



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON 08.12.2021
ORDER DELIVERED ON 05.01.2022

CORAM:

THE HON'BLE MRS.JUSTICE V. PARTHIBAN

W.P.NO.12523 OF 2021
AND
W.M.P.NOS.13304 & 13305 OF 2021

C.Dinesh

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of General of Police,
State of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
- 3.The Deputy Inspector of General of Police,
Western Zone, Coimbatore.
- 4.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Campus,
Egmore, Chennai - 600 008.
- 5.The Superintendent of Police,
Tiruppur District, Tiruppur.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 3rd respondent in Na.Ka.No.A1/3731/2021 dated 25.05.2021 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to appoint the petitioner in the post of Sub-Inspector.

For Petitioner : Mr.Arun Anbumani
for Mr.R.Jayaprakash



For Respondents

: Mr.P.Kumaresan
Additional Advocate General
assisted by Mr. L.S.M. Hasan Fizal
Additional Government Advocate

WEB COPY

O R D E R

This writ petition has been filed challenging the impugned order passed by the 3rd respondent in Na.Ka.No.A1/3731/2021 dated 25.05.2021 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to appoint the petitioner in the post of Sub-Inspector.

2. The 4th respondent Recruitment Board issued a Notification No.2/2019 dated 08.03.2019 calling for common recruitment to the post of Sub-Inspector of Police (Taluk Armed Reserve and Tamil Nadu Special Police). The petitioner has applied in response to the notification and was permitted to participate in the selection process. The petitioner passed the initial written examination and has also come out successfully in the physical test conducted by the Board. When he was awaiting appointment order to be issued, the impugned order was passed on 25.05.2021, rejecting the candidature of the petitioner on the ground that he had suppressed the criminal case which was registered against him earlier to his participation in the selection.

3. According to the petitioner, a case in Crime No.289 of 2014 was registered on the file of the Inspector of Police, Kangeyam Police Station for the alleged offences under Section 323, 294(b) and 506(i) of I.P.C. The said case was taken on file as C.C.No.132 of 2017 on the file of the learned Judicial Magistrate, Kangeyam. After the trial, the petitioner was acquitted from the charges vide order dated 25.04.2018.

4. According to the petitioner, the criminal case ended in acquittal as early as on 25.04.2018, but the notification was issued only on 08.03.2019. At that time, there was no pendency of criminal case against him. Even, otherwise a petty quarrel had resulted in registration of the FIR and the criminal case, but eventually, the petitioner was acquitted of all the charges and has come out unscathed in the proceedings.

5. The learned counsel Mr.Arun Anbumani, who appeared for the petitioner has drawn the attention of this Court to number of decisions passed by this Court in such matters allowing the writ petition and interfering with the cliched and hackneyed reasoning of the appointing authority while considering such matters. The learned counsel referred to one such decision in W.P.No.8135 of 2020 dated 04.12.2020. The learned counsel would



draw the attention of this Court to paragraph Nos.24 to 26, which are extracted hereunder.

24. In one other recent decision of this Court in W.P.No.10788 of 2020 dated 06.10.2020, yet again this Court has reminded the authority has to how they should discharge the discretion vested in them. In this decision, this Court has inextenso extracted the decision of the Hon'ble Supreme Court in Avtar Singh's case and also the observation of the learned Division Bench of this Court referred to above and finally, held as under in paragraph Nos. 23,24,25 and 26:

"23. The above decision is a pointer to the authorities of the importance of the discretionary power vested in them and the exercise of such power in matters like the present one.

24. In cases of this nature, when the discretion is vested with the authorities, they are expected to adopt circumstantial flexibility and cannot meaninglessly take refuge under the Rule position and reject all cases by painting every candidate with same brush, who was involved in the criminal case or failed to disclose the same in the application form. Such exhibition of pedantic-application of mind would amount to apathetic surrendering of the discretion, so vested, to the inanimate letters of the rule, giving a go by to the spirit of the rule which was essentially brought into existence to address the complex and variegated claims of the candidates concerned, falling with the purview of the Rule.

