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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 999 of 2020  
and  
C.M.P.No.12230 of 2020

Mr.T.Velusamy

...Appellant

-vs-

1. The Chairman,  
The Tamil Nadu Uniformed Services Recruitment Board,  
Old Cop Campus, Patheon Road,  
Egmore, Chennai - 600 008.
2. The Superintendent of Police,  
Dharmapuri District,  
Dharmapuri.
3. The Inspector of Police,  
Kadathur Police Station,  
Dharmapuri-635 303.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 27.04.2019 in W.P.No.34763 of 2018 and allow the Writ Appeal.

Prayer in W.P.No.34763 of 2018: Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.A3/2626/2018 dated 02.11.2018 on the file of the 2<sup>nd</sup> Respondent quash the same and direct the 2<sup>nd</sup> Respondent to place the petitioner's name in an appropriate place in the select list of "Grade II Police Constable", Grade II Jail Warder and Fireman for the year 2017-2018" along with his batch mates who were went for training on 01.12.2018 and award his consequential benefits.

For Appellant : Mr.G. Prabhakar

For Respondents: Mr.P. Ananda Kumar  
Government Advocate



## J U D G M E N T

S.VAIDYANATHAN., J  
and  
MOHAMMED SHAFFIQ., J

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The present Appeal has been preferred against the order of the learned Single Judge dated 24.07.2019 in W.P.No.34763 of 2018, in dismissing the Writ Petition filed by the Appellant/Writ Petitioner.

2.The Appellant/Writ Petitioner participated in the selection process to the Post of Grade II Police Constable, Grade II Jail Warder and Fireman for the year 2017-2018 and he was successful in the written examination and appeared for physical verification test. Though the Appellant/Writ Petitioner had completed the process of certificate verification, was waiting the appointment order, his candidature was rejected by the Second Respondent vide order dated 02.11.2018 on the ground that a criminal case against the Appellant/Writ Petitioner was pending in P.R.C.No.12/2018. In the said order, it is stated that there was a suppression of information in respect of involvement in the criminal case. It is further stated that according to Tamil Nadu Special Police Subordinate Service Rule No.13 (b) & (e), the following criterion should be taken into account while recruiting candidates for the post of Grade II constable:

- i. The candidate should not be involved in any Criminal case and his previous antecedent and conduct should be satisfactory and;
- ii.if the candidate is found involved in a criminal case, then the appointing authority can reject the application of the candidate.

3. According to the Appellant/Writ Petitioner, he has not at all involved in any criminal case, and the case in Crime No.41 of 2018 for the offence under Sections 341, 294b, 323, 109 I.P.C. and 3(1) of The Prevention of Damage to Public Property Act, 1984 has been falsely registered against him. But, the Competent Authority has erroneously come to the conclusion that the Appellant/Writ Petitioner is not suitable for appointment to the post of Grade II Police Constable in the Uniformed Services. It is further stated that the Appellant/Writ Petitioner has not suppressed any material fact and that the Criminal Court has honorably acquitted the Appellant/Writ Petitioner from all



charges, and hence the rejection of his candidature to the post of Grade II Police Constables is illegal. It is submitted that Learned Single Judge without considering the various judgments relied upon by the Appellant simply dismissed the W.P.No.34763 of 2018 on 27.04.2019

4.The learned Government Advocate appearing for the respondents vehemently contended that in terms of Explanation (2) of Rule 14 (b) of Tamil Nadu Special Police Subordinate Service Rules (TNSPSS), any person, who has involved in the criminal case cannot be considered for appointment to the post of Grade II Police Constable, Grade II Jail Warder and Fireman and hence, the case of the Appellant/Writ Petitioner was rightly rejected. In support of his contentions, he relied upon the following decisions of the Hon'ble Supreme Court:

(i) Union of India and Ors Vs. Methu Meda reported in (2022) 1 SCC 1.

(ii) State of Madhya Pradesh and Ors Vs. Abhijit Singh Pawar reported in 2018 (6) CTC 659.

5.He further contended that the Criminal Case ended in an acquittal on 26.11.2019 after the orders of the learned Single Judge and the learned Single judge, after taking note of the facts and rules applicable has rejected the case of the petitioner and the petitioner has no right to claim any benefit and he can claim right of appointment only by participating in the next recruitment.

6. Heard both parties. Perused the records.

7. It is not in dispute that the Appellant/Writ Petitioner has applied for the post of Grade II Police Constable, Grade II Jail Warder and Fireman for the year 2017-2018. Admittedly, a criminal case was pending in P.R.C.No.12/2018. It is also not in dispute that the Appellant/Writ Petitioner has suppressed the fact about the criminal case. It was argued on the side of the Appellant/Writ Petitioner that he has not suppressed any fact and he has been subsequently acquitted from the case and therefore his case should be considered positively. The said submission cannot be accepted for the reason that as, on the date of the pronouncement of the order dated 27.04.2019, the criminal case was pending against him and only thereafter ie., on 26.11.2019, the Appellant/Writ Petitioner got an order of acquittal in the Criminal Court. At the same time, the contention of the Government Advocate that a person who is involved in the criminal case will not be eligible for appointment at any point of time also cannot be accepted. Ofcourse, on the date of the order passed by the learned Single



