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W.P.No.13755 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**W.P.No.13755 of 2020
and WMP No.22777 of 2021**

S.Dinesh

... Petitioner

Versus

1. The Director General of Police,
Post Box No.601, DrRadhakrishnan Salai,
Mylapore, Chennai-600 004.
2. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai-600 007.
3. The Deputy Commissioner of Police,
Commissioner Office,
Vepery,
Chennai-7

.... 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 on the file of the 1st respondent in relation to the impugned order vide Rc.No.396907/Rect.1(2)/2020 dated 28.08.2020 and quash the same and further direct the 1st respondent to appoint the petitioner to the post of Group II Police Constable.



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For Petitioner : Mr.R.Karthikeyan
For Respondents : Mr.Hasan Fizal
AGP

ORDER

This writ petition has been filed challenging the order dated 28.08.2020 passed by the first respondent, in which, the petitioner's name has been removed from the selection list.

2. The petitioner was earlier selected provisionally for the post of Grade II Police Constable. His name has now been removed from the Provisional Selection List on the ground that the petitioner has suppressed the fact that he was involved in a criminal case.

3. The respondents have applied Rule 13 of the Tamil Nadu Police Subordinate Service Rules for passing the impugned order. As per the said Rule, no person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that he is not involved in any criminal case before police verification.

4. According to the petitioner, the dispute, which culminated in a



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criminal case, is a civil dispute involving his neighbour. According to the petitioner, on the date of the submission of the application, seeking for appointment, there was no charge sheet filed against the petitioner and therefore, he was under the impression that there was no necessity for him to disclose the details of the criminal offence in his application form. It is also stated by the petitioner that subsequent to the lodging of the criminal complaint, a charge sheet was filed in C.C.No.31 of 2017 before the learned Judicial Magistrate, Cheyyar. Subsequent to the filing of the charge sheet, the defacto-complainant and the petitioner (accused) have entered into a compromise and based on the said compromise, the petitioner has been acquitted by order dated 05.10.2017 by the learned Judicial Magistrate, Cheyyar. The petitioner contends that having been acquitted and the offence being trivial in nature, the applicability of Rule 13 of the Tamil Nadu Police Subordinate Service Rules to the case of the petitioner will not arise.

5. This is the second round of litigation. Earlier, a similar order was passed which was challenged by the very same petitioner and the matter was remanded back to the respondent for fresh consideration on merits and in accordance with law by order dated 07.01.2020 in W.P.No.27926 of 2017.



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According to the petitioner, by a stereotype order, the earlier order has been reproduced in the impugned order dated 28.08.2020, under which, the petitioner has been removed from the Provisional Selection List for the post of Grade II Police Constable. According to the petitioner, the impugned order is arbitrary and illegal.

6. A counter affidavit has been filed by the respondents reiterating the contents of the impugned order. According to them, only in terms of Rule 13 of the Tamil Nadu Police Subordinate Service Rules, on account of the suppression of material fact viz., the petitioner has suppressed the fact that he was involved in a criminal case, the impugned order dated 28.08.2020 came to be passed, under which, the petitioner has been removed from the Provisional Selection List. According to them, there is no infirmity in the impugned order.

7. Learned counsel for the petitioner reiterated the contents of the affidavit filed in support of the writ petition during the course of his submissions. In support of his contentions, he has also relied upon the following decisions:-



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<i>S.No</i>	<i>Date</i>	<i>CITATION</i>	<i>DESCRIPTION OF DOCUMENTS</i>
1	13.11.2019	W.A.No.3877 of 2019	C.Surendhar vs The Director General of Police and 2 others(Para 33-35)
2	04.12.2020	W.P.No.8135 of 2020	K.Balachandran vs The Chairman TN Uniformed Service Recruitment Board and 2 Others9Paras.17,18,21,26 and 27)
3	16.12.2020	W.P.No.7229 of 2020	E.Sugumar vs The State of Tamil Nadu rep by the Secretary to Government and 2 others (Para 14)
4	16.08.2021	W.P.No.13569 of 2020	K.Gopi vs The State of Tamil Nadu rep by the Secretary to Government and 2 Others (Para 22 & 23)

8. After relying upon the aforesaid decisions, learned counsel for the petitioner would submit that the petitioner having been acquitted of a trivial offence, the respondents ought to have considered the same in the light of the aforesaid decisions and not passed the impugned order.

