

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.13812 OF 2020

AND

W.M.P.NOS.17173 & 17174 OF 2020

M.Kumaran

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Represented by its Home Secretary,
Fort St. George,
Chennai.

2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
Chennai - 18.

3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
Chennai - 18.

4. The Superintendent of Police,
Villupuram District.

... Respondents

PRAYER:-

This Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records in the impugned order C.No.A2/102002019, dated 23.3.2020, on the file of the fourth respondent and to quash the same and to direct the respondents 1 to 3, to hold an enquiry dispassionately either through a screening committee or otherwise, within a fixed time frame.

For Petitioner : Mr.Sudharshana Sunder

For R1 & R4 : Mrs.S.Anitha
Special Government Pleader

For R2 & R3 : Mr.R.Kumaresan
Additional Advocate General
Assisted by
Mr.J.Daniel
Government Advocate

O R D E R

The relief sought for in the writ petition is for issuance of Mandamus to call for the records in the impugned order C.No.A2/102002019, dated 23.3.2020, on the file of the fourth respondent and to quash the same and to direct the respondents 1 to 3, to hold an enquiry dispassionately either through a screening committee or otherwise, within a fixed time frame.

2.The brief facts of the case:

(a).The writ petitioner has applied to the post of Police Constable Grade-II, Tamil Nadu Special Police, pursuant to the notification issued by the Tamilnadu Uniformed Services Recruitment Board, Chennai for the year 2019 and he successfully passed in all the tests and selected for this post.

(b).At the time of police verification, the fourth respondent found that the petitioner was involved in Crime No.293/2018 registered by the Milam Police Station for the offence under Sections 294(b), 323, 324 and 506(ii) of IPC and the petitioner was arrayed as second accused and he was arrested and sent to the judicial custody. The aforesaid criminal case was taken up for trial in C.C.No.100 of 2018 before the learned Judicial Magistrate No.II, Tindivanam and thereafter, compromise has been arrived between the parties and the learned Judge has passed the Judgment by acquitting the petitioner on benefit of doubt. Despite the fact that the petitioner was acquitted in the Criminal Case and he is entitled to the Post of Grade-II Police Constable, but, the respondent by its impugned order dated 23.03.2020, refused to appoint the petitioner, based on the judgment passed by the learned Judicial Magistrate Court, Thindivanam. Hence, the instant writ petition is filed.

3. The learned counsel for the petitioner would submit without considering the factual matrix of the case, on the date of submission of application, the criminal case against the petitioner was ended in acquittal, the respondent has passed the impugned order dated 23.03.2020 and subsequently, the said judgment was also challenged before this Court by the petitioner in Crl.A.No.115/2021 and by order dated 05.03.2021, this Court has set aside the acquittal on benefit of doubt and granted honorary acquittal to the petitioner and further, this Court has

held that the complaint preferred by the complainant is falsely foisted against the petitioner and hence, it is required for the reconsideration of the impugned order passed by the respondent. Therefore, there is no legal embargo on the respondents to reconsider the petitioner to the post of police constable.

4. Further, the learned counsel for the petitioner submitted that Rule 14(2) in Sub-Rule (b)(iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978 will not apply to the facts of this case on the ground that on the date of submitting the application, no criminal case was pending against the petitioner and aforesaid criminal case filed against the petitioner was ended in acquittal. Therefore, the order passed by the respondent dated 23.03.2020 is liable to be set aside.

5. The learned Additional Advocate General appearing for the respondents 2 & 3 relied upon the order passed by this Court in W.P.No.9621 of 2020, dated 24.07.2020, wherein, the petitioner was acquitted from the criminal case in C.C.No.32 of 2015, but the same has not been disclosed by the petitioner and thereby, the respondents therein refused to consider the appointment of the petitioner therein to the post Grade-II Constable; further, in the above said writ petition, this Court relied upon the decision of the Hon'ble Full Bench of this Court in the case of Manikandan and others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai - 2008 (2) CTC 97, wherein, this Court had considered the scope of the Rule 14(2) in Sub-Rule (b)(iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules, 1978; and also relied upon the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar - 2018 (18) SCC 733, has dismissed the writ petition by stating that despite disclosure of antecedents by a candidate, it is well within the ambit of the employer to consider the same as well as the suitability of the candidate. It was also made clear in the judgment that the employer has every right to take into account the severity of charges, nature of acquittal, etc., to suit the job profile, for which the selection is undertaken.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. On perusal of the records it is seen that the writ petitioner was arrayed as second accused in Crime No. 293/2018, Milam Police Station for the offence under Sections 294(b), 323, 324 and 506(ii) of IPC and the said crime number was taken on file as C.C.No.100 of 2018, on the file of the learned Judicial Magistrate No.II, Tindivanam and he was acquitted from the

aforesaid case on the ground of benefit of doubt. Challenging the said acquittal on the ground of benefit of doubt, the State has preferred Criminal Appeal in CrI.A.No.115 of 2021 and this Court has allowed the appeal by setting aside the judgment of the Magistrate Court in respect of finding of the acquittal on the ground of benefit of doubt. Thus, according to the petitioner he has already been acquitted from the Criminal Court. Therefore, there is no bar for considering the petitioner in the light of the judgment reported in 2016 (8) SCC 471 - Avatar Singh Vs. Union of India.

8. Therefore, this Court has safely come to the conclusion that without considering the said fact, the respondent had passed the impugned order. This Court finds some force on the contention of the learned counsel for the petitioner. Thus, the impugned order is liable to be quashed.

9. Accordingly, this Court directs the fourth respondents to consider the request made by the petitioner afresh in the light of the decision of this Court W.P.(MD).No.15726 of 2021, dated 25.10.2021, and to pass appropriate orders on its own merits and in accordance with law as early as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, the impugned order is quashed and this writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Dua

To

1. The Home Secretary,
The State of Tamil Nadu,
Fort St. George,
Chennai.
2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
Chennai - 18.

3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
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4. The Superintendent of Police,
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+1cc to the Government Pleader, S.R.No.29397

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W.M.P.NOS.17173 & 17174 OF 2020

KK(CO)
PBS/18/07/2022