



W.A.(MD)No.640 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.640 of 2022

A.Suresh

... Appellant

Vs.

- 1.The Director General of Police,
State Head Quarters Office, Chennai-4.
- 2.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai – 600 008.
- 3.The Superintendent of Police,
Ramanathapuram.
- 4.The Inspector of Police,
Nainarkoil Police Station, Ramanathapuram District. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order in W.P.(MD)No.916 of 2020, dated 11.01.2022.

For Appellant :Mr.R.Murugan

For Respondents :Mr.Veera Kathiravan

Additional Advocate General
assisted by Mr.S.P.Maharajan
Special Government Pleader



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JUDGMENT

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

This appeal is preferred by the Writ Petitioner, who had filed W.P.(MD)No.916 of 2020 challenging the impugned order passed by the third respondent, dated 24.10.2019 and to direct the respondents 1 to 3 to issue appointment order to the appellant to the post of Grade-II Police Constable for the year 2017.

2.Heard Mr.R.Murugan, learned Counsel for the appellant and Mr.Veera Kathiravan, learned Additional Advocate General, assisted by Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for the respondents. By consent of both parties, this Writ Appeal is taken up for final disposal at the admission stage itself.

3.The appellant submitted an application on 13.07.2017 pursuant to the recruitment notice issued by the respondents for the post of Grade-II Police Constables, Grade-II Jail Warders and Firemen for the year 2017. Though the appellant submitted an application on 13.02.2017, an FIR in Cr.No.230 of 2017, was registered on 23.09.2017 against the appellant for the offences punishable under Sections 147, 148, 341, 294(b), 323, 324 and 506(ii) IPC.



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4.After police verification, by the order of the third respondent, dated 24.10.2017, the appellant's candidature was rejected on the ground that he has suppressed materials facts at the time of submission of application and participating in the selection process. In the Writ Petition filed by the appellant in W.P(MD)No.20068 of 2017, the impugned order was quashed and the matter was remitted to the third respondent by order, dated 11.01.2018. Thereafter, by order, dated 24.04.2018, another order was passed rejecting the candidature of the appellant mainly on the ground of suppression of appellant's involvement in criminal case. When that was challenged in W.P(MD)No.12405 of 2018, by the appellant, that Writ Petition was allowed and remitted to re-consider the candidature of appellant. Once again the third respondent rejected the candidature of the appellant mainly on the ground of suppression. Challenging the same, the appellant filed W.P(MD)No.916 of 2020. Meanwhile, the appellant was acquitted in the criminal case on the ground that the prosecution had failed to prove the charges and after accepting the case of all the accused that false complaint is given.

5.The learned Single Judge of this Court, though found that the appellant/Writ Petitioner has not suppressed any material fact in his application, dismissed the Writ Petition on the ground that the appellant/Writ Petitioner's involvement in the criminal case is admitted



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and that therefore, the candidature of the appellant/Writ Petitioner is liable to be rejected. Aggrieved by the same, the above Writ Appeal is filed.

6.The learned Counsel for the appellant pointed out that it is the duty of the appointing authority to satisfy himself whether the candidate is suitable for appointment to the post of Constable with reference to the nature of criminal case. Referring to the judgments of Honourable Supreme Court that there should be an application of mind to the nature of complaint and involvement of appellant in the criminal case, the learned Counsel for the appellant submitted that the order impugned in the Writ Petition is liable to be set aside and that the matter may be remanded to the third respondent for fresh consideration in the light of the judgments of the Honourable Supreme Court as well as this Court.

7.As pointed out by this Court as well as the Honourable Supreme Court, particularly, in the case of ***Avtar Singh vs Union of India and others***, reported in ***(2016) 8 SCC 471***, the third respondent may consider the antecedents and suitability of the appellant independently based on the facts that are available. In this case, the appellant was ultimately acquitted by the criminal Court. The verdict of the criminal Court has to be considered whether the appellant was



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honourably acquitted. The findings of the Criminal Court clearly indicate that the appellant has been falsely implicated in the criminal case.

However, it is open to the third respondent to consider the suitability of the appellant and it is for the third respondent to consider the same in the light of the rules interpreted by this Court as well as the Honourable Supreme Court in several cases. Even when a criminal case is pending, the authority has to be satisfied whether the candidate's character and antecedents are such as to qualify him for service.

8.The Honourable Supreme Court in the case of ***Commissioner of Police vs Raj Kumar, in Civil Appeal No.4960/2021***, the Honourable Supreme Court has observed as follows:

“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



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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."

9.Since there should be subjective consideration of the suitability based on the antecedents, this Court is of the view that the impugned order rejecting the candidature of the appellant on the ground of suppression of material facts cannot be sustained. Since the Criminal Court has now acquitted the appellant, the question whether the acquittal was honorary acquittal or not shall also be considered.

10.For the foregoing reasons, this Writ Appeal is allowed and the order of the learned Single Judge in W.P(MD)No.916 of 2022, dated 11.01.2022 as well as the order impugned in the Writ Petition are set aside and the matter is remanded to the third respondent to consider the suitability of the appellant in terms of the rules as interpreted by the Honourable Supreme Court as well as this Court in several cases and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

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

Index : Yes / No



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

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