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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.6847 of 2020
and W.M.P.No.8156 of 2020

1 Raffik Basha ...Petitioner

Vs.

1 The Director General of Police,
Dr. Radhakrishnan Salai, Chennai-4.

2 The Member Secretary,
Tamil Nadu Uniformed Services Recruitment
Board, Old Commissioner of Police Office
Campus, Pantheon Road, Egmore, Chennai-8.

3 The Superintendent of Police,
District Police office,
Thiruvannamali District.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the third respondent vide proceedings Na.Ka.No.A2(2)/09927/2019 dated 5.3.2020 and to quash the same and consequently direct the respondents to appoint the petitioner as Grade II Police Constable.

For Petitioner : Mr.S.Vijayakumar
For Respondent No.2 : Mr.P.Kumaresan, A.A.G.
For Respondent-1&3 : Mr.P.Balathandayutham,
Special Govt. Pleader

O R D E R

The issue involved in the writ petition is that the writ petitioner has applied for the post of Police Constable Grade II, he successfully passed written examination and also successfully come out from practical test and provisionally selected for the post of Police Constable Grade II. However, the selection was cancelled by the respondent by stating that



the petitioner did not disclose the pendency of the criminal case registered in Cr.No.542 of 2018 for the offence punishable under Sec.294(b) of I.P.C. Challenging the said order, the petitioner has filed the instant writ petition before this Court.

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2. The learned counsel Mr.Vijayakumar, has vehemently argued the matter by stating that the aforesaid criminal case was registered when the petitioner was aged 19 years and the criminal case was ended in acquittal before the Judicial Magistrate, Chengam by judgment dated 5.12.2019 made in C.C.No.106 of 2018. According to the learned counsel appearing for the petitioner, since the petitioner was acquitted by the trial Court in the aforesaid criminal case, there was no embargo to consider the petitioner's name for selection, as the petitioner has already passed written examination and practical test for selection to the post of Police Constable Grade II. According to the learned counsel appearing for the petitioner, non disclosure of pendency of criminal case in the application would not be fatal to the selection for the post of Police Constable Grade II. In support of his contention, he relied upon the judgment passed by the Division Bench of this Court in C.SURENDHAR VS. THE DIRECTOR GENERAL OF POLICE, Chennai-4 AND TWO OTHERS [W.A.No.3877 of 2019 dt.13.11.2019] wherein it has been categorically held as follows:

'32. However, the march of law does not rest there. The issues raised came to be considered later on and as per the judgments that have been cited at the bar, we find that they have been settled to the effect that the acquittal in a criminal case is not conclusive of the suitability of a candidate for a particular post. The antecedents of a candidate have to be verified and more particularly, in a case where it is a matter of Uniformed Service of the State Police''.

34. 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



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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.''

3. The learned Additional Advocate General appearing for the respondents has clearly stated in the counter affidavit that the notification regarding recruitment to the post of Police Constable Grade II was published in the year 2019 and the application has been submitted by the petitioner on 30.3.2019. According to the Additional Advocate General appearing for the respondents, a criminal case has been lodged against the petitioner in Cr.No.542 of 2018 for the offence punishable under Sec.294-b of I.P.C. and the same was taken on the file of the Judicial Magistrate, Chengam on 6.10.2018 and the same is pending before the Judicial Magistrate Court, Chengam at the time of submitting the application by the petitioner. The said fact was not disclosed in the application submitted by the petitioner. The aforesaid criminal case was ended in acquittal before the trial Court on 5.12.2019 in C.C.No.106 of 2018.

4. The petitioner submitted the application on 30.3.2019. Therefore, it is clear that as on the date of submitting the application, the aforesaid criminal case was pending against the petitioner before the trial Court. The entire selection process has already been completed on 26.11.2019 and the provisional list was published on 4.2.2020. Therefore, according to the Additional Advocate General appearing for the respondents as per Rule 13 (b) and (e) of the Special Rules of Tamil Nadu Police Subordinate Rules, if the criminal case is pending against the applicant at the time of submitting the application, such candidature cannot be considered for selection to the post of Police Constable Grade II and in the event of the criminal case ended in acquittal, his candidature can be considered for the next selection. Therefore, the writ petition is liable to be dismissed.

5. Heard the rival submissions of the parties and perused the materials available on record.

6. As per Rule 13 (b) and (e) of the Special Rules of Tamil Nadu Police Subordinate Rules, if the criminal case is



pending against the applicant at the time of submitting the application, such candidature cannot be considered for selection to the post of Police Constable Grade II and in the event of the criminal case ended in acquittal, his candidature can be considered for the next selection.

7. The Hon'ble Supreme Court while dealing with an identical issue in State of M.P. Vs. Abhijit Singh Pawar [2018 (6) CTC 659 = 2018 (18) SCC 733, the Hon'ble Supreme Court settled the proposition of law that the employer is still have the right to consider the antecedents and the suitability of the candidate and held as under:

'14. 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 under Section 320(8) CrPC, the law declared by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], specially in paras 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.

15. The reliance placed by Mr Dave, learned Amicus Curiae on the decision of this Court in Mohd. Imran [Mohd. Imran v. State of Maharashtra, Civil Appeal No. 10571 of 2018, order dated 12-10-2018 (SC)] is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of the said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an autorickshaw



registered against the petitioner in Cr.No.542 2018 for the offence punishable under Sec.294(b) of I.P.C. and the same was pending on the file of Judicial Magistrate, Chengam and the petitioner has not disclosed the aforesaid criminal case in his application. In the aforesaid background, the petitioner was selected for the post of Grade II Police Constable and thereafter, the criminal case was ended in acquittal.

10. As per Rule 13(b) and (3) of the Special Rules of Tamil Nadu Police Subordinate rules and as per the decision cited supra, the petitioner is not entitled to claim appointment on the basis of selection. Therefore, there is no merit in the writ petition. However, the writ petitioner can participate in the next selection process if otherwise eligible.

11. Consequently, the writ petition stands dismissed with the above observations. No Costs. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Director General of Police,
Dr. Radhakrishnan Salai, Chennai-4.
2. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai-8.
3. The Superintendent of Police, District Police office,
Thiruvannamali District.

+1 CC to Mr.S.Vijayakumar, Advocate sr 13942

+1 CC to The Government Pleader sr 14630.

W.P.No.6847 of 2020
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AJS (CO)
SP(24/03/2022)