



W.P. No. 5900 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 23.09.2022

Pronounced on : 02.12.2022

CORAM

**THE HON'BLE MR. T. RAJA,
ACTING CHIEF JUSTICE**

AND

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 5900 of 2019

and

W.M.P. No. 6738 of 2019

J.Ranjith Kumar

... Petitioner

-VS-

1. The Registrar General,
High Court Madras.

2. The Secretary,
Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Chennai – 600 003.

3. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Courts I) Department,
Fort St. George,
Chennai – 600 009.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in R.O.C. No. 9099/2017-Con.B1 dated 29.01.2019 and quash the same as illegal, incompetent and without jurisdiction, and further direct the Third Respondent to appoint the Petitioner as Civil Judge, Junior Division by issuance of a notification.



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For Petitioner : Mr. V.Raghavachari

For Respondents : Mr. B.Vijay (for R1)

Mr. V.Vaithyalingam (for R2)

Mr. P.Muthukumar,
Government Pleader (for R3)

ORDER

(Order of the Court was made by **P.D. AUDIKESAVALU, J.**)

We have heard Mr. V.Raghavachari, Learned Counsel for the Petitioner, Mr. B.Vijay, Learned Counsel for the First Respondent, Mr. V.Vaithyalingam, Learned Counsel for the Second Respondent and Mr. P.Muthukumar, Learned Government Pleader appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner challenges the proceedings in Official Memorandum Roc. No. 9099/2017-Con.B1 dated 29.01.2019 of the First Respondent in which he has been informed that he is not fit to be considered for the post of Civil Judge by direct recruitment in the Tamil Nadu State Judicial Service. It is the case of the Petitioner that in the application for recruitment to the post of Civil Judge submitted by him in pursuance of the Notification No. 08/2018 dated



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09.04.2018 issued by the Second Respondent, he has in the relevant column

truly disclosed the registration of a criminal case in Special C.C. No. 2 of 2012 on the file of the Mahila Court, Coimbatore for alleged commission of offences under Section 366-A and 376(1) of the Indian Penal Code, 1860, read with Section 3 of the Protection of Children from Sexual Offences Act, 2012, in which he has been acquitted by judgment dated 07.11.2014, but the impugned order has been passed causing grave prejudice to his career in life, apart from unlawfully denying his selection in the judicial service of the State.

3. The First Respondent resists the claim of the Petitioner by highlighting that though he has been acquitted in the criminal case, it has been discerned from the materials borne out of the record in those proceedings that it was not an 'honourable acquittal' as the prosecution did not take any steps to conduct the case effectively and totally abdicated the responsibility of conducting fair prosecution. Further, it is stated that the Petitioner had appeared both for the complainant and the accused in a criminal case in S.T.C. No. 689 of 2014 on the file of the Judicial Magistrate – I, Fast Tract Court – I, Erode under Section 138 of the Negotiable Instruments Act, 1881, as reflected in the judgment dated 02.03.2017 passed in that case, which is in violation of professional ethics and amounts to professional misconduct. It has been submitted that the Hon'ble



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Recruitment Committee of the High Court, having due regard to these relevant antecedents of the Petitioner, was of the considered opinion that the Petitioner was not fit and suitable for appointment to the post of Civil Judge and would disentitle him to be appointed as a Civil Judge, which has culminated in the impugned order.

4. The primordial attack of Learned Counsel for the Petitioner on the impugned order is that once the Petitioner has been acquitted of the charge for commission of an offence by the Criminal Court, it is not permissible for the High Court to express a different view on the culpability of the Petitioner in that case during recruitment for a judicial post. Similarly, it is contended that the High Court cannot assess breach of 'professional ethics' without any authority of law in such recruitment proceedings.

5. At the outset, it may be taken note of the fact that the impugned order has been passed determining the 'suitability' of the Petitioner for holding judicial office in the State, which certainly requires maintenance of higher standards of moral conduct in life than other forms of public employment. It would be beneficial in this context to refer to the recent decisions of the Hon'ble Supreme Court of India relating to assessment of 'suitability' for a post *viz-a-viz*



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involvement of the candidate in a criminal case, irrespective of its disclosure in

the application for recruitment made, which are extracted below:-

(i) ***Avtar Singh -vs- Union of India*** [(2016) 8 SCC 471]:

“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:

....

38.4.3. 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.”

(ii) ***Union Territory, Chandigarh Administration -vs- Pradeep Kumar***

[(2018) 1 SCC 797]:



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“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in **Commr. of Police -vs- Mehar Singh [(2013) 7 SCC 685]** and **State of M.P. -vs- Parvez Khan [(2015) 2 SCC 591]** cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be malafide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

....

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While



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deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.”

