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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 978 of 2014
and
M.P.No.1 of 2014

1. The Member Secretary,
The Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.T. Chengalvaraya Naicker Maaligai,
Anna Salai,
Chennai-600 002.
 2. The Superintendent of Police,
District Police Office,
Kancheepuram.
- ... Appellants/Respondents

-vs-

D.Chitharanjan ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.03.2013 passed in W.P.No.1740 of 2013.

Prayer in W.P.No.1740 of 2013:

Writ Petition filed under Article 226 of the Constitution of India calling for the records in Na.Ka. No.M1/ 6241/2012 dated 10.12.2012 on the file of the 2nd respondent herein and quash the same and direct the 1st respondent to select and appoint petitioner for the post of Grade II Police Constable in the Tamil nadu Special Police, Kancheepuram.

For Appellants : Mr.T.Anandakumar
Government Advocate

For Respondents : Mr.M.Gnanasekar



J U D G M E N T

S.VAIDYANATHAN.,J and MOHAMMED SHAFFIQ.,J

The present Appeal has been preferred by the Appellants challenging the order dated 22.03.2013 made in W.P.No.1740 of 2012, in allowing the Writ Petition.

2. The learned Government Advocate appearing for the Appellants submitted that the Respondent/Writ petitioner, who applied for the post of Grade II Police Constable was not selected on the ground that he was found involved in a criminal case registered in Crime No.795 of 2005 for the offences punishable under Sections 294(b), 323 and 506 (i) I.P.C. It is further submitted that though the learned Judicial Magistrate No.II, Kancheepuram vide order dated 08.10.2010 acquitted the writ petitioner from the charges, the Writ Petitioner did not disclose the said factum while applying for the post in the application and therefore, the learned single Judge ought not to have granted relief of consideration of the case of the petitioners afresh. He further submitted that the question of discrimination does not arise at all, as the appointment orders were issued to other eligible candidates only. He also drew the attention of this Court to the Judgments of Hon'ble Supreme Court in the case of Union Territory, Chandigarh Administration and Ors. Vs. Pradeep Kumar and Ors. reported in (2018) 1 MLJ 873 and Avtar Singh Vs. Union of India and others reported in (2016) 8 SCC 471 to contend that the Writ Petitioner is unfit to the post in the disciplined force and therefore prays to set aside the order of the learned Single Judge.

3. The learned counsel appearing for the Writ Petitioner submitted that there was a clear discrimination among the writ petitioners, as the similarly placed persons were granted the relief, pursuant to the Judgment of the Division Bench of this Court in W.A.Nos.741 of 2017 etc. (Batch cases) dated 23.11.2017. Since the Writ Appeal has not been tagged along with the batch at the time of final disposal of the case, the relief has not been extended to the Writ Petitioner herein. He further submitted that the order of the learned Single Judge directing the Appellants herein to consider the case of the Writ Petitioners in the batch for appointment has been slightly modified by the Division Bench of this Court in the batch of Writ Appeals, viz., W.A.Nos.741 of 2017 etc. (Batch cases). For the sake of convenience, paragraph 16 of the aforesaid Judgment is extracted hereunder:

"16. In the light of the decision of the Larger Bench, we hereby modify the order passed by the learned Single



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Judge, directing the appellants to reconsider the case of the respondents, after affording an opportunity of personal hearing to them and strictly in terms of the guidelines laid down by the Larger Bench of the Supreme Court in Avtar Singh (supra) and take a decision in accordance with law, with regard to the appointment of the respondents for the post in question. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this Judgment."

Thus, the contention of the learned counsel for the Respondent/Writ Petitioner herein is that he may be granted the relief on par with other Writ Petitioners, who have got the benefit of Judgment in the batch of Writ Appeals. He further put forth that when others were involved in similar offences of I.P.C., the petitioner cannot be discriminated by denying the employment.

4. Heard both sides. Perused the records.

5. It is seen that the Writ Petitioner had applied for the post of Police Constable Grade II, in the Uniformed Services, in the year 2012. His candidature was not considered for appointment, as he was subsequently found involved in a criminal case which, of course ended in acquittal by the learned Judicial Magistrate II, Kancheepuram in C.C.No.251 of 2007. In the decision of the Hon'ble Apex Court in the case of Union Territory, Chandigarh Administration and Ors. Vs. Pradeep Kumar and Ors. reported in 2018 1 MLJ 873, the Hon'ble Supreme Court, by observing that the Tribunal and the High Court erred in setting aside the decision of the Screening Committee, interfered with the order of the learned Single Judge and upheld the cancellation of the candidates therein.

6. Admittedly, the Writ Petitioner has not disclosed his involvement in the criminal case of the year 2010 and the learned Single Judge dealt the issue on humanitarian grounds. As held by the Hon'ble Supreme Court (supra), the Screening Committee is the competent body to consider the suitability of the candidature as per the Tamil Nadu Subordinate Police Service Rules while appointing a person in the police force.

7. The next plea raised by the Writ Petitioner with regard to discrimination cannot be accepted, as such plea raised in general uniformity in respect of illegality. The observation



of the Division Bench in Paragraph 16 extracted supra runs counter to the Judgment of the Hon'ble Supreme Court in the case of Avtar Singh Versus Union of India and Others reported in 2016 8 SCC 471, wherein it was held as follows:

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"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."

8. The contention that the non-inclusion of the Writ Petitioner's case in the batch of Writ Appeal has become fatal to the case of the Writ Petitioner, cannot be accepted, as it is not necessary to apply the same yardstick to the case of the Writ Petitioner especially when the aforesaid decision runs contrary to the Judgment of the Supreme Court stated supra. Hence, we are of the view that the order of the learned Single Judge has no merit acceptance and is liable to be set aside. The relief sought for by the Writ Petitioner cannot be granted.

9. In the result, this Writ Appeal is allowed and the order of the learned Single Judge in W.P.No.1740 of 2013 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Member Secretary,
The Tamil Nadu Uniformed Service Recruitment Board,
No.807, P.T. Chengalvaraya Naicker Maaligai,
Anna Salai,
Chennai-600 002.
2. The Superintendent of Police,
District Police Office,
Kancheepuram.



Copy to

1. The Section officer,
Writ Section,
High Court, Madras.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.8632

[12/04/2022]

+1cc to the Government pleader S.R.No.9189

W.A.No.978 of 2014

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srg 25/03/2022