25. Coming back to the case on hand, the petitioner herein has admittedly cleared all the stages of selection and has also been provisionally selected, which facts are not in dispute. The objection for her appointment is only on the stated grounds, which have been dealt with by this Court in the above paragraphs. For a simple quarrel in the family, which is common in our social settings i.e., mother-in-law, sisters-in-law on one side versus daughter-in-law might have attracted the mischief of two provisions 294(b) and 323 of I.P.C., but considering the involvement of the



WEB COPY

petitioner in a family squabble and branding the petitioner as a candidates of criminal antecedents and hence not fit for the appointment in the police force is a apologetic display of pretentious sanctimony of officious disposition. In such circumstances, the involvement of the petitioner in the criminal case and the conviction perforce cannot operate as a blanket bar under the rule and the petitioner be denied of the appointment. The petitioner's aspiration to become a member of the police force cannot be nipped at the budding stage of her blossoming life by holding on to so called criminal antecedents against her and disqualifying her for a life time. If such action is upheld, it would amount to Mccarthyism to have a full play in infringing the fundamental right of aspiring young people who seek employment in public service. Therefore, the authorities need to have a larger understanding of the future of the candidates and also need to exhibit judicious application of mind in segregating the deserving cases from undeserving ones so that the sublime purpose and the noble ends of justice is better served. The art of being wise is the art of knowing what to over look, as the saying goes and the authorities would be looked upon with deferential esteem, if they act wisely in these matters, towards advancing the cause of good public administration.

26. In the above circumstances, this Court has no hesitation in allowing the writ petition and hence the impugned order in Na.Ka.No.F1/5482/2019 dated 13.03.2020 is hereby set aside and the second respondent is directed to process the candidature of the petitioner and if she is otherwise fit for appointment to the post to which she has applied, grant her appointment on the basis of her selection in pursuance of the notification issued by the Uniformed Service Board in 2019. The second respondent is directed to pass appropriate orders within a period of four



WEB COPY

(4) weeks from the date of receipt of a copy of this order.”

25. The above decisions have dealt with as how to discharge the discretionary power by the authority while making objective assessment vis-a-vis dealing with such claims as in the present case. Merely by exhibiting rule oriented pedantic approach time and again by the authority in rejecting the candidatures of the candidates who are involved in criminal cases and being acquitted on the basis of “benefit of doubt”, without appreciating the nature of offence and the facts which led to acquittal etc., tantamounts to relegating the spirit of the rule to the back burner and enforcing the inanimate letter of the rule in negation of the fundamental rights of the candidate. Such approach in the considered opinion of this Court would invariably result in undermining procedural fairness and denial of objective consideration towards the claim of the candidates who seek appointment in Police Service or Public Service.

26. To hold every person involved in a criminal case as a criminal across the spectrum, regardless of the nature of offence charged, is a sordid reflection of a warped understanding of the jaded administration, branding someone a criminal and barring him from seeking public employment for his life time, even if the offences were trivial in nature, amounted to integrating “Mccarthyism” into the decision making process in the police administration.

6. The learned counsel would also refer to another decision of this Court order dated 16.12.2020 passed in W.P.No.7229 of 2020 and he would rely on paragraph Nos.9 to 12 which are extracted hereunder.

“9. This Court has considered the submissions of the learned counsel for the petitioner and the learned Special Government Pleader for the respondents. In matters of this nature, particularly, in the recruitment of Police force, this Court has passed a number of orders emphasizing the importance of proper application of mind on the part of the authority who is vested with the power of assessment of suitability of the candidates. Time and again this Court has held on the basis of the Hon'ble Supreme Court's all encompassing decision on the subject matter as to how to deal with the claim of the candidates who are involved in criminal cases, on various aspects.



WEB COPY

10. But, despite all the decisions, it is unfortunate that the authorities have been passing orders almost in a cyclostyled form quoting the same decisions and rule position without disclosing any material that the authority had taken into consideration each candidates' involvement in the criminal case, nature of the offences, the manner in which he or she was acquitted and whether the non disclosure of the involvement was material, intentional or deliberate. There are several aspects like these to be considered before the candidature could be rejected. But, unfortunately the authorities have been adopting a mechanical approach in rejecting the candidatures merely on the basis of the involvement in the criminal cases.

11. The important discretion vested in the authority would have no meaning if such cliched approach is adopted in rejecting the candidature across the Board based on the mere fact of pending criminal case or involvement in the criminal case or non disclosure of the involvement in the criminal case by the candidate concerned. The discretion so vested is not to be surrendered apathetically in violation of the fundamental rights of the candidates in being considered for public employment. In the opinion of this Court, every involvement of the candidate in criminal case does not become an absolute bar from consideration in public employment, even in the Police Force, unless the authority comes to a valid conclusion that the appointment of the candidate in the Police Force is against public interest. Such conclusion must be reflected in the order of the authority, while rejecting the candidature of the candidates concerned. Otherwise such orders are liable and vulnerable to interference by this Court.

