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W.P.No.10172 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**W.P.No.10172 of 2022
and WMP Nos.9869 and 9871 of 2022**

R.Gobi

... Petitioner

Versus

1. The Superintendent of Police,
Vellore District, Vellore.

2. The Director General of Police,
Mylapore, Chennai-4

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying this Court to issue a writ of Certiorarified Mandamus to call for the
records relating to the Endorsement of the 1st respondent dated 25.02.2022
issued in Na.Ka.No.A2(3)333/25838/PV/2021 and quash the same and
consequently to direct the respondents particularly the 1st respondent to appoint
the petitioner as Grade II Constable (Armed Reserve-Men) with all
consequential benefits including on part with his batch mates in all aspects.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.Hassan Fizal

AGP

ORDER

This writ petition has been filed challenging the order dated
25.02.2022 passed by the first respondent deleting the petitioner's name from
the provisional selection list for appointment to the post of Grade II Constable



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(Armed Reserve-Men) on the ground that he has been pleaded guilty to a criminal offence in Cr.No.433 of 2018 for the offence punishable under Sections 279, 337, 279, 338 IPC r/w 181(3) of Motor Vehicles Act and has paid a fine amount of Rs.2,300/-, which is in excess of Rs.2,000/-, beyond which, a person cannot be appointed as per the judgment of the Hon'ble Supreme Court in the case of *Pawan Kumar vs State of Haryana and another reported in 1996 (4) Supreme 764*. The petitioner has challenged the impugned order on the following grounds:-

- a) The offence, to which, the petitioner has pleaded guilty, is a traffic violation offence and it is a trivial offence and therefore, the removal of the petitioner's name from the Provisional Selection List by the respondents is arbitrary and illegal.
- b) There was no wilful suppression by the petitioner in the application, seeking for appointment as Grade II Constable, as according to the petitioner, he was unaware that for such a trivial offence, he has to disclose the same in the application.
- c) The petitioner has voluntarily disclosed to the police during police verification that he was earlier involved in traffic violation offence, for which, he



has pleaded guilty, for which, he has paid a total fine amount of Rs.2,300/-, involving three sections of IPC.

2. A counter affidavit has been filed by the first respondent, denying the contentions of the petitioner. They would reiterate that the petitioner has wilfully suppressed material facts in the application by not disclosing that he was involved in a criminal offence and has paid fine amount of Rs.2,300/- in excess of Rs.2,000/-. They would also state that only after police verification of the petitioner, they came to know that the petitioner was involved in a criminal offence and has paid the fine amount of Rs.2,300/-. According to them, only in accordance with the Tamil Nadu Police Subordinate Service Rules, the petitioner's name has been removed from the Provisional Selection List for appointment as Grade II Constable (Armed Reserve-Men) and there is no arbitrariness or illegality committed by them.

3. Heard Mr.P.I.Thirumoorthy, learned counsel for the petitioner and Mr.Hassan Fizal, learned Additional Government Pleader for the respondents.

4. Learned counsel for the petitioner drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of **Pawan Kumar vs**



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State of Haryana and another reported in 1996(4) Supreme 764 and would

submit that the said judgment was passed in the year 1996 and that a direction was issued to the respondents therein that a provision need to be made that punishment of fine upto a limit of Rs.2,000/- on a summary/ordinary conviction shall not be treated as conviction at all. According to the learned counsel for the petitioner, in the above said judgment, the fine of Rs.2,000/- was fixed in the year 1996. Since there has been a lapse of more than 26 years, the same yardstick cannot be followed in the year 2022. Learned counsel for the petitioner also drew the attention of this Court to a recent judgment of the Hon'ble Supreme Court in the case of ***Umesh Chandra Yadav vs The Inspector General and Chief Security Commissioner, RPF, Northern Railway, New Delhi and Others in Civil Appeal No.1964 of 2022 dated 02.03.2022*** and would submit that in the said decision, following the judgment of the Hon'ble Supreme Court in the case of ***Avtar Singh vs Union of India and Others reported in 2016 8 SCC 471***, has held that when a criminal case is registered against a juvenile, it is indisputedly a special circumstance which the authority ought to have taken into consideration before cancelling the juvenile's appointment. Learned counsel also drew the attention of this court to the principles summarised in ***Avtar Singh vs Union of India and Others reported in 2016 8 SCC 471*** and in particular, he referred to paragraph 38.4.1



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of the said judgment and would submit that in a case of trivial 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 the post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. He would submit that since the petitioner is similarly placed as the offence involved is a trivial one and will not render the petitioner (incumbent) unfit for the post for which he is seeking, deletion of his name from the Provisional Selection List is arbitrary and illegal.

5. Per contra, learned Additional Government Pleader appearing for the respondents would reiterate the contentions of the counter affidavit filed by the first respondent and once again submit the following:-

- a) Suppression of material facts in the application with regard to the involvement of the petitioner in the criminal offence;
- b) Payment of fine of Rs.2,300/- for the offence by pleading guilty;
- c) Only in accordance with the Tamil Nadu Police Subordinate Service Rules, the petitioner's name was deleted



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from the Provisional Selection List and the impugned order came to be passed and therefore, there is no arbitrariness and illegality in the same.

6. This Court has given careful consideration to the contentions of the respective affidavits as well as the submissions made by the respective counsels and thereafter observes the following:-

7. Admittedly, the criminal offence, committed by the petitioner, is only a trivial offence as the offence involves violation of Traffic Rules and on account of the petitioner's rash and negligent driving, a case in Cr.No.433 of 2018 was registered for the offence punishable under Sections 279, 337, 238 IPC r/w 181 (3) of Motor Vehicles Act and STC No.672 of 2019 was assigned. The petitioner has pleaded guilty for the said offences and has paid fine of Rs.2,300/- for the all the offences put together. It is natural for any person to plead guilty in such kind of traffic offences.

