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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

C O R A M

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.9545 of 2014
&
M.P.Nos.1 & 2 of 2014

D.Srinivasan

...Petitioner

Vs.

1. The Commandant,
Tamil Nadu Special Police XIII Battalion,
Veerapuram, Chennai - 55.
2. The Dy Inspector General of Police,
Armed Police, Chennai - 10.
3. The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.

...Respondents

PRAYER:Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned order passed by the first respondent in PR No.18/2010, Rule 3(AA) dated 29.08.2011 and the second respondent in RC No.C1/Appeal 01/2012 dated 28.02.2012 and quash the same and direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner .. Mr.V.Vijay Shankar

For Respondents.. Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

This writ petition has been filed to quash the impugned order, passed by the first respondent, in PR No.18/2010, Rule 3 (AA), dated 29.08.2011 and the second respondent, in RC No.C1/Appeal 01/2012, dated 28.02.2012 and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.



2. The petitioner was selected and appointed as Grade - II Police Constable in TSP Battalion on 15.12.2008. He successfully completed his probation and promoted as Nayak in the year 2010. He received more than 25 rewards for his meritorious service.

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3. The petitioner while studying in school, a minor at that point of time, was implicated in a criminal case in Crime No.140/2003, as a consequence of a communal clash between two groups of school students in his village. He was charge sheeted and shown as one of the accused, on the file of Principal Sessions Judge, Ramanathapuram, in Special SC No.257/09. The criminal case, however, eventually ended in acquittal, vide judgment, dated 02.02.2012.

4. The petitioner was also implicated in an another criminal case in Crime No.46 of 2008 in respect of boundary dispute with his paternal uncle's son, who gave a false complaint against him. Even the said criminal case ultimately ended in acquittal on 12.03.2011. While matters stood thus, on the basis of complaint from vested interests, the petitioner was issued with a charge memorandum, under Rule 3(b) of TNPSS (D&A) Rules, in PR No.18/2010, dated 11.10.2010, containing two articles of charges. The charges were that the petitioner suppressed and concealed the fact of his involvement in the criminal case registered in Crime No.140/2003, under Sections 147, 341, 323, 502 par r/w Sec.3(1) of SC/ST Act and he was in judicial custody for about a month, thereby, he committed grave misconduct. The second charge was that the petitioner was shown as accused in Crime No.46/2009, registered, under Sections 294, 341, 324 and 307 IPC and he suppressed and deliberately failed to disclose the fact of his involvement in the second criminal case at the time of his recruitment into service and thereby, committed grave misconduct again.

5. On receipt of the charge memo, the petitioner submitted his explanation denying the charges. In respect of the first charge, namely involvement in the first criminal case (Crime No.140/2003), the petitioner was a minor. As far as the second charge was concerned, he was falsely implicated by his close relatives, due to personal animosity. However, notwithstanding the above factual position an enquiry was conducted and charges were held proved ultimately in the enquiry. A copy of the enquiry report was forwarded to the petitioner and he submitted his representation against the findings. But the disciplinary authority, however, did not accept the legitimate explanation offered by the petitioner and agreeing with the findings, imposed a penalty of dismissal from service, by an order, dated 29.08.2011.

6. As against the order of penalty of dismissal from service,



the petitioner preferred a statutory appeal before the second respondent on 26.09.2011. The Appellate authority, the second respondent herein without considering various lacunae pointed out by the petitioner in the appeal, has rejected the same by an order dated 28.02.2012. As against the rejection of appeal, petitioner preferred a mercy petition on 30.03.2012 before the first respondent, but the same did not evoke any response. Being aggrieved by the order of dismissal and the confirmation of the same by the appellate authority, the petitioner is before this Court.

