime No. 60 of 2019 for the offences under Sections 294(b), 324 and 506 (ii) of IPC and the same has been taken cognizance in C.C. No. 993 of 2019 and the said case ended in acquittal. The another case in Crime No.387 of 2015 for the offence under Section 75(1)(C) of the TNCP Act and in that case he has paid some fine amount. The third respondent has rejected the candidature of this petitioner on the ground that he has involved in cases in crime No.387 of 2015 and in Crime No.993 of 2019. The case in Crime No.60 of 2019 was disposed on benefit of doubt and not as honorary acquittal as contemplated in Rule 14(b) of TNPSS Rules.

11. The Hon'ble Apex Court in **Avtar Singh .vs. Union of India and others** reported in **(2016)8 SCC 471** held that cases trivial of 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 the post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. Therefore the case in Crime No. 387 of 2015 may not be an impediment in considering the case of the petitioner.

12. Insofar as other case in Crime No.60 of 2019 is concerned the petitioner has mentioned the same in his application and there is no suppression. The case was taken on file in C.C. NO.993 of 2019 on the file of the learned Judicial Magistrate No.V. Trichy and ended in acquittal on 11.11.2019. None of the witnesses, except the Investigating Officer has spoken about the occurrence. The case was also registered at the instance of a neighbour and he has not supported his case, when he was examined before the Trial Court. Therefore the trial court decided the case with an order of acquittal.

13. The Hon'ble Apex Court has issued certain guidelines in respect of deciding the involvement of the candidates in a criminal case for recruitment. However, the impugned order has not been passed by following the guidelines of the Hon'ble Apex Court in **Avtar Singh's** case.

14. In the light of the above, the impugned order passed by the third respondent is set aside and the matter is remitted back to the respondents to consider the case of the petitioner afresh by taking into account the guidelines issued in **Avtar Singh's** case cited supra.



15. This Writ Petition is disposed of in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Old Commissioner of Police Office Campus
Pantheon Road, Egmore, Chennai.
2. The Director General of Police
Kamarajar Salai, Chennai- 600 004.
3. The Commissioner of Police
Law and Order, Commissioner of Police
Trichy City
4. The Inspector of Police
Golden Rock Police Station
Ponmalai, Trichy City.

+1 CC to M/s.SPL.GP (SR-34091[F] dated 11/11/2021)

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and**

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NSN (CO)
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