



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.817 of 2020

M.Sathish Kumar

... Petitioner

-Vs-

1. The Director General of Police,
Tamilnadu State,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

2. Tamilnadu Uniformed Service Recruitment Board,
Represented by its Chairman,
Pantheon Road,
Egmore, Chennai - 600 008.

3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings in C.No.A3/29575/2017 dated 24.10.2019 conducted by the 3rd respondent and quash the same as illegal, arbitrary and unconstitutional and further direct the respondents to issue Appointment Order to the petitioner for selection of Police Constable Grade II in Tamil Nadu Special Police within the period stipulated by this Court.

For Petitioner

: Mr.P.Muniasamy

For Respondents

: Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.A.K.Manikkam
Spl.Govt.Pleader

O R D E R

The order of rejection, dated 24.10.2019, passed by the 3rd respondent, rejecting the candidature of the writ petitioner for selection to the post of Police Constable Grade-II, is under challenge in the present writ petition.



2. The petitioner participated in the process of selection and was successful in the written examination. He was allowed to participate in the physical verification test and endurance test. The petitioner succeeded in the tests also. During the verification process, the Selection Committee found that the petitioner suppressed the fact regarding the registration of criminal case against him. The petitioner has suppressed the said registration of the criminal case in the application submitted pursuant to the Notification. Considering the fact that the petitioner has suppressed the fact regarding the registration of the criminal case, the order of rejection was passed.

3. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the suppression must be related to the material facts. Certain trivial offences and the registration of criminal case for such trivial offences cannot be a ground to reject the case on suppression of material facts. In other words, it is contended that suppression of material facts in respect of the criminal cases registered based on trivial offences is not a valid ground for rejection. The learned counsel for the petitioner further contended that the petitioner was acquitted honorably that also is to be considered. The order of acquittal was passed by the trial Court. In the revision petition, the petitioner was acquitted honourably.

4. The petitioner relied on the Instruction issued by the Director General of Police and the points to be considered by the authorities are narrated in the said Instructions issued by the Director General of Police. With reference to the instructions issued by the Director General of Police, the said Instructions are issued only for guiding the Competent Authorities and such Instructions would not confer any right on the petitioner either to rely on the same or to refer for the purpose of selection to the post. Such instructions reveals various aspects, which are all to be considered and such instructions are of no statutory enforceability. Therefore, relying on such instructions, inferences cannot be drawn in respect of the principles settled by the Constitutional Courts across the Country.

5. This Court is of the considered opinion that the issues regarding the selection was elaborately discussed by the Hon'ble Full Bench of the Madhya Pradesh High Court in the case of Ashutosh Pawar Vs. High Court of Madhya Pradesh reported in (2018 (1) CTC 335). The learned counsel for the petitioner also referred the Judgment of Hon'ble Supreme Court in case of Avtar Singh Vs. Union of India and Others reported in (2016 (8) SCC 471) that was also considered by the Full Bench of Madhya Pradesh High Court. Even recently the Hon'ble Supreme Court reiterated the principles considering Avtar Singh 's case (cited supra) and all earlier cases decided by the Supreme Court in the case of Commissioner of Police



vs. Raj Kumar in C.A.No.4960 of 2021 dated 25.08.2021 held as follows:-

26. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasized by this court, in *M.V. Thimmaiah v. Union Public Service Commission*⁷ held as follows:

"21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection."

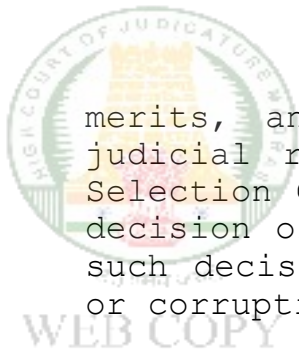


29. Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.

30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."

6. The learned counsel for the petitioner has all fairness admitted the fact that the petitioner has suppressed the fact regarding the registration of criminal case both in the application as well as during verification. However, he made an attempt to distinguish the suppression by stating that it is not a material suppression, but the offences are trivial in nature and therefore, the case of the writ petitioner is to be considered.

7. Beyond the registration of the criminal case, suppression itself is sufficient to reject the application. Even in cases, where there is no suppression, then also the competent Selection Committee is empowered to make independent assessment regarding the



merits, antecedents, eligibility and suitability. The scope of judicial review is limited in this aspect. The decision of the Selection Committee became final in all respects. Writ against the decision of the Selection Committee needs to be entertained only if such decision is tainted with *mala fides* or on allegation of fraud or corruptive activities are established beyond any pale of doubt.

8. Therefore, this Court is of the considered opinion that regarding suppression no distinction need to be adopted. When a suppression is apparent with reference to the registration of a criminal case that is sufficient enough to hold that the writ petitioner is not entitled for the relief. Suppression cannot be quantified by stating that the offences are trivial in nature. Only in respect of heinous offences, the material facts are to be disclosed in the application. The application states that Whether any criminal case is registered against the applicant or not?. In such circumstances, if the applicant says, 'No', then, it amounts to suppression of facts, if the criminal case registered against him. This being the principles to be adopted, the case of the writ petitioner was rejected on the ground of suppression of material facts regarding the registration of criminal case both in the application as well as at the time of verification. Thus, this Court do not find any infirmity or illegality in the order of rejection passed by the 3rd respondent.

9. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

MPK

To

1. The Director General of Police,
Tamilnadu State,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Chairman,
Tamilnadu Uniformed Service Recruitment Board,
Pantheon Road,
Egmore, Chennai - 600 008.



3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.MUNIASAMY, Advocate (SR-13649[F] dated 23/03/2022)

W.P. (MD) No.817 of 2020
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MGJ(06.04.2022) 6P 6C