7.Mr.V.Vijay Shankar, learned counsel appearing for the petitioner would submit at the outset that the dismissal order passed against the petitioner, in the facts and circumstances of the case is shockingly disproportionate and cannot be countenanced both in law and on facts. According to him, the first charge relating to Crime No.140 of 2003 was in respect of a group clash when admittedly, the petitioner was a school student. In any event, ultimately, after the trial, criminal case ended in acquittal, on 02.02.2012. However, without waiting for the outcome of the criminal trial and also without duly appreciating the fact that the petitioner was a minor alleged to have been involved in a criminal case relating to the clash between two groups of students, the disciplinary authority ordered enquiry and proceeded with the same eventually resulting in the imposition of penalty of dismissal from service. His non-disclosure of his involvement in the first criminal case was due to his ignorance and as a matter of fact, he was not even aware of the criminal case pending against him.

8.As far as second charge is concerned, the petitioner was acquitted on 12.03.2011 (in Crime No.46 of 2019). Here, again, the petitioner was implicated in a false case by his paternal uncle's son relating to a civil dispute of sharing boundaries between the petitioner's family and his paternal uncle's family. As it was a civil dispute being given a criminal colour, the petitioner was under bonafide impression that it was not relevant to disclose the information to the respondent. As a matter of fact, the second crime case was registered after the petitioner submitted his application for recruitment to the Police force. Therefore, there was no occasion for him to disclose the same. According to the learned counsel, however, the fact remained that in both the cases, the petitioner had been acquitted and therefore, the non-disclosure of the information had become immaterial.

9.The learned counsel would then submit that as far as the first criminal case is concerned, in terms of the provisions of the Juvenile Justice (Care and Protection of Children), Act 2015, all past records under Juvenile Justice system should be



erased except in special circumstances. Section 24 would also mandate that if a child who has committed an offence and has been dealt with under the provisions of the Act shall not suffer disqualification, if any, attached to conviction or an offence under such law.

10.The petitioner herein, as a matter of fact, was acquitted of the charges and therefore, the question of suffering from any disqualification did not arise at all. The provision of the Juvenile Justice Act, 2015 clearly stipulate that past records must be erased and the child ought not to have suffer from any disqualification. Further, the charge relating to the so called commission of criminal offence at the time when the petitioner was a juvenile cannot be a legal basis for imposing the penalty of dismissal from service.

11.As far as the other charge in Crime No.46 of 2008 is concerned, the said criminal case also ended in acquittal on 12.03.2011 and the acquittal had become final. As stated above, even that charge was relating to a boundary dispute between the petitioner and his family with their close relatives and non-disclosure of the said criminal case could not have invited an extreme penalty of dismissal from service.

12.According to the learned counsel, the Hon'ble Supreme Court as well as this Court have held that public administration cannot practice "McCarthyism" and also held even in the event of conviction in a case where it was not disclosed by the person, in respect of a charge, which was not so serious, the person cannot be stated to have attracted any disqualification for seeking any employment in Police force or public service.

13.The learned counsel after referring to the Juvenile Justice (Care and Protection of Children) Act, 2015 has also referred to an order passed by the Hon'ble Supreme Court, in UNION OF INDIA AND OTHERS Vs. RAMESH BISHNOI (2019) 19 SCC 710. He would draw the attention of this Court to paragraphs 7 to 9 of the above decision, which are extracted hereunder:

7. In the present case, the complaint/FIR lodged against the respondent was to the effect that when he was a minor, he had teased a girl a few times and went to the extent of catching hold of her hand. However, the girl and her parents finally decided to pardon the respondent by not giving any evidence against him, resulting in the acquittal of the respondent. In the aforesaid facts, even if the aforesaid is found to be true, it cannot be said that the respondent had committed such a crime, which would be covered under the definition of moral turpitude, specially when the



respondent is said to have committed the alleged offence when he was a minor.