9. Per contra, learned Additional Advocate General appearing for the respondents would reiterate the contents of the counter affidavit filed by the respondents before this Court. According to him, admittedly, the petitioner has not disclosed in his application form about the pendency of the criminal case against him and therefore, the respondents have rightly applied Rule 13 of the Tamil Nadu Police Subordinate Service Rules and have passed the impugned order.



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10. Admittedly, a criminal case was pending against the petitioner at the time of submission of the application form by the petitioner, seeking for appointment to the post of Grade II Police Constable which arose from a dispute with his neighbour and a case in Cr.No.24 of 2016 was registered for the offences punishable under Sections 147, 148, 294-b, 323, 324 and 506(i) IPC. Thereafter, charge sheet was filed against the petitioner and the same was taken cognizance by the Judicial Magistrate, Cheyyar, Thiruvannamalai District in C.C.No.31 of 2017. It is also an admitted fact that subsequently, the defacto-complainant and the petitioner who was arrayed as A.4 have compromised amongst themselves on 05.10.2017 and based on the said compromise, the Judicial Magistrate, Cheyyar, Thiruvannamalai has acquitted the petitioner by judgment dated 05.10.2017. Admittedly, the offences are not serious offences. In the decisions relied upon by the learned counsel for the petitioner referred to supra, it has been held consistently that a person should not be disadvantaged merely because frivolous complaints were lodged and not pursued with any seriousness either by the defacto-complainant or by the law enforcement authority. It has also been held in one of the decisions that the authority will have to appreciate the circumstances and the facts which led to the acquittal.



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11. In the case on hand, the nature of offence, for which, the petitioner was earlier charged and the reasons for his acquittal given by the Judicial Magistrate, Cheyyar have not been considered in the impugned order though it has been admitted that the petitioner was acquitted of the said offences.

12. Being a trivial offence and that too when the petitioner has been acquitted, Rule -13 of the Tamil Nadu Police Subordinate Service Rules will have to be interpreted by this Court favouring the petitioner who seeks employment in public service. It is also possible in many cases that frivolous complaints may be filed and the respondents cannot blindly apply Rule -13 of the Tamil Nadu Police Subordinate Service Rules without any independent assessment with regard to the circumstances, which led to the lodging of such complaints. If that is allowed to happen, innocents, who apply for getting appointments in public service, will also be affected and that is not the intention of Rule 13 of the Tamil Nadu Police Subordinate Service Rules . Only to weed out the real criminals, the said Rule has been framed.



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13. For the foregoing reasons and in view of the fact that the petitioner has not deliberately suppressed the existence of the criminal case against him at the time of submission of his application form to the post of Grade II Police Constable and that too, when the said criminal case has ended in acquittal, based on a compromise reached with the defacto-complainant, this Court is of the considered view that by total non-application of mind to the aforementioned facts and by wrongly interpreting Rule 13 of the Tamil Nadu Police Subordinate Service Rules, the impugned order has been arbitrarily passed on 28.08.2020 removing the petitioner's name from the Provisional Selection List to the post of Grade II Police Constable.

14. Learned counsel for the petitioner, on instructions, would also submit that the petitioner shall not claim any consequential benefits including 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.



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15. Accordingly, the impugned order dated 28.08.2020 is hereby quashed and the writ petition is allowed. The respondents shall issue appointment order to the petitioner for the post of Grade II Police Constable within a period of twelve weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner shall not claim any seniority benefits on par with his batch mates as per the Provisional Selection List .

No costs. Consequently, connected miscellaneous petition is closed.

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sr

Index: Yes/No

Speaking Order/Non-Speaking Order

To

1. The Director General of Police,
Post Box No.601,DrRadhakrishnan Salai,
Mylapore, Chennai-600 004.
2. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai-600 007.
3. The Deputy Commissioner of Police,
Commissioner Office,
Vepery, Chennai-8

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ABDUL QUDDHOSE, J

SR

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