(iii) ***State of Rajasthan -vs- Love Kush Meena*** [(2021) 8 SCC 774]:

“24. Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere



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fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere by-stander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.

....

26. *The judgment in **Avtar Singh -vs- Union of India** [(2016) 8 SCC 471] on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.”*

(iv) **Union of India -vs- Methu Meda** [(2022) 1 SCC 1] :

“21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the



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charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate....”

- (v) **Satish Chandra Yadav -vs- Union of India** (Order dated 26.09.2022 in Civil Appeal arising out of Special Leave Petition (Civil) No. 5170 of 2021):

“69. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

....

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a



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criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

....

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted malafide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

In view of this incontrovertible legal position, it is beyond cavil that the authority making selection always has the right to consider the antecedents of a candidate so as to examine whether he is 'suitable and fit' for appointment to the post. It has not been shown that there has been any element of bias in the decision of the First Respondent or that the action of the First Respondent disqualifying the Petitioner for appointment to the judicial post suffers from



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any *malafides*. The point then boils down to the next question as to whether the disqualification of the Petitioner for appointment to the judicial post is based upon relevant considerations?

6. It is vehemently pleaded by Learned Counsel for the Petitioner that when the Petitioner has been acquitted in the criminal case, it would be extraneous to rely on his mere involvement in it as a factor for denying public employment to which he would be otherwise eligible. The decisions of the Hon'ble Supreme Court of India in *Mohammed Imran -vs- State of Maharashtra* [(2019) 17 SCC 696], *Joginder Singh -vs- Union Territory of Chandigarh* [(2015) 2 SCC 377] and *Anil Bhardwaj -vs- Hon'ble High Court of Madhya Pradesh* (Order dated 13.10.2020 in Civil Appeal No. 3419 of 2020) are cited where disqualification of candidates for mere involvement in a criminal case despite acquittal therein, have been set aside. However, the said rulings have been duly taken note by the Hon'ble Supreme Court of India in the subsequent pronouncement in *Satish Chandra Yadav -vs- Union of India* (Order dated 26.09.2022 in Civil Appeal arising out of Special Leave Petition (Civil) No. 5170 of 2021) referred supra in which it has been explained that each case should be scrutinized thoroughly by the concerned authority as the appointment ultimately made to the post has to inspire public confidence. It is evident in this



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case that after proper application of mind to the materials placed, the selection authority has arrived at the conclusion that the Petitioner had got himself involved in a serious and heinous offence of committing an act of physical violence upon a girl of 14½ years though he would claim that he was acquitted. Again, the representation said to have been made by the Petitioner as Advocate on behalf of the complainant as well as the accused in the same case arising from Section 138 of the Negotiable Instruments Act, 1881, has rightly been inferred to have been not 'ethical'. Viewed from that perspective, the occurrence of these incidents, which are not disputed by the Petitioner, could not have been discarded as trivial in nature in the process of assessing his 'suitability' for holding judicial office carried out by the First Respondent.

7. Though a vain attempt is made by the Petitioner to impeach the procedure of enquiry adopted by the First Respondent as not fair and reasonable, it is accepted that an enquiry had been conducted by the Hon'ble Recruitment Committee of the High Court in which the Petitioner had participated and his explanation had been heard for the adverse materials that had been relied against him, which adequately satisfies the requirements of a fair and reasonable procedure. The claim of the Petitioner that the scope of such enquiry should have been expanded by calling upon him to lead evidence by



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examining witnesses to disprove the inference sought to be drawn against him, is far fetched and cannot be countenanced.

8. It is lastly contended that in the recruitment made for the following year in the same post in the Notification No. 25/2019 dated 09.09.2019 issued by the Second Respondent contained a specific clause, which reads as follows:-

“Note: In the case of candidates who are convicted, acquitted, discharged, proceedings against whom are quashed, further proceedings closed under Section 258 Cr.P.C., investigation stopped under Section 167(5) Cr.P.C., proceedings closed under Section 468 Cr.P.C., their suitability is subject to the final approval of the High Court before their appointment.”

It is projected that in the absence of such clause in the Notification No. 08/2018 dated 09.04.2018 in which the Petitioner had participated in this case, he could not have been disqualified for appointment to the judicial post. In response thereto, it has been brought to notice by the First Respondent that it has been provided in clause 16(g) of the Notification No. 08/2018 dated 09.04.2018 as shown below:-

“If any dispute or question arises relating to disqualification/ suitability of the Candidates or interpretations of



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the Rules, the decision of the Hon'ble Chief Justice, High Court of

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The said condition certainly binds the Petitioner who had participated in that recruitment and he cannot wriggle out of the same.

9. In the upshot, the Writ Petition, which is devoid of merits, is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

(T.R., ACJ.) (P.D.A., J.)

02.12.2022

vjt

Index: Yes/No



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