8. From the facts, it is clear that at the time when the charges were framed against the respondent, on 30.06.2009, the respondent was well under the age of 18 years as his date of birth is 05.09.1991. Firstly, it was not disputed that the charges were never proved against the respondent as the girl and her parents did not depose against the respondent, resulting in his acquittal on 24.11.2011. Even if the allegations were found to be true, then too the respondent could not have been deprived of getting a job on the basis of such charges as the same had been committed while the respondent was juvenile. The thrust of the legislation, i.e. The Juvenile Justice (Care and Protection of Children) Act, 2000 as well as The Juvenile Justice (Care and Protection of Children) Act, 2015 is that even if a juvenile is convicted, the same should be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the society as a normal person, without any stigma. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down guidelines for the Central Government, State Governments, the Board and other agencies while implementing the provisions of the said Act. In clause (xiv) of Section 3, it is clearly provided as follows:

"3.(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances."

9. In the present case, it is an admitted fact that the respondent was a minor when the charges had been framed against him of offences under Sections 354, 447 and 509 of IPC. It is also not disputed that he was acquitted of the charges. However, even if he had been convicted, the same could not have been held against him for getting a job, as admittedly he was a minor when the alleged offences were committed and the charges had been framed against him. Section 3(xiv) provides for the same and the exception of special circumstances does not apply to the facts of the present case."

14. In the above matter, Hon'ble Supreme Court has held that even in the case of conviction of Juvenile, the same should be obliterated in terms of provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Hon'ble Supreme Court has further held that the avowed object of the legislation



is to reintegrate such juvenile back in the society as a normal person without any stigma. In this case, the first charge relate to the involvement of the petitioner in a group clash when he was a minor and a school student. The charges were therefore, cannot be stated to be one relating to involvement in crime of moral turpitude or any other serious offences. In any event, ultimately, the petitioner was acquitted of the charges by the trial Court which had admittedly become final.

15.The learned counsel would then refer to AVTAR SINGH Vs. UNION OF INDIA AND OTHERS (2016) 8 SCC 471. He would particularly draw reference to paragraph Nos 37 and 38 which are re-produced and relied upon by this Court in its decision rendered in W.P.No.9552 of 2020 dated 9/10/2020, the same is referred to hereunder.

M.SRITHAR Vs.TAMIL NADU UNIFORMED SERVICES, RECRUITMENT BOARD, rep. BY ITS SECRETARY, OLD COMMISSIONER OF POLICE OFFICE CAMPUS, EGMORE, CHENNAI 600 008 AND ANOTHER (W.P.No.9552 of 2020 dated 09.10.2020). This Court in similar circumstances has referred to the case of Avtar Singh and its importance and salient observations. Paragraph Nos.9 to 19 of the judgment is extracted hereunder:

9. He would further submit that the petitioner being involved in serious offence of using criminal force was not entitled to be considered for appointment in the Police Force. He would submit that the candidates, who are seeking recruitment in the Police Force, need to exhibit conduct and discipline of higher degree. He would also submit that mere acquittal in the criminal case on the basis of all the prosecution witnesses turning hostile cannot be construed as acquittal on merits. As per Rule 14 (b) of Special Rules, any acquittal on the basis of witnesses turning hostile would be considered as conviction and the said Rule being upheld by this Court, the contention on behalf of the petitioner that acquittal of the petitioner ought to have been taken into consideration by the authority is without merits. Therefore, the authority passed the order rejecting the candidature of the petitioner in terms of the Rule position and also the decisions of this Court rendered in such matters. Therefore, the writ petition is without any merits and liable to be dismissed.

10.This Court has considered the submissions of Mr.N.Balamuralikrishnan,learned counsel for the petitioner and Mr.V.Kathirvelu, learned Special Government Pleader for the respondents and also perused the materials placed on record.



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11. There are two limbs of objections as disclosed in the impugned order dated 13.03.2020 passed by the second respondent. The first limb is the involvement of the petitioner in the criminal case wherein, the petitioner was charged for offences under Sections 147, 294(b), 352, 506(ii) of I.P.C., which admittedly ended in acquittal vide criminal court's judgment dated 17.03.2016. The authority cannot be found fault with, atleast to the extent that as per the rule position, acquittal on the basis of prosecution witnesses turning hostile is not an acquittal on merits, but it is construed as one of conviction in terms of Rule 14(b) of Special Rules for Tamil Nadu Police Subordinate Service, which Rule has been upheld by this Court.

