



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **23.08.2021**
CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P (MD)No.8565 of 2019
and
W.M.P (MD)No.6681 of 2019

WEB COPY

P.Ramasamy

... Petitioner

Vs.

The Additional Director General of Police
and the Inspector General of Prisons,
Department of Prisons,
CMDA Tower II,
Gandhi Irwin Road,
Egmore, Chennai-600 008.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned reference No.50528/EW.1/2017-9 dated 14.12.2018 issued by the respondent and quash the same as illegal and direct the respondent to consider afresh the petitioner's case in the light of judgment passed in (2015)2 SCC 377 Jogender Singh Vs. UT of Chandigarh and others to induct the petitioner as 2nd Grade Jail Warder.

For Petitioner : Mr.V.Rajiv Rufus

For Respondent : Mr.A.K.Manickam
Standing Counsel.

ORDER

This Writ Petition has been filed seeking the relief of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned reference No.50528/EW.1/2017-9 dated 14.12.2018 issued by the respondent and quash the same as illegal and direct the respondent to consider the petitioner's case afresh.

2.The petitioner applied to the Tamil Nadu Uniformed Services Recruitment Board for various post including Grade-II Jail Warder on 18.01.2018. The petitioner appeared for the written examinations and other tests as per the recruitment notification. The writ petitioner had cleared all the examinations and he was eligible for the post of Grade-II Jail Warder in the respondent Department. While that being so, the petitioner's appointment was not considered and the same was rejected on the ground that during the police enquiry it reveals that the petitioner was involved in a criminal case before the Eral Police Station, Tuticorin District. Based on



the said report, the impugned rejection order was passed. Challenging the aforesaid order, the writ petition is filed before this Court.

3. According to the petitioner, the aforesaid criminal case was lodged against the petitioner under Sections 294(b), 324, 506(ii) IPC @ 294(b), 324, 323, 506(ii) IPC in Crime No.429 of 2014. The aforesaid criminal case was registered as C.C.No.236 of 2015 on the file of the learned Judicial Magistrate Court, Srivaikundam. After considering the list of witnesses and evidences adduced before the Court on the side of both sides, the trial Court has come to the conclusion that the Criminal case registered as against the petitioner was ended in acquittal and therefore, no criminal case is pending as against the petitioner. According to the petitioner, the dispute had occurred only between the petitioner and the complainant and no corroborated evidence has been established before the Trial Court. Hence, the rejection order has been passed by the respondent by without taking note of the judgment passed by the Trial Court.

4. The learned Counsel appearing for the respondent states that the said dispute is purely a private dispute among the petitioner and the complainant and on perusal of the judgment it is seen that the Trial Court has acquitted the petitioner by giving benefit of doubt and it is not a honorary acquittal for the petitioner.

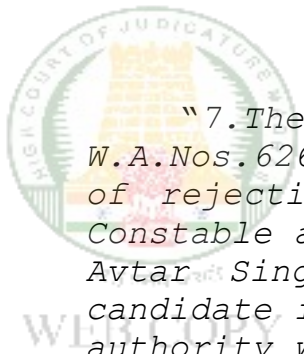
5. The learned Standing Counsel appearing for the respondent also has not disputed the said fact that it is not a case as against the petitioner involving moral turpitude or offence of heinous/serious nature. Therefore, the learned Standing Counsel sought disposal of the writ petition.

6. I am consciously considered the submissions of the parties and perused the materials on record.

7. The point for consideration in the case of the petitioner is that the writ petitioner has been involved in the Criminal case in Crime No.429 of 2014 for the offences under Sections 294(b), 324, 506(ii) IPC @ 294(b), 324, 323, 506(ii) IPC before the Eral Police Station, Tuticorin District wherein the petitioner was arrayed as an accused in the said criminal case. The case has been referred to the criminal Court in C.C.No.236 of 2015 on the file of the learned Judicial Magistrate Court, Srivaikundam. By judgment dated 14.10.2017, the trial Court acquitted the petitioner on the ground of benefit of doubt. The fact remains is that the said dispute is purely a private dispute among the petitioner and the complainant. On perusal of the nature of the offences, the petitioner is not involved in moral turpitude or offence of heinous/ serious nature.

8. This Court in W.P.No.31601 of 2017 has dealt with identical issue and the relevant portion of the order, dated 09.01.2020, are

<https://www.courts.madras.gov.in/cases/index.htm>



"7.The Division Bench of this Court in an identical issue in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, considered the scope of rejection of the candidature to the post of Grade II Police Constable and following the judgment of the Hon'ble Supreme Court in Avtar Singh case(supra), observed that the involvement of the candidate in a criminal case may have adverse impact, the appointing authority would take a decision after considering the seriousness of the case and directed the Director General of Police to consider the case of the petitioner therein in the light of the decision rendered by the Hon'ble Supreme Court in Avtar Singh case, wherein the Hon'ble Supreme Court held as under :

"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 he employee, at the time of taking the decision.

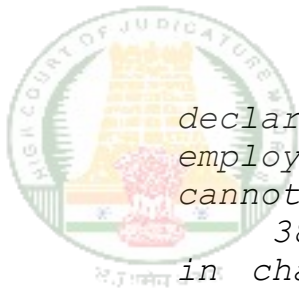
38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application / verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the 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 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 from 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.

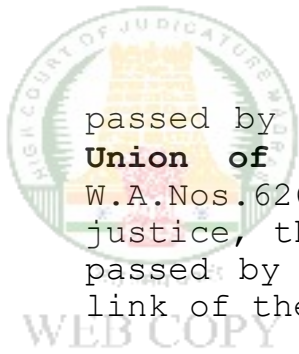
38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can 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 suppression veri or suggestio falsi, knowledge of the fact must be attributable to him."

9. Therefore, in the case on hand, charge sheet was filed against the petitioner and it was taken on file in C.C.No.236 of 2015 by the learned Judicial Magistrate Court, Srivaikundam and by judgment dated 14.10.2017 the aforesaid criminal case was ended in acquittal. The petitioner was given the benefit of doubt and he was not honorarily acquitted on considering the nature of the offences in which the petitioner was involved.

10. In the light of the decision of the aforesaid judgment

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



passed by the Hon'ble Supreme Court in the case of **Avtar Singh Vs. Union of India [(2016) 8 SCC 471]** as well as this Court in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, to meet the ends of justice, this Court is inclined to interfere with the impugned order passed by the authority and pass the following order on the same link of the order, dated 09.01.2020, in W.P.No.31601 of 2017:-

"The impugned order dated 14.12.2018 passed by the respondent is quashed and the respondent is directed to consider the petitioner's selection for the posts of Grade-II, Jail Warder afresh, and in accordance with law within a period of twelve(12) weeks from the date of receipt of a copy of this order."

11.Accordingly, this Writ Petition stands allowed with these directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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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

The Additional Director General of Police
and the Inspector General of Prisons,
Department of Prisons,
CMDA Tower II,
Gandhi Irwin Road,
Egmore, Chennai-600 008.

+1 CC to M/s.V.RAJIV RUFUS, Advocate (SR-27086[F] dated 24/08/2021)

+1 CC to M/s.GP (SR-27326[F] dated 25/08/2021)

W.P (MD) No.8565 of 2019

and

W.M.P (MD) No.6681 of 2019

23.08.2021

RD(17.09.2021) 5P 4C