



WEB COPY



W.P.No.21306 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.21306 of 2021
and
W.M.P.No.22546 of 2021

M.Poovendra Raja

... Petitioner

vs.

1.The Principal/Commandant,
Ty.PRS, TSP III Battalion,
Veerapuram, Chennai – 55.

2.The Director General of Police,
Mylapore, Chennai – 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Endorsement of the 1st respondent dated 16.08.2021 issued in Rc.No.A2/329/2020 and quash the same and consequently to direct the 1st respondent to reinstate the petitioner as Grade II Constable with all attendant service and monetary benefits.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.V.Manoharan
Additional Government Pleader



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ORDER

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Mandamus, calling for the records relating to the Endorsement of the 1st respondent dated 16.08.2021 issued in Rc.No.A2/329/2020 and quash the same and consequently to direct the 1st respondent to reinstate the petitioner as Grade II Constable with all attendant service and monetary benefits.

2. The case of the writ petitioner is that the petitioner has applied to the post of Grade-II Constable for the recruitment year 2017 and he was provisionally selected for the said post. Thereafter, the 1st respondent served a show cause notice to the petitioner on 05.01.2018, to submit his explanation for his involvement in a criminal case. The petitioner has submitted a detailed explanation on 05.01.2018 itself. On 06.01.2018, the 1st respondent has cancelled the appointment order on the ground that he was not honourably acquitted in the criminal case. Challenging the same, the petitioner has filed W.P No.6024 of 2018 and by an order dated 12.12.2019, this Court allowed the aforesaid petition and set aside the cancellation of appointment order. Thereafter, a writ appeal has been preferred by the 1st respondent in W.A No.168 of 2021 and by judgment dated 28.04.2021, the Division Bench of



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this Court had arrived a conclusion that the trial Court acquitted the petitioner on merits and also remanded the matter to the 1st respondent to consider afresh the petitioner's request by taking into consideration the acquittal of the petitioner in a criminal case as well as antecedents of the petitioner and pass suitable orders for appointing the petitioner in the respondent department. But, the 1st respondent once again rejected the petitioner's claim on 16.08.2021. Hence the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that despite the order has been passed by the Division Bench of this Court, the 1st respondent without taking to consideration the antecedents of the petitioner as well as the suitability of the petitioner to continue the said service, has simply rejected the petitioner's claim. Hence, the impugned order passed by the 1st respondent is liable to be quashed.

4. The learned Additional Government Pleader appearing for the respondents would submit that pursuant to the order of the Division Bench of this Court, the 1st respondent has passed an order on 16.08.2021 in which it is stated that the petitioner was acquitted in a criminal case due to



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compromise memo filed between the parties and the said fact has been brought to the knowledge of the appointing authority and after verifying the records, the appointment order was cancelled and therefore, the petitioner is not eligible for the appointment to the post of Grade II PC (TSP).

5. I have heard the rival submissions made on either side and also perused the materials on record.

6. On perusal of the aforesaid impugned order passed by the 1st respondent dated 16.08.2021, there is no whisper about the observations made by the Division Bench of this Court vide judgment dated 28.04.2021 in W.A.No.168 of 2021. In the aforesaid judgment, it is clearly held in para 15 as follows:

"15. The above cited judgment would also disclose that the involvement in a criminal case is not a total bar for employment, but it is for the employer to find out the suitability. In the judgment relied on by the learned Single Judge in 2018 (18) SCC 733 (State of Madhya Pradesh and Others Vs. Abhijit Singh Pawar), it has



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been held that even after disclosure is made by a candidate, employer would be well within his rights to consider antecedents and suitability of candidate and while so considering, employer can certainly take into account the job profile for which selection is undertaken, severity of charges levelled against candidate and whether acquittal in question was an honourable acquittal or as merely on ground of benefit of doubt or as a result of composition, it is a duty cast upon the employer to take a call. However in the impugned order, instead of remanding the matter to the employer, the learned Judge has straight away allowed the Writ Petition and therefore on that limited ground, the impugned order warrants interference.

In the light of the aforesaid observations and findings of the Division Bench of this Court, this Court has no hesitation to interfere with the impugned order passed by the 1st respondent and the same is liable to be quashed.



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WEB COPY 7. Accordingly, this Court is inclined to pass the following order:

i) The impugned order passed by the 1st respondent vide proceedings in Rc.No.A2/329/2020 dated 16.08.2021 is hereby quashed and the matter is remitted to the 1st respondent.

ii) After receipt of the same, the 1st respondent is directed to consider the petitioner's claim afresh and pass appropriate orders, in the light of the judgment passed by the Division Bench of this Court in W.A.No.168 of 2021 dated 28.04.2021, as expeditiously as possible, more preferably, with a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.03.2022

Index : Yes / No

Internet : Yes / No

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To

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D.KRISHNAKUMAR. J

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