



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

WP(MD) No.7910 of 2019 and

WMP(MD).No.6257 of 2019

WEB COPY

V. Kalyani

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
St. George Fort,
Secretariat, Chennai - 600 009.

2.The Additional Director General of Police
- cum - Inspector General of Prison,
Egmore, Chennai - 600 008.

3.The Chairman,
Uniform Services Recruitment Board,
No.807, II Floor, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the record in impugned order passed by the 2nd respondent dated 14.12.2018 in No.50528 / EW1 / 2017-5 and quash the same and consequently, direct the 2nd respondent to give appointment Grade - II, Constable with all attendant benefits with suitable seniority.

For Petitioner : Mr.M. Ajmalkhan
Senior Counsel for Mr.V. Muthukamatchi

For Respondents : Mr. Veerakathiravan
Additional Advocate General
Assisted by Mr. A.K. Manikkam
Standing Counsel for State

O R D E R

This Writ Petition has been filed to call for the records pertaining to the impugned order passed by the 2nd respondent dated 14.12.2018 in No.50528 / EW1 / 2017-5 and quash the same and consequently, to direct the 2nd respondent to give appointment as Grade - II, Constable with all attendant benefits with suitable seniority.



2. Heard Mr. M. Ajmalkhan, learned Senior Counsel appearing for the petitioner and Mr. Veerakathirvan, learned Additional Advocate General appearing for respondents.

3. The Petitioner has applied for the post of Grade II Police Constable Armed Reserve Force of Tamil Nadu called for by the 3rd respondent and submitted the application on 19.01.2018. The petitioner appeared for the written examination on 11.03.2018 and was successfully passed on the same. The respondents called the petitioner to appear for the physical test held on 02.09.2018 and in the physical test also, he was successfully passed and thereafter, the petitioner was provisionally selected by the 3rd respondent. On police verification, it was found that the petitioner was involved in Crime No.111 of 2014 and the same was pending at the time of submitting the application by the petitioner. However, the said fact was not disclosed in the application and hence, the petitioner's application was rejected.

4. The learned Senior counsel appearing for the petitioner would submit that at the time of submitting the application the petitioner was not aware of the criminal case pending against him and no charge has been laid as against the petitioner. Subsequently, the petitioner's criminal case ended in acquittal on 03.08.2018. In support of his contention, the learned Senior Counsel has also relied on the Judgment of the Hon'ble Supreme Court reported in **2016 (8) SCC 471 in the case of Avtar Singh Vs. Union of India**. In the above said Judgment the Hon'ble Supreme Court has directed the appointing authority to consider the case regarding the issues in nature and the appointing authority reconsider the rejection by mere false information pending lapsed. Therefore, no bar for considering the petitioner's selection for the post of Grade - II Police Constable Armed Reserve Force of Tamil Nadu.

5. The learned Additional Advocate General appearing for the respondents would submit that the case registered against the petitioner in Crime No.111 of 2014 for the offences under Sections 294(b), 323, 307, 506(ii) r/w. 34 IPC is grievous in nature. Considering the gravity of offence and suppression of the materials fact, the authority has rightly rejected the petitioner's application.

6. Considering the submissions of both parties and on a perusal of the materials available on record, it is seen that the Notification issued by the respondent on 28.12.2017 and the petitioner submitted his application on 19.01.2018 and as on date, the petitioner is having criminal case in Crime No.111 of 2014 for the offences under Sections 294(b), 323, 307, 506(ii) r/w. 34 IPC. But, the petitioner is disputing the said fact that the pending of the criminal case was not aware on the date of application.



7. Considering the fact that the petitioner's involvement in criminal case and that the same has taken on file in S.C.No.615 of 2017, before the Assistant Sessions Court, Madurai. Therefore, this Court is of the view that the present impugned order passed by relying upon such a criminal involvement of the criminal case by the petitioner would amount to the non disclosure of the facts in the application. The employer has to consider the gravity of involvement in the criminal case. Whether the case is trivial in nature. The decision of the Division Bench of this Court in W.A (MD)No.3877 of 2019, dated 13.11.2019 and the relevant paragraphs 33 to 35 is extracted hereunder:

33. The question of 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 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 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 necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of M.Manohar Reddy and another vs. Union of India and others, reported in 2013 (3) SCC 99. Whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice, or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve



a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person 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 appointment did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. We, accordingly allow the appeal and set aside the impugned judgment dated 27.04.2019 as well as the impugned order dated 08.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today."

8. Considering the fact that on the date of application, the petitioner has involved in a criminal case and subsequently, the case has been referred to S.C.No.615 of 2017 on the file of the Assistant Sessions Judge, Madurai and it was ended in acquittal on 03.08.2018. The petitioner applied for the post of Grade II Police Constable Armed Reserve Force of Tamil Nadu on 19.01.2018, thus the petitioner is not entitled for recruitment for the posts.

9. For the reasons stated above, the Writ Petition is disposed of. However, it is open to the respondent to consider the petitioner's application if any, submitted with fresh recruitment notification issued by the respondent Board. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

trp



To

1.The Secretary to Government,
Home Department,
St. George Fort,
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2.The Additional Director General of Police
- cum - Inspector General of Prison,
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3.The Chairman,
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Anna Salai, Chennai - 600 002.

+1 CC to M/s.SPL.GP (SR-32556[F] dated 26/10/2021)

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MGJ/PM(24.11.2021) 5P 5C