12. However, while considering the acquittal vis-a-vis the criminal offences charged against the petitioner, it is incumbent upon the authority to see whether the petitioner was involved in a serious crime and unfit to be recruited to the Police Force for all times to come. As the facts of the criminal case would disclose, a minor scuffle between the petitioner and others on one side and complainant on the other side resulted in the registration of the criminal case, which was tried by the Jurisdictional Criminal Court. For whatever reasons, the criminal case ultimately ended in a acquittal by judgment dated 17.03.2016 in C.C.NO. 218 of 2015. The authority while considering the said acquittal as one of conviction ought to have also taken into consideration the nature of offences alleged against the petitioner. When the authorities vested with the discretionary power to assess the suitability of the candidates, such exercise must be free from the vice of stereotyped application of mind, reflecting callous, inflexibility regardless of the facts and the circumstances of the case.

13. As far as the case on hand is concerned, the authority sticking to Rule 14 is one aspect of the matter, which as stated above, cannot be called into question. Nevertheless, by giving a colour of conviction to such acquittal, on the basis of the above rule, it is imperative that a decision is taken after judicious exercise of the power of discretion with reference to the law laid down by the Hon'ble Supreme Court of India on this aspect.

14. The Hon'ble Supreme Court of India by its all-encompassing decision in the matter of Avtar Singh, has enunciated detailed legal principles to be followed in such matters. For better appreciation, paragraphs 29 to



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38.11 of the Hon'ble Supreme Court decision are extracted hereunder:

"29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact



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are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the



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basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34.No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35.Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36.What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37.The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be



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generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we 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 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 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.



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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.

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.



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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."

15. The above ruling of the Hon'ble Supreme Court would be a strong reminder and a legal mandate to the authorities as to how they are to reconcile various contingencies that may arise for their consideration. The Hon'ble Supreme Court of India, as held above in one of the paragraphs, that even in a matter of conviction, if it is trivial in nature, it is for the authority to ignore the same and proceed further for consideration. The Hon'ble Supreme Court has further held that even if a candidate involved in a criminal case and if such involvement was not disclosed and if the disclosure of the criminal offence otherwise would not have been material as criminal offence itself was trivial in nature, the non-disclosure of such involvement can be ignored and overlooked.

16. The above ruling of the Hon'ble Supreme Court ought to have been considered by the authority particularly with reference to the second limb of objection, wherein, the authority has held that the petitioner failed to disclose the involvement in the criminal case before the recruitment.

17. Further, a learned Single Judge of this Court in the case of M.Vijaya Baskar Vs. The Superintendent of Police, Dharmapuri [reported in 2013 SCC Online Mad 1053] in similar situation has held in paragraphs 24 to 27 as under:

"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 V. The Secretary to Government), decided on 12.02.2013 and this Court was pleased to lay down, that when a person is acquitted of criminal charges prior 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.



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25. The stands 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 case, 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, Rules 14(b) can only be interpreted to mean, that in cases, which are pending at the time of selection, and end 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."

18. The above decision of the learned Single Judge of this Court is a pointer to the police administration, that notwithstanding the Rule 14(b), if a person is acquitted much prior to the recruitment process, in which a candidate concerned has participated, failing to disclose the information of his involvement in the criminal case would not attract Section 14(b). If the said decision of this Court and the decision of the Hon'ble Supreme Court in the case of Avtar Singh to be taken and applied together, this Court has to come to a necessary conclusion that firstly non-disclosure of involvement in the criminal case in a case where, the candidate was acquitted prior to the recruitment would not attract Section 14(b) of the Special Rules for the Tamil Nadu Police Sub-ordinate Service. Secondly, even if the said rule is applicable, ultimately disclosure of the same would not have made any material difference, with reference to the nature of the offence alleged against the candidate, such non-disclosure ought to be ignored. Thirdly, even if a conviction is recorded, ultimately, the authority within the domain of his discretion is under a legal obligation to exercise the



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power of the discretion fairly and judiciously, duly applying the principle of circumstantial flexibility. As a corollary, the authority cannot perfunctorily take refuge under the rigors of the rule, oblivious to the spirit and the objective of the foundational basis for introduction of the rule.

