



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.04.2022

DELIVERED ON : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.6493 of 2020

W.M.P(MD).No.5815 of 2020

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V.Gokulganesh

...Petitioner

/Vs./

1.The Director General of Police,
Head Office,
Chennai-4.

2.The Superintendent of Police,
Pudukottai,
Pudukottai District.

3.The Inspector of Police,
Thirukkorkarnam Police Station,
Pudukottai District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in the impugned rejection order in Na.Ka.No.A2/8497/2020 dated 06.05.2020 by the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to appoint the petitioner for the post of Grade II Police for the year 2017 in Reg.No.2004214 with seniority from 2017.

For Petitioner

: Mr.M.Ramu

For Respondents

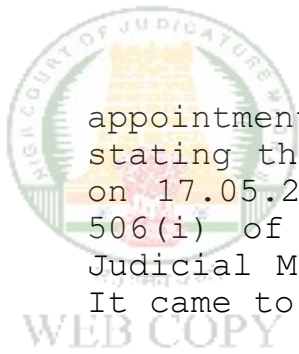
: Mr.Veera Kathiravan

Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The order of rejection rejecting the candidature of the petitioner for selection to the post of Grade-II Police Constable is under challenge in the present Writ Petition.

2. The petitioner, pursuant to the recruitment notification issued by the respondents, participated in the process of selection for appointment to the post of Grade-II Police Constable. He has submitted an application on 15.02.2017. He was successful in the written examination and he participated in the physical verification test and medical test. The petitioner was waiting for an order of



appointment. While so, his candidature was rejected on 08.10.2017 by stating that the petitioner suppressed the criminal case registered on 17.05.2017 in Crime No.139 of 2017 under Sections 294(b), 324, 506(i) of IPC and the charge sheet was filed before the learned Judicial Magistrate, Pudukottai and the same was not taken on file. It came to know during the verification of antecedents.

3. The petitioner states that he has not involved in any offence and he challenged the rejection order in W.P.(MD).No.20415 of 2018. The said writ petition was partly allowed by quashing the impugned order and the matter was remanded back to the file of the second respondent for fresh consideration. However, the second respondent again rejected the claim of the writ petitioner in order dated 08.05.2018 by stating that the petitioner was arrested and remanded in the criminal case registered in Crime No.139 of 2017.

4. The learned counsel appearing for the petitioner reiterated that the petitioner is no way connected with the criminal case. In fact, his brother was implicated in the criminal case. He was not aware of the criminal case at the time of verification. Therefore, he has mentioned that no criminal case was registered against him and he has not involved in any criminal offence. Therefore, the case of the petitioner is to be considered for selection to the post of Grade-II Police Constable.

5. It is contended that the reason stated in the order impugned is an error apparent as the petitioner was not arrested in connection with any criminal case. When the petitioner has not been arrested in any criminal case and he has not involved, there is no reason whatsoever to reject the candidature of the petitioner based on certain in-correct facts.

6. The petitioner relied on the judgment of the Hon'ble Division Bench of this Court dated 07.07.2021 in W.A(MD).No.13 of 2018. The Hon'ble Division Bench dismissed the appeal filed by the State and the State was directed to re-consider the case of the petitioner therein. The Hon'ble Division Bench has stated that in respect of trivial offences, the principles laid down in the case of **Avtar Singh vs Union of India reported in (2016) 8SCC 417** are to be followed. Therefore, the Authorities have directed to re-consider the issue with reference to the nature of the offence and other factual details in the criminal case. Relying on the above judgment, the learned counsel appearing for the petitioner reiterated that the petitioner submitted an application on 15.02.2017 and the First Information Report against the petitioner's brother was registered on 17.05.2017. However, he was successful in the written examination and other tests. There was no charge sheet filed against the petitioner. However, the petitioner received summons in the criminal case on 22.08.2018 which is admitted by the petitioner. But, the criminal case was quashed in favour of the petitioner on 28.09.2018. **Thus, the petition is to be considered.**



7. The learned Additional Advocate General appearing on behalf of the respondents objected the said contention raised by the petitioner stating that no doubt, the petitioner was successful in the written examination. However, on verification, the Authorities found that a criminal case was registered against the petitioner, after submission of the application for recruitment. But the petitioner has suppressed the fact regarding the registration of criminal case, during verification on 12.09.2017. The criminal case was registered on 17.05.2017 and in the verification Roll form on 12.09.2017, the petitioner has suppressed the fact regarding the registration of criminal case. It is further contended that the petitioner applied for anticipatory bail which was granted by the Criminal Court on 07.07.2017. When the petitioner has obtained an order of anticipatory bail from the Criminal Court of law, it is to be construed that he was aware of the fact regarding the registration of criminal case against him. The anticipatory bail was granted based on the fact that the criminal case was registered against the petitioner. Therefore, the petitioner cannot plead that he is innocence regarding the registration of criminal case against him. The very statement that the petitioner is no way connected with the criminal case is untenable as he himself obtained the anticipatory bail stating that the criminal case was registered against him. While so, the Authorities considered the fact that the petitioner suppressed the fact during verification and rejected the candidature of the petitioner.

