



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.20249 of 2021

and

W.M.P.(MD)Nos.16918 and 16919 of 2021

WEB COPY

P.Thangapandi

... Petitioner

versus

1. The Director General of Police,  
Mylapore,  
Chennai - 600 004.

2. Tamil Nadu Uniformed Service  
Recruitment Board,  
Rep. By its Member Secretary,  
Egmore,  
Chennai - 600 008.

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

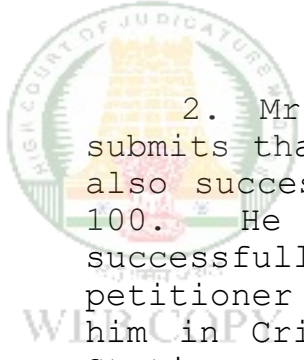
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of rejection passed by him vide his proceedings in Na.Ka.No.A5/19292/2019, dated 21.06.2021 and quash the same as illegal and arbitrary and consequently, direct the respondents to appoint the petitioner in the post of Grade II Police Constable based on the Provisional Selection list published by the second respondent in the light of the order passed in the case of Avtar Singh vs. Union of India and others reported in 2016 (8) SCC 471 or in the post of Grade II Jail Warden or Fireman by following the Tamil Nadu Jail Subordinate Service Rules or Tamil Nadu Fire Subordinate Service Rules respectively within the time frame stipulated by this Court.

|                 |   |                                                                                                            |
|-----------------|---|------------------------------------------------------------------------------------------------------------|
| For Petitioner  | : | Mr.G.Thalaimutharasu                                                                                       |
| For Respondents | : | Mr.Veera Kathiravan,<br>Additional Advocate General<br>assisted by Mr.A.K.Manickam,<br>Government Advocate |

### ORDER

This Writ Petition has been filed as against the order dated 21.06.2021 passed by the third respondent rejecting the candidature of the petitioner for the selection process of Grade-II Police Constable in the year 2019.



2. Mr.G.Thalaimutharasu, learned counsel for the petitioner submits that the petitioner had participated in the written test and also successfully completed the same by securing 73.0 marks out of 100. He had also participated in Physical Endurance Test and successfully completed the same. However, the candidature of the petitioner was rejected by referring a criminal case pending against him in Crime No.92 of 2016 on the file of Thisaiyanvilai Police Station.

3. According to the learned counsel for the petitioner, the case in Crime No.92 of 2016 was quashed by this Court in Crl.O.P. (MD)No.4020 of 2020 vide order dated 04.03.2020. The certificate verification was made only on 21.11.2019. This petitioner has also placed the order passed by this Court in Crl.O.P.(MD)No.4020 of 2020. However, the third respondent, by the impugned order dated 21.06.2021, rejected the candidature of the petitioner.

4. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents submits that the petitioner was involved in a case in Crime No.92 of 20216 and the case was pending till 04.03.2020. However, in the application filed by the petitioner for the post of Grade-II Police Constable, on 16.03.2019, he has mentioned as if there is no criminal case pending against him and that apart, the case was also quashed on the ground of limitation and it is not on merits.

5. The learned Additional Advocate General further submits that as per Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978, even if a person got acquitted, it must be a honourable acquittal and therefore, the pendency of the criminal case would be impediment for the petitioner in the selection process. The learned Additional Advocate General has also referred the Judgment of the Hon'ble Apex Court reported in **2016 (8) SCC 471 (Avtar Singh vs. Union of India)** in support of his contentions.

6. This Court paid its anxious consideration to the rival submissions made.

7. Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978, is extracted hereunder:

"14(b). No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

(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; and

(iii) that such a person does not have more than one



(iv) That he has not involved in any criminal case before police verification.

Explanation (1): A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant "turned hostile" shall be treated as person involved in a criminal case.

Explanation (2): A person involved in a criminal case at the time of Police Verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as 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."

8. This issue has also been considered in detail by the Hon'ble Apex Court in the case of **Avtar Singh vs. Union of India** reported in **2016 (8) SCC 471**, wherein, it has been 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 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 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."

9. The Hon'ble Apex Court has clearly mentioned in clause 38.7, that if there is any false information furnished in the application, the employer shall pass appropriate orders cancelling the candidature.

10. In this case, the petitioner has failed to inform the criminal case pending against him in the application filed by him on 16.10.2019. In view of the order passed by the Hon'ble Apex Court in **Avtar Singh vs. Union of India** reported in **2016 (8) SCC 471**, the petitioner is not entitled for the relief as prayed for in the writ petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

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,  
Mylapore, Chennai - 600 004.
2. The Member Secretary,  
Tamil Nadu Uniformed Service Recruitment Board,  
Egmore, Chennai - 600 008.
3. The Superintendent of Police,  
Thoothukudi District, Thoothukudi.

+1 CC to M/s.SPL GP ( SR-34595[F] dated 16/11/2021 )

+1 CC to M/s.G. THALAIMUTHARASU, Advocate ( SR-34714[F] dated 17/11/2021 )

W.P(MD)No.20249 of 2021  
15.11.2021KMV(CO)

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