19. In the light of the above consideration, the rejection by the authority on the basis of the relevant clauses of the notification and the rule position did not meet the legal requirement of fair play and good conscience in the discharge of the discretion so vested. Mere discharge of the discretion routinely with a wooden mind set would only result in travesty of good administrative function and abdication of onerous responsibility conferred on the authority.

16. In the above case, this Court has extracted the extensive ruling in Avtar Singh's case and finally held that even non-disclosure of criminal antecedents did not per se disqualify a person from being considered to Police force in certain circumstances. According to the learned counsel from the above case laws would be squarely applicable to the factual matrix of this case. The impugned action of the respondents is therefore, liable to be interfered with.

17. After notice, Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader, took notice and filed a counter affidavit. In the counter affidavit, it has been repeatedly stated that, in view of the non-disclosure of two criminal cases, a serious view was taken and charges were framed against him. According to him, when the dismissal order was passed on 29.08.2011, petitioner was still facing the criminal case. The acquittal came only subsequently. According to the respondents, the subsequent acquittal will not invalidate the decision taken by the authorities.

18. Counter affidavit would also state that, as per amendment made to Rule 14(b) of the Special Rules for Tamil Nadu Police Subordinate Service Rules, 1978, even acquittal on the basis of benefit of doubt, will be construed as conviction and the same will operate as a disqualification for recruitment to the Police force.

19. In view of the fact that the petitioner was involved in two criminal cases, the petitioner himself by his own conduct invited disqualification. In the counter affidavit it has been clearly emphasized that non-disclosure of his involvement in two criminal cases amounted to serious mis-conduct which cannot be condoned particularly in disciplined Police force. Therefore,



rightly, the petitioner was imposed with the penalty of dismissal from service.

20. The learned Additional Government Pleader reiterated the above position adopted by the respondents as reflected in the counter affidavit. He particularly submitted that the petitioner having involved himself in two criminal cases, and having chosen not to deliberately disclose the same, cannot expect the authorities to act leniently. In the said circumstances, imposition of penalty of dismissal from service is in order and cannot be faulted with.

21. Heard the submissions of the learned counsel for the petitioner, learned counsel for the respondents, perused the pleadings, materials and case laws cited on behalf of the petitioner.

22. The facts stated above on behalf of the petitioner have not been controverted and this Court therefore, need not needlessly traverse into the same. The impugned punishment of dismissal from service is to be tested on the touch stone of the case laws cited on behalf of the petitioner on the subject matter, and also with reference to the provisions of the Juvenile Justice Act, as it stood then, and the nature of offences alleged against the petitioner and his ultimate acquittal by the criminal courts.

23. Admittedly, the petitioner was involved in two criminal cases. One relating to Crime No.140 of 2003. When the said criminal case was registered against the petitioner, he was a minor and therefore, he was proceeded against under the Juvenile Justice (Care and Protection) Act, 2000. It was a case where there was a clash between two groups of School students and the petitioner was found to be one of them involved in the clash. The criminal case was registered and after a full fledged trial, the Principal Sessions Court, Ramanathapuram in Spl.S.C.No.259 of 2007 had delivered judgment in acquitting the petitioner vide judgment dated 2/2/2012.

