



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.24745 of 2019

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... Petitioner

vs.

1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee Chengaalvaraya Naicker Maaligai,
Annasalai,
Chennai - 600 002.

2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

3.The State of Tamil Nadu,
Rep. by its Inspector of Police,
East Police Station,
Virudhunagar.

... 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 pertaining to the impugned proceedings in C.No.A2(1)/10/306/2018, dated 13.08.2019 conducted by the second respondent and to quash the same as illegal and arbitrary and consequently, direct the respondents to issue appointment order to the petitioner.

For Petitioner : Mr.V.R.Shanmuganathan
for Mr.V.Munisasamy

For Respondents : Mr.Veera.Kathiravan
Senior Standing Counsel
Assisted by
Mr.K.S.Selva Ganesan
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned proceedings, dated 13.08.2019, conducted by the second respondent and to direct the respondents to issue appointment order to the petitioner.

2.According to the petitioner, he was provisionally selected for appointment to the post of Grade II Police Constable (AR). The



second respondent by order, dated 27.11.2018, held that the petitioner could not be appointed to the police force. Challenging the said order, the petitioner has filed a Writ Petition in W.P(MD) No.13049 of 2019. This Court directed the learned Additional Advocate General, who appeared for the respondents, to verify whether any criminal case has been registered against the petitioner. On such direction, the learned Additional Advocate General produced a letter, dated 22.06.2019, before this Court, wherein it has been stated that no criminal case has been registered against the petitioner. This Court, by an order, dated 24.06.2019, recording the contents of the said letter and considering the Judgment of the Hon'ble Apex Court and this Court, set aside the order of the second respondent therein, dated 27.11.2018 and remanded the matter to the second respondent for fresh consideration. The second respondent again by the impugned order, dated 13.08.2019, held that the petitioner is not fit for the post of Grade II Police Constable (AR) for the year 2017-18. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner extensively referred to the impugned order, dated 27.11.2018 and the order of this Court in W.P(MD)No.13049 of 2019, dated 24.06.2019 and submitted that the present impugned order, dated 13.08.2019, is verbatim of the earlier impugned order, dated 27.11.2018, except minor addition. The learned counsel appearing for the petitioner further submitted that in the criminal case, the petitioner was acquitted Honourably and the contention of the respondents that the petitioner was acquitted giving benefit of doubt is not correct and referred to the Judgment of the criminal Court in C.C.No.148 of 2013, dated 03.12.2013 on the file of the learned Judicial Magistrate Court No.II, Virudhunagar and relied on the order of this Court reported in **2021 (3) CTC 735 [Manikandan Vs. Tamil Nadu Uniformed Services Recruitment Board and others]** and submitted that if a person honourably acquitted, there is no necessity to disclose the criminal case. The learned counsel appearing for the petitioner further submitted that in pursuance of the notification issued in the year 2020, the petitioner has applied to the post of Grade II Police Constable (AR) and the petitioner disclosed all the details in the application and prayed for setting aside the impugned order. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Apex Court reported in **2013 (1) SCC 598 [Deputy Inspector General of Police and another Vs. S.Samuthiram]**, with regard to the honourable acquittal and the relevant portion of the said Judgment reads as follows:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that

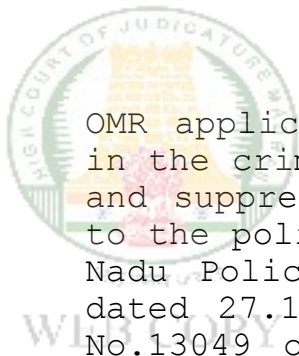


case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

4.Mr.Veera.Kathiravan, learned Senior Standing Counsel appearing for the respondents submitted that the petitioner was involved in a criminal case and was prosecuted for an offence under Section 380 I.P.C., and a candidate involved in a theft case cannot be appointed as Police Constable. For entering into the police service, a candidate is required to be of good character, integrity and clean antecedents. The petitioner was acquitted in a criminal case only by winning over the witness and not by honourable acquittal. The petitioner compromised with the complainant and the complainant turned hostile and therefore, he was acquitted. The petitioner suppressed his involvement in the criminal case and suppression gives suspicious on the petitioner. In view of the nature of offence, the petitioner is not a fit person to be appointed in the police force. The second respondent has given valid reason in the impugned order, dated 13.08.2019. The Writ Petition is devoid of merits and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