8. The original file was produced before this Court. On verification of original file, it reveals that in the verification form, the petitioner has filled up the column Nos.15 and 16 as follows:-

15.Have you ever been concerned in any criminal

case as defendant?

: இல்லை

நீ கிரிமினல் கேசில் எப்போதாவது பிரதிவாதியாக சம்மந்தப்பட்டதுண்டா?

16.Have you ever been arrested or convicted

and sentenced undergo imprisonment or pay

a fine in any criminal or other offence?

:இல்லை

If so, give details with C.C.No. and Court.

நீ எப்போதாவது கிரிமினல் குற்றங்கள் அல்லது பிற குற்றங்கள்

தொடர்பாக கைது செய்யப்பட்டோ, தண்டிக்கப்பட்டோ, சிறைக்கு

அனுப்பப்பட்டோ அல்லது அபராதம் விதிக்கப்பட்டோ இருந்ததுண்டா?



ஆம் எனில் குற்ற வழக்கு எண்கள், நிதிமன்றத்தின் பெயர்களை
குறிப்பிடுக,

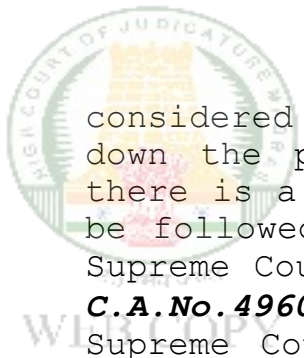
9. In the verification form, the petitioner has signed the declaration also. The declaration form in clear terms states that "I am applicant for appointment to the Tamil Nadu Police Force, do solemnly and sincerely declare that the answer furnished by me to the following questions are entirely true and accurate." When such declaration is signed by the petitioner and the fact regarding the criminal case was not mentioned in Column Nos.15 and 16, undoubtedly, it is a clear suppression on the part of the petitioner. The submission now made by the petitioner that he has not involved in the criminal case cannot be accepted as he has obtained anticipatory bail on 07.07.2017, even though the fact was not informed to the Authorities during verification.

10. The learned Additional Advocate General further contended that the fact stated in the impugned order that the petitioner was arrested is in-correct. In fact, the petitioner has obtained an order of anticipatory bail. However, he was not arrested. But the petitioner has suppressed the fact regarding registration of criminal case during verification which is in violation of the declaration signed by the petitioner. Therefore, the Authorities have rejected the candidature of the petitioner. The Hon'ble Supreme Court of India in the case **Avtar Singh vs Union of India reported in (2016) 8SCC 417** in paragraph No.38.1 held as follows:-

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.

11. 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. Thus, it is unambiguously contemplated that suppression of material fact is a ground for rejection of candidature. Irrespective of the fact that whether the offence is trivial in nature, the facts are to be stated truthfully by the candidates. Therefore, in the present case, the suppression has been established. Once the suppression is established, the candidate is not eligible for selection in view of Rule 14(b)(ii) and (iv) of the Tamil Nadu Police Sub-ordinate Service Rules.

12. Regarding the judgment of the Hon'ble Division Bench of this Court cited on behalf of the petitioner, more specifically in <https://www.mca21.com/cases/2018/2367> of 2021, this Court is of the



considered opinion that the Hon'ble Supreme Court of India has laid down the principles which are to be followed as precedent. When there is a Judgment of the Hon'ble Supreme Court of India, it is to be followed as precedent. Thus, the recent judgment of the Hon'ble Supreme Court in the case of **Commissioner of Police vs. Rajkumar in C.A.No.4960 of 2021 dated 25.08.2021** is to be followed. The Hon'ble Supreme Court of India in the above case considered the relevant judgments of the Hon'ble Supreme Court on the subject including the case of **M.V.Thimmaiah vs. Union Public Service Commission reported in (2008) 2SCC 119** and the case of **Union Public Service Commission vs M.Sathiya Priya reported in (2018) 15 SCC 796**. The Hon'ble Supreme Court of India in the said judgment has made an elaborate analysis regarding the facts and circumstances and the legal principles to be followed and the relevant paragraphs are extracted hereunder:-

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 Commission⁷ 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



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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."

13. In view of facts and circumstances in the present writ
<https://hcservices.ecourts.gov.in/hcservices/>



petition, the petitioner has suppressed the fact regarding the criminal case during the time of verification and further, he obtained an order of anticipatory bail on 07.07.2017. Therefore, the nature of offence which is trivial or otherwise deserves no merit consideration as the principles in this regard are elaborately considered by the Hon'ble Supreme Court of India in the case of **Commissioner of Police vs. Rajkumar** as cited supra. Thus, the judgments of the Hon'ble Supreme Court of India relied on by the petitioner are of no avail for the purpose of considering the relief sought for in the present writ petition.

14. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

1.The Director General of Police,
Head Office,
Chennai-4.

2.The Superintendent of Police,
Pudukottai,
Pudukottai District.

3.The Inspector of Police,
Thirukkokarnam Police Station,
Pudukottai District.

+1 CC to M/s.SPL.GP. (SR-20495[F] dated 22/04/2022)

+1 CC to M/s.M.RAMU, Advocate (SR-20894[F] dated 25/04/2022)

W.P.(MD)No.6493 of 2020

21.04.2022

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