12. Even this Court earlier has allowed few writ petitions by setting aside the similar type of orders by the authorities and unfortunately without taking any cue from those decisions, the authorities are still passing routine administrative orders without disclosing an iota of application of mind, in terms of the ruling of the Hon'ble Supreme Court of India and by this Court."

7. According to the learned counsel, when a similar writ petition was allowed in respect of one A.Manikandan, it was appealed against in W.A.No.2486 of 2018. The Division Bench of



WEB COPY

this Court vide order dated 24.01.2019 has dismissed the appeal by confirming the order of the learned Single Judge of this Court. The Division Bench has extracted the relevant succinct and crucial significant observations of the Hon'ble Supreme Court of India which holds the field in respect of the subject matter of the present writ petition as well. It is useful therefore, to refer and extract paragraph Nos.8 and 9 of the Division Bench as follows:-

8. Perusal of the above offences would show that they are punishable with imprisonment or with fine thereby they are trivial offences.

9. A Hon'ble Division Bench of this Court in W.A.(MD)Nos.753 of 2015, by judgement dated 06.09.2017, observed as under:

"4. The Hon'ble Apex Court in Avtar Singh v. Union of India (cited supra) culled out the principles governing the cases involved in suppression of materials facts, such as conviction rendered by the Criminal Court etc., It also taken note of non declaration of pendency of the criminal cases. The following is the direction given by the Apex Court finally:-

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

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



WEB COPY

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 recourse 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 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.



WEB COPY

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.

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.

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

5. In the case on hand, the writ petitioner was admittedly involved in a trivial case. Furthermore, on a perusal of the records we find that he has not ticked the column as yes with respect to



WEB COPY

involvement of criminal case and the First Information Report. As rightly submitted by the learned counsel for the writ petitioner, it is not a case of willful suppression. It has come out of ignorance, otherwise he would have tick the column as yes, which raised question as to whether the applicant is convicted or not, apart from pendency of the criminal case. One more thing has to be seen that the complainant in the criminal case has become his wife. The conviction is only with respect to payment of Rs.500/-. Even on the date of filing of the charge sheet, the conviction was rendered on payment. The writ petitioner did not want to go through the Trial without knowing the implication that may arise in future. The affidavit filed by the writ petitioner would show that he is in penury having married the lady who given the complaint. After giving the complaint, not only the writ petitioner, even the complainant is suffering with two minor children.

6. As per paragraph 38.4.a mentioned in the judgment referred supra certainly leverage has been given to a case trivial in nature. The appellants have not exercised their discretion which in our considered view is not correct. In fact the appellants have proceeded on the footing that respondent is not entitled for such discretion."

8. The learned counsel, apart from the above orders would also refer to a decision of the learned Single Judge in a batch of writ petition in W.P.No.2795 of 2013 etc. dated 22.03.2013. The observation of the learned single Judge in paragraph Nos.24 to 28 is important for the present case, as the allegation against the petitioner was that he did not disclose his involvement in the criminal case. Paragraph Nos. 24 to 28 are extracted herein:-

"24. The question, whether a person, who was acquitted of criminal charges prior to commencement of the selection process, was considered by this Court in W.P.No.2100 of 2008 (Navaneethakrishnan Vs. The Secretary to Government and another), decided on 12.02.2013 and this Court was pleased to lay down, that when a person is acquitted or criminal charges prior



WEB COPY

to the selection process had commenced, it cannot be said that any criminal case is pending against the person or he is involved in any criminal case.

25. The stand of the State Government as noticed above was, that the petitioners were admittedly involved in the criminal case, therefore, are not entitled to challenge the impugned orders passed in consonance with the Rule 14 read with the explanation added thereto, which was upheld by the Hon'ble Full Bench of this Court.

26. Learned Additional Government Pleader vehemently contended, that this Court held the amended Rule 14(b) of the Special Rules for Tamil Nadu Police Subordinate Services Rules, to be a valid piece of legislation, therefore action taken under Rule 14(b) does not call for any interference by this Court in exercise of writ jurisdiction.

27. On consideration, I find force in the contention raised by the learned counsel for the petitioners. It would be seen, that in all these cases, the petitioners were acquitted in criminal cases much before commencement of process of selection. Acquittal in criminal cases means, that the charges framed against the accused itself were bad, therefore, it cannot be said, that persons were involved in any criminal case. Therefore, Rule 14(b) can only be interpreted to mean, that in cases, which are pending at the time for selection, and in acquittal by giving benefit of doubt, then a person can be denied the right of appointment by considering him to be involved in criminal cases, but not in a case, where much before the start of selection process, the person is acquitted, even by giving benefit of doubt.

