



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.7773 of 2021

and W.M.P. (MD)No.5922 of 2021

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S.Arunkumar

... Petitioner

vs.

1.The Director General of Police,
Tamil Nadu,
Chennai.

2.The Chairman,
Tamil Nadu Uniform Service Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai - 600 008.

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

... Respondents

PRAYER: 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 impugned proceedings made in C.No.A5/9164/185/2021, dated 13.03.2021 passed by the 3rd respondent and quash the same as illegal and consequently directing the respondents to appoint the petitioner in the post of Grade-II Police Constable with effect from the date of his original selection for the recruitment year 2019.

For Petitioner : Ms.K.Abiya

For Respondents : Mr.K.Chellapandian,
Additional Advocate General assisted by

Mr.C.Ramesh,
Special Government Pleader

ORDER

This Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings made in C.No.A5/9164/185/2021, dated 13.03.2021 passed by the 3rd respondent and quash the same as illegal and consequently directing the respondents to appoint the petitioner in the post of Grade-II Police Constable with effect from the date of his original selection for the recruitment year 2019.



2. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

3. According to the petitioner, he is qualified to apply for the post of Grade-II Police Constable and applied the Common Recruitment for the post of Grade-II Police Constable for the year 2019, conducted by the second respondent. He participated in the written examination and physical test and he was declared as provisionally selected for the post of Grade-II Police Constable for the year 2019. While he was awaiting for the appointment order from the respondents, the third respondent, by the impugned proceedings dated 13.03.2021, informed that the petitioner is not eligible for the post of Grade-II Police Constable, due to suppression of fact of his involvement in a criminal case in the application form.

4. The learned counsel appearing for the petitioner submitted that the petitioner's father quarrelled with one Isakkiraja. The petitioner went there and pacified his father and brought him to home. The said Isakkiraja, the defacto complainant gave a complaint before Kulathur Police Station on 20.10.2014, against the petitioner also. The Police Officials registered the FIR in Crime No.148 of 2014, for the alleged offence under Section 294(b) of IPC. The Special Sub Inspector of Police, Kulathur Police Station, after investigation, found that the petitioner, who is arrayed as second accused, was not involved in the offence. The defacto complainant also gave his 161(3) Cr.P.C. Statement that the petitioner has not abused him with filthy language. The Police Officials, after investigation, filed the charge sheet only against the petitioner's father, deleting the name of the petitioner. The petitioner's father accepted his guilty and he was imposed with a fine of Rs.500/- (Rupees Five Hundred only) by the learned Judicial Magistrate, Vilathikulam. The petitioner has no intention to suppress the criminal case and his involvement. The petitioner cannot be treated as criminal. The third respondent mechanically denied the appointment order of the petitioner against the investigation report filed by the Police Officials, Kulathur Police Station. Due to false complaint, the petitioner should not be penalized from entering into the Uniformed Service. Hence, prays for setting aside the impugned order passed by the third respondent.

5. The learned Additional Advocate General, appearing for the respondents submitted that after selection process, training was given to the selected candidates from 03.05.2020 to 01.12.2020 and now, the entire selection process is over. The learned Additional Advocate General also circulated the letter addressed to the Additional Chief Secretary to Government, Home Prohibition & Excise Department, Secretariat, Chennai - 600 009. Paragraph 9 of the said letter is extracted hereunder:

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



"9. In this regard, it is informed that the following instructions have been issued to the COPs/SPs while causing Police verification in respect of provisionally selected candidates in this office memo in C.No.1268/20889/Rect. II (1)/2015, dated 17.12.2015. The relevant portion is furnished below:-

"6. All the appointing authorities are requested to go through the relevant rules, Court orders (Full Judgment available in High Court website), details of criminal case, role of the candidate in that case, present stage of case, judgment delivered etc., in a careful manner and issue necessary endorsement regarding rejection of their candidature under proper acknowledgement.