24. In regard to the above, departmental charge against the petitioner, he did not disclose his involvement in the criminal case and therefore, his acquittal in the case was immaterial. The non-disclosure of this information itself was a serious act of misconduct, inviting disqualification from continuing in Police force. This Court is unable to appreciate the rigid stand of the Department in the teeth of the fact that the petitioner was a School student and a minor when he was implicated in the criminal case. Therefore, his non disclosure at the time of his recruitment to the Police force ought not have been viewed too strictly and pedantically. Even otherwise, the criminal case



had ultimately ended in the acquittal and he suffered no disqualification on this account. This apart, the petitioner has a stronger case that even in the event of his conviction in criminal case, it should be obliterated in terms of the provisions of the Juvenile Justice (Care and Protection) Act, as held by the Hon'ble Supreme Court in a decision rendered in the matter of UNION OF INDIA AND OTHERS Vs RAMESH BISHNOI (2019) 19 SUPREME COURT CASES 710. The crucial ruling of the Court has been extracted supra.

25.The learned counsel in this regard, has relied upon two provisions of the Juvenile Justice Act, 2015 which are reproduced hereunder:-

3 (xiv). All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

24. Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law.

26.The first provision mandates the erasing of the past records of any child tried under Juvenile Justice system. As far as the second provision is concerned, even the offence ended in conviction, such would not entail any disqualification.

27.The reliance placed by the learned counsel on the Juvenile Justice Act, 2015 may not be correct, as admittedly the relevant incident happened much prior to the coming into force of the new Act. However, in the earlier Juvenile Justice Act, 2000, a similar provision was provided for in Section 19 which reads as under.

"19. Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law."

Therefore, the legal position remained the same under the earlier enactment.

28.In this case, first the petitioner was factually acquitted of the criminal charge and therefore, his claim certainly stand on a better footing than what is stated in the above provisions. Even otherwise, when the past records are to be mandatorily erased, whether the Juvenile was convicted or not is immaterial in the eye of law.

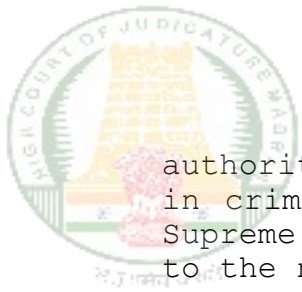


29. The learned counsel rightly relied upon the decision of the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS Vs. RAMESH BISHNOI (2019) 19 SUPREME COURT CASES 710. In the extracted observation, it is very clear that under the provisions of the Juvenile Justice Act even after the Juvenile is convicted, the same should be obliterated, so that there is no stigma with regard to any crime committed by such a person as a Juvenile. By applying the ratio, the petitioner herein cannot be stated to have suffered any conviction as construed by the respondent.

30. The non disclosure of his involvement in the criminal case, when he was a Juvenile cannot be stated to have attracted Rule 14 (b) of the Special Rules, for the simple reason that in the eye of law, it cannot be held that there was any case pending against the petitioner under the Juvenile Justice (Care and Protection of Children) Act. Therefore, proceeding against the petitioner on the basis of the charge relating to non disclosure of the criminal case in Crime No.140 of 2003 when he was a minor, was misconceived and amounted to undermining the very object and the spirit of the Act. Therefore, this Court is unable to countenance the charge framed against the petitioner in respect of the non-disclosure of his involvement in the criminal case in Crime No.140 of 2003 when he was a minor. This Court is further unable to come to terms with the punishment of dismissal from service imposed on the petitioner on that account.

31. As far as the second criminal case is concerned, again the petitioner appeared to have been involved in a boundary dispute with his close relatives, giving rise to Crime No.46 of 2008 under certain provisions of the Indian Penal Code. This criminal case also ended in acquittal, vide, criminal Court judgment, dated 12/3/2011. According to the learned counsel for the petitioner that this case was registered after the petitioner was recruited to the Police force and therefore, he had no occasion to inform about his involvement at the time of his recruitment. Even assuming that it was imperative on the part of the petitioner to inform his employer whenever he was involved in any criminal case, this Court would have to examine whether the non disclosure of the involvement in the second criminal case could by itself invite a bar of continuance in Police force and invite extreme penalty of dismissal from service or not?

