



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.15726 of 2021 and

W.M.P(MD)No.12670 of 2021

P. Ramki

:Petitioner

.vs.

1. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
(old office complex of
Commissioner of Police)
Pantheon Road, Egmore, Chennai-600 008.

2.The Director General of Police of
Tamilnadu,
Office of the Director General of Police of
Tamil Nadu,
Kamarajar Salai, Mylapore,
Chennai - 600 004.

3.The Superintendent of Police,
Madurai District, Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings in R.C.No.B1/4339/2020-10 dated 02.07.2021and to quash the same as the illegal and arbitrary and consequently, directing the respondents to consider and appoint the petitioner in the post of Grade - II, Police Constable (Tamil Nadu Special Police).

For Petitioner : Mr. B. Saravanan

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
<https://hcservices.ecourts.gov.in/hcservices/> relating to the impugned order passed by the 3rd respondent in his



proceedings in R.C.No.B1/4339/2020-10 dated 02.07.2021 and to quash the same and consequently, direct the respondents to consider and appoint the petitioner in the post of Grade - II, Police Constable (Tamil Nadu Special Police).

2. The Petitioner has applied for the post of Grade II Police Constable under Tamil Nadu Special Police during the recruitment held in the year 2019 and he was selected provisionally. When the Petitioner was subjected to verification of character and antecedents and on final checking of documents during checking, the respondent / authorities found that the petitioner involved in a Criminal case in Crime.No.70 of 2019 on the file of the Sedapatti Police Station and and he was implicated as an accused No.7. After investigation, the Petitioner's case was dropped and final report has also been filed as against other accused before the learned Judicial Magistrate, Peraiyur. In the meantime, the third respondent had passed an order on 23.5.2020 rejecting the selection of the Petitioner and removed his name from the selection list. Challenging the same, the present Writ Petition has been filed.

3. According to the learned Additional Advocate General, the Petitioner's case was considered by the respondent / authorities and the same was rejected and on a perusal of the impugned order, the relevant portion of the order reads as follows:

"9. Hence, as per the direction of the Hon'ble Madurai Bench of Madras High Court order issued in the reference 2nd cited, the application, verification roll and connected records of Thiru. P. Ramki (Regn. No. 2408085), S/o. C. Paraman, Madurai District who had applied for the post of Gr.II PC on 20.03.2019 before the Tamil Nadu Uniformed services Recruitment Board and his application No... is 1000123001 and his Registration No. is 2408085 are carefully re-scrutinized and it is not feasible for consideration of appointment as Gr.II PC for the year 2019 as per Rule 14(b) of TNPSS Rules as well as the Hon'ble Supreme Court direction and Hon'ble High Court directions and Chief Office instructions as mentioned stated above. Hence, representation of Thiru.P. Ramki (Regn.No.24088085) requesting for appointing as Gr.II PC for the year 2019 is hereby rejected."

4. A perusal of the above impugned order reveals that the petitioner was originally arrayed as accused No.7 and after investigation, his name was dropped and a final report has also been filed as against the other accused before the learned Judicial Magistrate, Peraiyur. The decision rendered in Judgment of

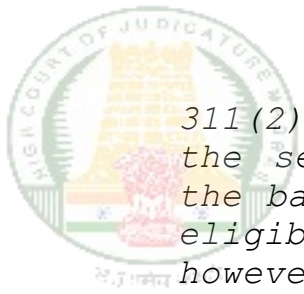


the Hon'ble Supreme Court reported in **2016 (8) SCC 471 in the case of Avtar Singh Vs. Union of India** and the relevant portion reads as follows:

"23. 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.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article



311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

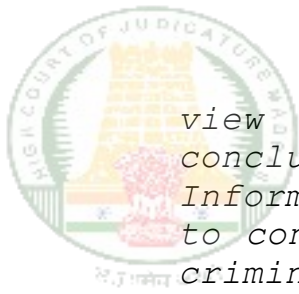
26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. 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:

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

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 : -

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.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits"

5. The decision of the Division Bench of this Court in W.A (MD)No.3877 of 2019 dated 13.11.2019 and the relevant paragraph 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."

6. From the above, it is seen that the respondents have not given any reason in the impugned order and in the light of the decision in the case of Avthar's singh case and decision of the Division Bench of this Court in W.A(MD)No.3877 of 2019 dated 13.11.2019, there is no hesitation for this Court to quash the impugned order.

7. Accordingly, the impugned order is set aside and the writ petition is allowed and the matter is remanded back to the third respondent to consider the matter afresh and pass orders taking note of the decisions cited supra, as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

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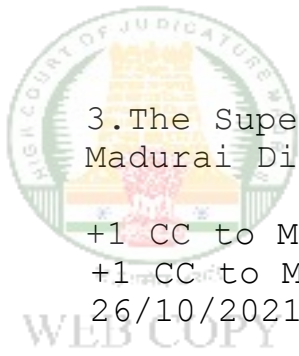
Sub Assistant Registrar(CS)

vsn / trp

To

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
(old office complex of
Commissioner of Police)
Pantheon Road, Egmore, Chennai.

2. The Director General of Police of Tamilnadu,
Office of the Director General of Police of Tamil Nadu,
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Chennai - 600 004.



3.The Superintendent of Police,
Madurai District, Madurai.

+1 CC to M/s.SPL.GP (SR-32565[F] dated 26/10/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-32666[F] dated
26/10/2021)

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