Judge, the said contention may be correct, but, as of now, since the appellant has already been acquitted by the criminal Court there is no impediment for the respondents to consider his candidature. This Court feels it relevant to extract the Explanation (2) of Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules (TNSPSS), which is extracted below:

"Explanation (2): A person involved in criminal case at the time of police verification and the case has yet to be disposed of and subsequently ended in honorable acquittal or treated as a 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.A perusal of the Judgment of the Criminal Court dated 26.11.2019 would go to show that the prosecution has not proved the case beyond reasonable doubt as against the accused, thereby all the accused, including the Appellant were acquitted. For the sake of convenience. Paragraph Nos:13)iii) & 13)iv) of the said Judgment is extracted hereunder:

"13) iii) PW1 is the vital witness on the above said case. However, his statement and evidences were not substantially proved as against the accused in the above said occurrence as well as the offence. Initially, the case was registered U/s. 147 of IPC and later the same was removed. According to the statement of the PW1 apart from the accused, some other persons were also attacked the PW1. The Doctor deposed that the injury of the PW1 may also occur on a vehicle accident. Since, PW1 didn't have any external injuries in his body. In this complaint PW1 deposed that in the morning at 8 a.m. He had disputes with the accused person while taking reverse to his vehicle therefore, there is no substantial evidence that the injury was occurred only by the accused.

13) iv) After careful perusal of the documents and evidences in all aspects, it is clear that the prosecution failed to prove the case beyond the reasonable



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doubt U/s. 341 of IPC, that the accused 1 to 4 had intention to stop the PW-1 vehicle on 26.02.2018 at Kannan Malligai Store at 8 a.m and also the prosecution failed to prove the case U/s.294(b) r/w 109 of IPC as against the accused that they have used the filthy languages and unparliamentary words and accused A2 to A4 assisted the A1 in committed the offence. The prosecution fails to prove that the case against A1 to A4 attacked the PW1 and caused hurt and also the prosecution fails to prove the case against the A1 as he used the stone to damage and other accused assisted the 1<sup>st</sup> Accused. Therefore, the prosecution fails to prove the case. Hence, the issues properly solved by this court and acquitted based on the issues framed by the court and accordingly answered."

9.Further, in the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others Versus Abhijit Singh Pawar reported in 2018 (6) CTC 656, it has been held as follows.

"13. A three Judge Bench of this Court in Avtar Singh v. Union of India (supra) was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

38.We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1.Information given to the employer by a candidate as to conviction, acquittal or arrest,



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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



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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.



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

15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal



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under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability



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of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."

10. We have not come across any order passed by a Sessions Court or the Criminal Court acquitting the accused coined with the word Honorable acquittal, so as to quickly arrive at a decision whether it is a honorable acquittal or acquittal on benefit of doubt. It is true that if the charges are very serious in nature, certainly the candidature of a person cannot be considered for appointment to the post of Uniformed Services as observed by the Apex Court even in a case of compromise. However, when it is contested, and judgment rendered on a full-fledged trial, then the Court may come to the conclusion regarding the nature of acquittal, depending upon the facts of each case.

11. As stated supra, a reading of the Paragraph 13 (iii) and (iv) of the Judgment passed by the criminal Court, shows that there is no evidence to establish the case against Accused No.2, namely, the Appellant herein. But however, the Court has rendered a finding that there is a benefit of doubt and not an honorable one.

12. The Hon'ble Division Bench of this Court in the case of C.Surendhar Versus Director General of Police reported in 2019 (6) CTC 465 has considered the point with regard to Honorable Acquittal. The relevant portion is extracted hereunder:

"33. The question on 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 the Explanations and in our opinion, the crucial word which has to be taken into consideration to be



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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 necessarily 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 v. Union of India and others, 2013 (1) LLN 331 (SC) : 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 its 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 was involved in a case of violating a mere Traffic Rule or was involved in a heinous offence would



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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 Appellant 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."

13. Ofcourse, we find no error apparent on the face of the order of the learned Single Judge on the reasoning that the Appellant was not acquitted on the date of the order of the learned Single Judge, which ultimately ended in dismissal of the writ petition. However, taking note of the fact that there is an honorable acquittal by the Criminal Court with regard to the Appellant, the case of the Appellant can be considered, in the light of the Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules (TNSPSS) and the Appellant can be considered for appointment against the next vacancy in the category he belongs to by taking into account the selection process already undergone and the marks obtained by him, provided the petitioner satisfies all other conditions and does not involve in any other criminal case.

14. With the above observation and directions, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr/rgm



To:

1. The Chairman,  
The Tamil Nadu Uniformed Services Recruitment Board,  
Old Cop Campus, Patheon Road,  
Egmore, Chennai - 600 008.

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

3. The Inspector of Police,  
Kadathur Police Station,  
Dharmapuri-635 303.

+1cc to Mr.G.Prabhakar, Advocate, S.R.No.8468

W.A.No. 999 of 2020

KV(CO)  
RGA(15/03/2022) (17/03/2022)