6.This Writ Petition is a second round of litigation. Admittedly, the petitioner was provisionally selected for appointment to the post of Grade II Police Constable (AR) for the year 2017-18, subject to police verification and medical examination. The second respondent, based on the police verification, passed an order, dated 27.11.2018, stating that the petitioner cannot be appointed to the police force on the facts mentioned in the said order. The second respondent has taken note of the fact that the petitioner was prosecuted in C.C.No.148 of 2013, dated 03.12.2013, on the file of the learned Judicial Magistrate Court No.II, Virudhunagar, for an offence under Section 380 I.P.C and the case was ended in acquittal. The petitioner while filling up



OMR application, had suppressed the fact regarding his involvement in the criminal case and due to his involvement in the criminal case and suppression of the fact, the petitioner could not be appointed to the police force as per Rule 13(e) of Special Rules for the Tamil Nadu Police Subordinate Service. Challenging the rejection order, dated 27.11.2018, the petitioner filed a Writ Petition in W.P(MD) No.13049 of 2019 before this Court. This Court, by order, dated 24.06.2019, set aside the order of the second respondent, taking note of the letter, dated 22.06.2019, produced by the learned Additional Advocate General, wherein it has been stated that no criminal case or civil case is pending against the petitioner. After setting aside the order of the second respondent, dated 27.11.2018, this Court remanded the matter to the second respondent with a direction to consider the case of the petitioner afresh. The second respondent again by the impugned order, dated 13.08.2019, rejected the petitioner's case stating that he is not fit for the post of Grade II Police Constable for the year 2017-18.

7.A combined reading of the impugned order of the second respondent, dated 27.11.2018 and the present impugned order of the second respondent, dated 13.08.2019, shows that the impugned order, dated 13.08.2019 is verbatim of the earlier impugned order, dated 27.11.2018. In the impugned order, the reason given by the second respondent for rejection on the ground that the petitioner has suppressed his involvement in the criminal case and the subsequent acquittal. The very same reason given by the second respondent in the earlier order, dated 27.11.2018, was set aside by this Court, considering the letter, dated 22.06.2019, produced by the learned Additional Advocate General. The second respondent has not denied the letter, dated 22.06.2019, produced by the learned Additional Advocate General. In the letter, dated 22.06.2019, produced before this Court on 24.06.2019, it has been mentioned as follows:-

"(3). In this connection, it is submitted that, at present, the above said candidate was involved in Pandalkudi P.S., Cr. No.171 of 2014 under Section 41(1)(a) Cr.P.C on 15.11.2014 at 04.00 hrs he was taken custody for Preventive Arrest and the same was action dropped by the Sub-Inspector of Police, Pandalkudi P.S. After completion of enquiry, he was released on the same day.

(4). The Inspector of Police, Virudhunagar East Police Station and the Inspector of Police, Virudhunagar Rural Police Station had stated in their reports, dated 13.06.2019 that no criminal case is registered against Tr.T. Iyyappadoss. The Inspectors of Police, Special Branch, Virudhunagar submitted a report, dated 16.06.2019 that Tr.T. Iyyappadoss is not involved in any civil and criminal cases and does not belong to any communal and prohibited organizations".



8.Taking note of paragraph Nos.3 and 4 of the letter, dated 22.06.2019 extracted above, this Court by order, dated 24.06.2019, held as follows "Therefore, taking note of the facts and circumstances of the case, it is clearly revealed that there is no criminal case pending against the petitioner and he has not involved in any civil or criminal case. Therefore, this Court has no hesitation to set aside the impugned order, dated 27.11.2018 in C.No.A22(1)/10/306/2018 and the matter is remanded back to the second respondent to consider the matter afresh". If the letter, dated 22.06.2019, did not contain true facts or the same was issued by mistake, the second respondent ought to have brought to the notice of this Court by way of review and ought to have sought review of the order, dated 24.06.2019. Without doing so, the second respondent passed the impugned order, dated 13.08.2019, for the very same reason mentioned in the earlier impugned order, dated 27.11.2018, which was set aside by this Court. The impugned order passed by the second respondent is non-application of mind and the second respondent has not complied with the order of this Court, dated 24.06.2019 made in W.P(MD)No.13049 of 2019, in letter and spirit.

9.For the above reasons, the impugned order, dated 13.08.2019, passed by the second respondent is liable to be set aside and the same is set aside. The respondents are directed to issue appointment order to the petitioner.

10.With the above directions, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

// 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

1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee Chengaalvaraya Naicker Maaligai,
Annasalai, Chennai - 600 002.



2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

3.The Inspector of Police,
East Police Station,
Virudhunagar.

+1 CC to M/s.SPL GP (SR-20290[F] dated 25/06/2021)

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24.06.2021

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