



W.P.No.15900 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.8.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.15900 of 2021
and W.M.P.No.16800 of 2021

1 V.Ramesh ... Petitioner

Vs.

- 1 The Member Secretary
Tamilnadu Uniformed Service Recruitment
Board, No.807 P.T. Lee Chengalvaraya
Naicker Maaligai, Anna Salai, Chennai - 2.
- 2 The Director General of Police,
Office of The Director General of Police,
No.1, Dr. Radhkrishnan Salai,
Mylapore, Chennai -4.
- 3 The Deputy Inspector General
of Police, Vellore Range, Vellore.
- 4 The Superintendent Of Police
Office Of The Superintendent Of Police
Thiruvannamalai District Thiruvannamalai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in Na. Ka.No. A2/5178/2021 dated 08.07.2021 on the file of the 3rd respondent and quash the same and direct the respondents to appoint the petitioner for the post of Sub Inspector.



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For Petitioner : Mr.M.Selvan
For Respondent No.1 : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mrs.Sowmi Dattan
For Respondents 2 to 4 Mr.P.Ganesan, G.A.

ORDER

The petitioner, challenging the impugned order of rejection dated 8.07.2021 passed by the third respondent, has filed the present writ petition.

2. The petitioner has applied for the post of Grade II Police Constable in pursuant to notification issued by the respondent in the year 2019, qualified in the written examination, Physical Endurance Test and he got provisionally selected for the said post. However, to his shock and surprise, the second respondent has passed the impugned order of rejection dated 8.07.2021 on the ground that the petitioner has suppressed the involvement in the criminal case in Crime No.187/2016 for the commission of offences under Sections 376, 294(b), 506(i) of I.P.C. and Sec.6 of POCSO Act. Challenging the same, the petitioner has filed the instant writ petition.

3. The learned counsel for the petitioner submits that the petitioner was acquitted in the criminal case, vide judgment dated 23.07.2018 in SC.No.16/2018 on the file of the Sessions/Fast Track Mahila Court,



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Tiruvannamalai and the said judgment was delivered before the notification and therefore, there is no criminal case pending against the petitioner on the date of submitting application by the petitioner and therefore, there is no legal impediment for the respondents to consider the request of the petitioner for appointment to the post of Grade II Police Constable and prays for quashing of the impugned order of rejection.

4. Mr.P.Kumaresan, learned Additional Advocate General for the respondents submits that at the time of submitting the application, the petitioner has not disclosed about his involvement in the criminal case in the relevant column of the application submitted for the post of Grade II Police Constable. As per Rule 14(b) (ii) & (iv) of Tamilnadu Special Police Subordinate Service, a candidate being selected for the post of Grade II Police Constable should not involved in any criminal case and having good character. The judgment of acquittal has been passed only on benefit of doubt and therefore, the respondents have rightly rejected the candidature of the petitioner for appointment to the post of Grade II Police Constable for the year 2019.

5. This Court has considered the submissions made and also perused the materials available on record.



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6. A perusal of the impugned order shows that the criminal case in S.C.No.16 of 2018 on the file of Sessions Court/Fast Track Mahila Court, Tiruvannamalai for the commission of offence under Sec.376, 354, 294(b), 506(i) of I.P.C. and Sec.4 & 8 of POCSO Act 2012 was ended in acquittal by judgment dated 23.07.2018. The judgment passed by the Sessions Court on the basis of benefit of doubt and considering the antecedents of the petitioner, the impugned order has been passed. According to the petitioner, in the aforesaid criminal case, the petitioner was arrayed as A2 for the offence under Sec.294(b) and 506 (i) of I.P.C. Alone, whereas in respect of A-1, the case was registered for the offence under Sec.376, 354, 294(b), 506(i) of I.P.C. and Sec.4 & 8 of POCSO Act 2012 and therefore, there is no legal embargo to consider the petitioner's name for selection to the post of Grade II Police Constable. However, it is the stand of the respondents that the petitioner has suppressed the involvement in the criminal case and further, the acquittal in the criminal case on the ground of benefit of doubt cannot be a ground to claim appointment.

7. This Court in W.P.No.31601 of 2017 has dealt with an identical issue and the relevant portion of the order, dated 09.01.2020, are extracted hereunder:

“7.The Division Bench of this Court in an identical issue in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, considered the scope of rejection of the candidature to the post of Grade II Police



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Constable and following the judgment of the Hon-ble Supreme Court in Avtar Singh case (supra), observed that the involvement of the candidate in a criminal case may have adverse impact, the appointing authority would take a decision after considering the seriousness of the case and directed the Director General of Police to consider the case of the petitioner therein in the light of the decision rendered by the Hon-ble Supreme Court in Avtar Singh case, wherein the Hon-ble Supreme Court held as under :

“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 of 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 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 recourses 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



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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 from 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.

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."

8. In the light of the decision of the Hon"ble Supreme Court in the case of ***Avtar Singh Vs. Union of India [(2016) 8 SCC 471]*** as well the Division



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Bench of this Court in W.A.Nos.626, 627, 816 to 825 and 159 of 2014, followed by this Court in W.P.No.8565 of 2019 dated 23.08.2021 [**P.Ramasamy v. The ADGP, Chennai**], to meet the ends of justice, this Court is inclined to interfere with the impugned order passed by the respondents.

9. Accordingly, the impugned order dated 08.07.2021 passed by the third respondent in Na.Ka.No. A2/5178/2021 is set aside and the second respondent is directed to consider the petitioner's selection for Grade II Police Constable afresh and pass orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands allowed with the above directions. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes / No

Internet : Yes / No

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To

- 1 The Member Secretary
Tamilnadu Uniformed Service Recruitment Board,
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- 2 The Director General of Police,
Office of The Director General of Police, No.1, Dr. Radhkrishnan Salai,
Mylapore, Chennai -4.



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- 3 The Deputy Inspector General of Police, Vellore Range, Vellore.
- 4 The Superintendent Of Police
Office Of The Superintendent Of Police,
Thiruvannamalai District Thiruvannamalai.

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D.KRISHNAKUMAR, J.

The matter is posted today under the caption “Being Mentioned” at the instance of the learned counsel for the petitioner. It is submitted that due to inadvertence, in the operative portion of the order dated 02.08.2022, the second respondent was directed to consider the petitioner's selection for Grade II Police Constable afresh, instead of Sub-Inspector of Police and therefore, prays for appropriate clarification.

2. Heard Mr.P.Kumaresan, learned Additional Advocate General for the first respondent, who expressed no objection for the above clarification.

3. In the light of the above, para 9 of the order dated 02.08.2022 shall be read as follows:

“9.....is set aside and the second respondent is directed to consider the petitioner's selection for **Sub-Inspector of Police** afresh and pass orders.....”

Registry is directed to make necessary correction and issue fresh order copy.

15.03.2023

Jvm

Note: Issue order on 17.03.2023