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W.A(MD)No.636 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.636 of 2022
and C.M.P.(MD) No.5293 of 2022

P.S.Selva Vinoth

... Appellant/Petitioner

Vs.

1.The Director General of Police,
O/o. The Director General of Police,
Tamil Nadu Police Head Quarters,
Chennai – 4.

2.The Inspector General of Police (Welfare),
O/o. The Inspector General of Police (Welfare),
Tamil Nadu Police Head Quarters,
Chennai – 4.

3.The Superintendent of Police,
O/o. The Superintendent of Police,
Madurai District Police,
Madurai – 7.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 24.03.2022 in W.P(MD)No.17916 of 2020 and allow the Writ Appeal.

For Appellant

: Mr.T.Lajapathi Roy

For Respondents

: Mr.Veera Kathiravan,
Additional Advocate General
Assisted by Mr.T.Amjad Khan
Government Advocate



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JUDGMENT

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(Judgment of the Court was delivered by S.S.SUNDAR,J.)

Challenging the order of learned Single Judge dated 24.03.2022, made in W.P.(MD) No.17916 of 2020, the petitioner in the writ petition has preferred the above appeal.

2. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the appellant and Mr.Veera Kathirvan, learned Additional Advocate General, assisted by Mr.T.Amjad Khan, learned Government Advocate, who accepts notice for the respondents.

3. Brief facts, that are necessary for disposal of this appeal, are as follows:

Pursuant to the recruitment notification issued by the Tamil Nadu Uniformed Services Recruitment Board, the appellant applied to the post of Grade – I Police Constable for the year 2017-2018. The appellant attended the written examination and secured 62 marks and qualified for Physical Verification Test and Endurance Test. He has also passed in the Physical Verification Test and Endurance Test. However, the appellant received a communication from the Superintendent of Police, Madurai, dated 26.09.2020 informing that the appellant was not appointed as his



antecedents were not satisfactory and that the appellant who got himself involved in two criminal cases had suppressed his involvement in the criminal cases. This communication was challenged by the appellant before the learned Single Judge.

4. It is admitted by the appellant himself that a complaint was registered against him and his family members in Crime No.111 of 2017 for the offence under Sections 147, 148, 294(b), 323, 324 and 506(ii) I.P.C. Though it is stated in the communication, dated 26.09.2020, that there were two cases registered against him, it is stated by the appellant that the appellant was shown as accused only in one case and the statement of facts recorded by the third respondent in the impugned order is not correct. The counsel for the appellant has also convinced this Court that there was only one case against him and he was released on anticipatory bail. It is further stated that the criminal complaint that was registered against the appellant was also quashed in CrI.O.P.(MD) No. 1466 of 2019.

5. Learned Single Judge after referring to the decided cases, particularly the judgment of the Hon'ble Apex Court in the case of ***Commissioner of Police v. Raj Kumar in C.A.No.4960 of 2021 dated 25.08.2021***, dismissed the Writ Petition only on the ground that



the Court cannot consider the suitability, eligibility and the antecedents of the individual overlooking the decision of the Selection Committee in this regard.

6. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in ***Avtar Singh v Union of India reported in (2016) 8 SCC 471***, particularly to paragraph 38.4, which reads as follows:

"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 recourses 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



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services of the employee.

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."

7. Learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court in the case of **Pawan Kumar v. Union of India & another in C.A.No.3574 of 2022, dated 02.05.2022**, wherein it has been held as follows:

"17. Adverting to the facts of the instant case, at the time of attestation form filled by the appellant, the criminal case was already registered against him but it may be noticed that at the very threshold, the complainant filed his affidavit that the complaint on which FIR came to be registered was due to misunderstanding and he did not want to pursue his case any further, but still charge sheet came to be filed and on the first date of hearing, the alleged victim PW.1 did not support case of the prosecution and thus the order of clean acquittal came to be passed by the learned Judge of competent jurisdiction by judgment dated 12th August, 2011.



18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in *Avtar Singh* (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside."

Referring to the said judgments, learned counsel for the appellant submitted that the third respondent did not consider the issue as it was observed by the Hon'ble Supreme Court.

8. This Court is unable to agree with the submissions of learned counsel for the appellant as the portion of judgment of the Hon'ble Supreme Court in ***Avtar Singh*** case (supra) relied upon by appellant's counsel is not applicable to the present case for the simple reason, in the present case, the appellant has suppressed the fact that criminal case, in which, the appellant was shown as accused was pending and it is admitted that the appellant has suppressed this in his application. In para 32 of ***Avtar Singh case*** (supra), it is stated as follows:



“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 any 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.”

Since the non-disclosure of the information about the pending criminal case is fatal as per the judgment of Hon'ble Apex Court in **Avtar Singh** case (supra), this Court has no reason to interfere with the impugned order of learned Single Judge.

9. Accordingly, this Writ Appeal is dismissed. However, liberty is granted to the appellant to participate in fresh selections and the appellant's candidature can be considered, if he discloses his involvement in the criminal case promptly and it is for the respondents to decide the



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suitability of the appellant in the light of the judgment of the Hon'ble Supreme Court in **Avtar Singh** case (supra). No Costs. Consequently, connected Miscellaneous Petition is also dismissed.

[S.S.S.R.,J] [S.S.Y.,J.]
30.06.2022

Index :Yes/No
Internet :Yes/No
sj

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