8. The petitioner in his affidavit, filed in support of the petition, has stated that he was unaware that he has to disclose such a trivial offence, that too, an offence involving traffic violation in his application, seeking for appointment as Grade II Constable (Armed Reserve-Men). It is also stated in the affidavit, filed in support of the petition that the petitioner has voluntarily



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disclosed to the police at the time of police verification that he was involved in a traffic offence, for which, he has pleaded guilty and for which, he paid a fine amount of Rs.2,300/-. Further, as seen from the impugned order, the petitioner has not been afforded any opportunity of hearing even though it may be contended that there is no requirement for any opportunity of hearing, but being a trivial offence, involving traffic violation, the respondents ought to have considered the said fact and afford an opportunity of hearing to the petitioner, which they have not done so in the instant case. The only ground for removal of the petitioner's name from the Provisional Selection List is that the petitioner has paid fine amount of Rs.2,300/- and has pleaded guilty for traffic violation. The decision rendered by the Hon'ble Supreme Court in the case of ***Pawan Kumar vs State of Haryana and another reported in 1996(4) Supreme 764***, which is the basis for passing of the impugned order cannot be applied to the facts of the instant case. The yardstick fixed in the year 1996 by the Hon'ble Supreme Court cannot be made applicable to a case of the year 2022. In the aforesaid decision, a direction was issued by the Hon'ble Supreme Court to make a provision that punishment of fine upto a limit of Rs.2,000/- on a summary/ordinary conviction shall not be treated as conviction at all. The maximum fine amount of Rs.2,000/- fixed by the Hon'ble Supreme Court cannot be used as an yardstick in the year 2022 as the cost of living index may have



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increased several times since then (1996).

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9. In fact, in the recent decision of the Hon'ble Supreme Court in its recent judgment in the case of ***Umesh Chandra Yadav vs The Inspector General and Chief Security Commissioner, RPF, Northern Railway, New Delhi and Others in Civil Appeal No.1964 of 2022 dated 02.03.2022*** by following the judgment of the Hon'ble Supreme Court in the case of ***Avtar Singh vs Union of India and Others reported in 2016 8 SCC 471***, has held that in a case of juvenile, who has committed a criminal offence, it is indisputedly a special circumstance and therefore, without affording him any reasonable opportunity, the cancellation of his appointment is unsustainable. In the aforesaid decision, the Hon'ble Supreme Court has also extracted the conclusion made in the case of ***Avtar Singh vs Union of India and Others reported in 2016 8 SCC 471*** and one of the conclusions made in Paragraphs **38.4.1** in the said judgment is that “ *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.*”

10. In the case on hand also, the offence committed by the petitioner



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is a traffic violation offence and is trivial in nature. He has not caused injury/death to any person on account of his traffic violation. He has pleaded guilty and has paid fine amount of Rs.2,300/- though it may be in excess of Rs.2,000/- fixed by the Hon'ble Supreme Court in the year 1996 in the case of ***Pawan Kumar vs State of Haryana and another reported in 1996 (4) Supreme 764***. As observed earlier, the yardstick applied in the year 1996 cannot be made applicable for a case of the year 2022.

11. Admittedly, the offence committed is trivial in nature and the petitioner has given satisfactory reasons in the affidavit filed in support of the writ petition that he did not deliberately suppress his involvement in a traffic violation offence in his application and he has also categorically stated that he has voluntarily disclosed his involvement in the criminal offence to the police at the time of police verification. No contra evidence has also been produced by the respondents to disprove the statement of the petitioner.

12. For the foregoing reasons, this Court is of the considered view that the impugned order, removing the name of the petitioner from the Provisional Selection List, is arbitrary and illegal and has been passed by total non-application of mind due to the following facts:-



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a) There was no deliberate suppression by the petitioner about his involvement in the traffic violation offence which resulted him in pleading guilty and paying fine amount of Rs.2,300/-;

b) The petitioner has voluntarily disclosed to the police at the time of police verification about his involvement in the traffic violation offence and has also disclosed the fact that he paid the fine amount of Rs.2,300/- by pleading guilty to the said trivial offence.

c) The offence committed by the petitioner is only trivial in nature and it will not have any bearing on his employment, for which, he is seeking.

d) The judgment of the Hon'ble Supreme Court in the case of *Pawan Kumar vs State of Haryana and another reported in 1996 (4) Supreme 764*, referred to supra does not have any bearing for an incident



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that has happened in the year 2022, for which, the petitioner has paid the fine amount of Rs.2,300/-. Therefore, the yardstick of Rs.2,000/- as fine amount fixed by the Hon'ble Supreme Court in the year 1996 cannot be made applicable to a case of the year 2022 when there has been a lapse of almost 26 years due to the increase in the cost of living index and other factors.

13. Learned counsel for the petitioner, on instructions, would submit that the petitioner shall not claim any consequential benefits including a claim that he should be treated on par with his batch mates as per the Provisional Selection List . The said undertaking is recorded by this Court. However, in view of the aforementioned reasons, the impugned order has to be necessarily quashed and the writ petition has to be allowed.

14. Accordingly, the impugned order dated 25.02.2021 passed by the



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ABDUL QUDDHOSE, J

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first respondent is hereby quashed and the writ petition is allowed. The respondents shall issue appointment order to the petitioner for the post of Grade II Constable (Armed Reserve-Men) within a period of four weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

12.10.202

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Index: Yes/No

Speaking Order/Non-Speaking Order

To

1. The Superintendent of Police,
Vellore District, Vellore.
2. The Director General of Police,
Mylapore, Chennai-4

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