32. In this connection, the learned counsel has relied upon the all encompassing judgment of the Hon'ble Supreme Court reported in AVATAR SINGH VS. UNION OF INDIA AND OTHERS (2016) 8 SCC- 471. The Hon'ble Supreme Court has summed up various contingencies that may arise for consideration of the



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authorities in the matter concerning involvement of candidates in criminal cases, in paragraphs 37 and 38. the Hon'ble Supreme Court, particularly in paragraph 38.4.1 has observed as to the non-disclosure as under:

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.

33. Following the same, this Court has also allowed a similar challenge in W.P.No.9552 of 2020 vide its order dated 9/10/2020. The ruling of this Court has also been extracted extensively supra, reproducing the paragraphs 29 to 38 of the Avtar Singh case judgment. When a discretion is vested in the authority to examine the nature of offences alleged against a person and the nature of involvement of the person concerned, such discretion has to be exercised and discharged by the officials with due care and caution and with fair application of mind. Merely because it was found that the person involved in a criminal case not disclosed the information, such conduct by itself cannot result in serious repercussions, leading to the imposition of penalty of dismissal from service.

34. When an extreme penalty of dismissal from service is inflicted on an employee, it is all the more reason for the authority to take into consideration the legal principles laid down on the subject matter by the Courts. Though it is stated that the decision was taken to dismiss the petitioner before the acquittal was recorded in both criminal cases, yet the authorities could have waited for the result of the criminal case. Unfortunately, the administration had needlessly rushed through and expedited the disciplinary proceedings against the petitioner and imposed the penalty of dismissal order on him. The respondents appeared to have acted unfairly and unreasonably lacking in sense of equanimity and judicious composure.

35. In fact, this Court has repeatedly held that the authorities must abandon their sanctimonious and fastidious approach in dealing with such matters, while taking decision adversely and irreversibly affecting the person concerned. The penalty of dismissal from service in the facts and the circumstances of the case in the opinion of this Court is shockingly disproportionate and cannot be sustained in law.

36. This Court in the cumulative circumstances of the case finds that the impugned orders cannot be countenanced both in law and on facts. Even assuming that the petitioner had



deliberately not disclosed the information to the authorities concerned, at the risk of repetition it is to be stated that the first involvement in the criminal case was when the petitioner was a minor and therefore, the charge itself became a non est, in view of the operation of the provisions of Juvenile Justice Act. In that view of the matter, the first charge cannot give rise to any departmental proceedings at all. As regards the second criminal case, it was a private dispute among the close relatives and even the said criminal case eventually ended in acquittal. Therefore, the non-disclosure of his involvement in that case cannot be stated to be very material, inviting disproportionate reaction from the department. For all the above said reasons, this Court is convinced that the petitioner has made out a strong case for the grant of relief as prayed for.

37. Accordingly, this writ petition is allowed. The impugned order passed by the first respondent in PR No.18/2010, Rule 3 (AA) dated 29.08.2011 and the second respondent in RC No.C1/Appeal 01/2012 dated 28.02.2012 are hereby set aside.

38. The respondents are directed to reinstate the petitioner in service forthwith with all benefits on notional basis, like fixation of seniority, promotion, calculation of pay and allowance.

39. However, it is directed that the petitioner is not entitled to payment of arrears of salary and allowance during the period of his non-employment till he is reinstated in service, as a measure of punishment for non-disclosure of his involvement in the second criminal case during his service in the department.

40. The respondent authorities are directed to pass appropriate orders in this regard within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected W.M.Ps are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mvs.



To

1. The Commandant,
Tamil Nadu Special Police XIII Battalion,
Veerapuram, Chennai - 55.

2. The Dy Inspector General of Police,
Armed Police, Chennai - 10.

3. The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.

+1cc to Mr.Vijayshankar, Advocate, S.R.No.13955

W.P.No.9545 of 2014
and
M.P.Nos.1 & 2 of 2014

MG (CO)
RGA (07/04/2022)