28. As already noticed above, persons in whose case criminal cases was closed and "Mistake of Fact", also by no stretch of imagination, can be said to be involved in criminal case to deny them public appointment, as has been done by the respondents."

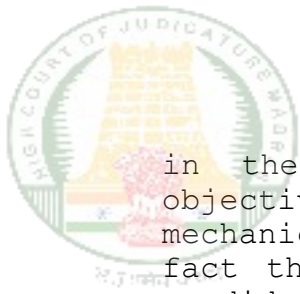
According to the learned counsel in all fours, the present writ petition is covered.



9. Mr. P.Kumaresan, Additional Advocate General assisted by Mr.L.S.M. Hasan Fizal, Additional Government Advocate entered appearance on behalf of the respondents and a detailed counter affidavit has been filed. In fact, an attempt was made in the counter affidavit to differentiate between the cases relied on by the learned counsel for the petitioner and the present one. This Court does not consider that this case is materially different from the other case laws cited above. The fact of the matter is that the petitioner was acquitted of the charges by the criminal court and the IPC sections invoked in the case of the petitioner were relating to a petty quarrel involving the petitioner. He was acquitted of the charges vide judgment dated 25.04.2018, much prior to the commencement of the selection process held pursuant to the notification dated 08.03.2019. As rightly held as above by the learned Judge of this Court, once the acquittal had taken place much prior to the issuance of the notification, failure to mention his involvement in the criminal case, cannot construed to be material and such candidates cannot said to be involved in criminal cases, even if they were acquitted on the ground of benefit of doubt.

10. In any event, in terms of the landmark ruling of the Hon'ble Supreme Court in Avtar Singh's case (2016 (8) SCC 471), even if disclosure of the involvement in the criminal case would not have rendered the candidate unfit for the post in question, denying an opportunity to the petitioner herein to serve in Police Force in the face of the charges against him being flimsy, not serious enough and further branding the petitioner as criminal for him to be debarred from gaining employment in Police Force at all for his life time is opposed to good conscience and justice. The minimum what is expected of the higher officials is to apply their mind to each and every case, where the candidate was involved in the criminal case and the discretion cannot be applied uniformly and rigidly leading only to the rejection of the candidature solely on the basis of the involvement in the criminal case and not disclosing about the same in the application form. Such perfunctory discharge of the discretion reflects not only non-application of mind but also amount to abdication of onerous responsibility rest on the shoulders of the higher officials concerned.

11. In the light of the above facts and the rulings, the 3rd respondent who passed the impugned order, failed to appreciate the nature of the criminal charges as against the petitioner and the acquittal by criminal Court which had become final. As could be seen from the charges, it was only petty quarrel which led to the registration of the FIR in Crime No.289/2014 which in any event, ended in acquittal, ultimately. When the discretion is vested with the authority to take a decision about the validity of the candidature of the candidates who are involved



in the criminal cases, the discretion must be discharged objectively and validly. Such discretion cannot be mutely and mechanically surrendered to inanity merely on the basis of the fact that there was an act of suppression on the part of the candidate in not disclosing the criminal case pending or framed against him.

12. On the whole, this Court is of the considered view that the petitioner has made out a case for grant of relief and the impugned order passed by the 3rd respondent is liable to be interfered with.

13. Accordingly, the impugned order passed by the 3rd respondent in Na.Ka.No.A1/3731/2021 dated 25.05.2021 is hereby set aside and the 4th respondent/ The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board is directed to publish the result of the petitioner on the basis of his selection to the post of Sub-Inspector of Police and forward his name to the Appointing Authority for further action on their end.

14. The 4th respondent is further directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

15. The appointing authority, on receipt of the communication from the 4th respondent, shall pass appropriate orders within a period of four weeks, granting appointment to the petitioner on the basis of his selection in the subject recruitment.

16. This Writ Petition is allowed in terms of the above directions. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

vsi/gba

To

1.The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.



2.The Director of General of Police,
State of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

3.The Deputy Inspector of General of Police,
Western Zone, Coimbatore.

4.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Campus,
Egmore, Chennai - 600 008.

5.The Superintendent of Police,
Tiruppur District, Tiruppur.

+1cc to Mr.R.Jayaprakash, Advocate SR.No.808

+1cc to the Government Pleader SR.No.1141

W.P.No.12523 of 2021
and
W.M.P.Nos.13304 & 13305 of 2021

AK-II(CO)
RVM(21/01/2022)