7. The following points should also be considered before issuance of the endorsement.

a. Every case has to be judged on its merit.

b. "Honourable acquittal" restores the right of individual. Hence honourable acquittal before the date of police verification means that the candidate must be considered favourably.

c. A case referred on "Mistake of Fact" has to be favourably viewed for the candidate.

d. Discharge on technical grounds (hostile witnesses) does not entitle the candidate for automatic clearance and the appointing authorities may still reject the candidature on ground of unsuitability to do the nature of the duty.

e. Suppression of involvement in a case still under investigation or trial or not ending in honourable acquittal is a ground sufficient for rejection of the candidate.

f. Petty cases should not lead to over penalization.

8. It is also informed that the following types of candidates were considered for appointment to the post of SI of Police/Gr.II PCs on earlier occasions.

i) The candidates acquitted honourably prior to Police Verification.

ii) The persons released under probation of offenders act were treated as not involved in a criminal case, in view of Section 12 of the PO Act, 1958 which stipulates that convicts released on Probation of Conduct Act or after admonition by the Court shall not suffer any disqualification attached to the conviction.

iii) The persons released under Juvenile Act were treated as not involved in a criminal case.

Section 19 of the Juvenile Justice (Care and



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Protection of Children) Act 2000 which stipulates that a juvenile has committed an offence and has been dealt with under provision of this act shall not suffer disqualification, if any attached to conviction of an offence under such law.

iv) If any political affiliation on the candidate comes to notice during the Police Verification, it will not be held against him, unless he is having other bad antecedents. However, he shall be instructed not to involved in such activities as per conduct rules.

v) The candidates whose names are deleted from the charge sheet.

vi) The cases treated as Mistake of fact prior to police verification.

vii) Some of the candidates involved in petty cases were considered.

viii) Accident cases were considered if the case was pending at the time of police verification and if there was no suppression of fact.

ix) The case in which the I.O registered the case against the a minor candidates under IPC and not under Juvenile Justice Act, his case were considered for appointment.

x) The cases where fine was imposed upto Rs.2000/- were considered.

9.The date of Police Verification is the date on which the verifying Officer (i.e, Not below the rank of SI of Police) is counter signing the verification Roll.

10. The persons who are acquitted under benefit of doubt (or) hostility of complainant will be treated as involved in criminal case and he will not be considered for appointment as per Rule 14 (b) of TNPSS Rules (or) Rule 13 of TNPSS Rules.

11.Regarding "Honourable acquittal", the Hon'ble Supreme Court of India in SLP (Civil Appeal No.4842/2013) in their orders, dated 02.07.2013 (arising out of SLP (Civil) No.38886/2012) filed by the Commissioner of Police, New Delhi and another (Appellants) - Versus - Mehar Singh have made observations in para 21 of the said orders and the same may be referred."

6. From the letter circulated by the learned Additional Advocate General, it is seen that the first respondent has issued certain instructions for consideration of persons provisionally selected, who were involved in criminal case, to the concerned Commissioner of Police and Superintendent of Police.



7. From the submissions made on either side, it is seen that the petitioner was provisionally selected for the post of Grade-II Police Constable and at the time of verification, it was found that he was involved in the criminal case. According to the petitioner, after investigation, his name was deleted and charge sheet was filed only against the father of the petitioner and no charge sheet was filed against the petitioner. From the final report, it is seen that the petitioner's name was deleted and charge sheet was filed only against the father of the petitioner.

8. In view of the instructions given by the first respondent to the concerned, Commissioner of Police and Superintendent of Police that the candidates, whose names are deleted from the Charge sheet can be considered favourably, the impugned order passed by the third respondent, dated 13.03.2021 is quashed and the respondents are directed to consider the appointment of the petitioner in the post of Grade-II Police Constable, with effect from the date of his original selection for the recruitment year 2019.

9. This Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

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

1.The Director General of Police,
Tamil Nadu,
Chennai.

2.The Chairman,
Tamil Nadu Uniform Service Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai - 600 008.



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

+1 CC to M/s.K.ABIYA, Advocate (SR-16816[F] dated 21/04/2021)

+1 CC to M/s.SPL GP (SR-17186[F] dated 22/04/2021)

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21.04.2021

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