

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.13097 of 2022

G.Vignesh

... Petitioner

Vs.

1.The Director General of Police,
State of Tamil Nadu,
Mylapore,
Chennai-4.

2.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Pandiyan Salai,
Elambur,
Chennai-8.

3.The Deputy Commissioner of Police,
North,
Tiruchirappalli City,
Tiruchirappalli.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling the records relating to the proceedings of third respondent made in Na.Ka. No.A2/28885/2021, dated 12.01.2022 and quash the same as illegal and consequently direct the first respondent to consider the case of the petitioner for appointment to the post of Grade II Constable.

For Petitioner : Mr.R.Murali
For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

The petitioner herein is an applicant, to the advertisement for common recruitment for the posts of Grade II Police Constables (Armed Reserve, Tamil Nadu Special Force), Jail Warder and Firemen in the Tamil Nadu Uniformed Services Recruitment Board for the year 2020. He is aggrieved against the non-selection of his candidature in the aforesaid recruitment process.

2. The main ground on which the petitioner's candidature was not considered in the selection process, was due to his prior involvement in a criminal case. Such a rejection, merely on a claim for his pre-involvement in a criminal case, may not *ipso facto* render a candidate ineligible, in view of the Memorandum issued by the Director General of Police, Chennai, dated 17.12.2015, for adoption during the recruitment processes conducted by the Tamil Nadu Uniformed Services Recruitment Board (TNUSRB).

3. This Memorandum issued by the Director General of Police in Rc.No.1268/208889/Rect II (1) 2015, dated 17.12.2015, was reiterated in the subsequent guidelines in the proceedings issued by the Director General of Police / Head of Police Force, Tamil Nadu in Rc.No.001455/Rect1(2)/2021, dated 22.02.2021, whereby, certain instructions were given to the selection committee, wherein, some of the disqualifications under Rule 13 of the Special Rules for the Tamil Nadu Police Subordinate Services, as well as Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, were liberalised in the following manner:

“7. The following points should also be considered before issuance of the endorsement.

a. Every case has to be judged on its merit.

b. “Honourable acquittal” restores the right of individual. Hence honourable acquittal before the date of police verification means that the candidate must be considered favourably.

c. A case referred on “Mistake of Fact” has to be favourably viewed for the candidate.

d. Discharge on technical grounds (hostile witnesses) does not entitle the candidate for automatic clearance and the appointing authorities may still reject the candidature on ground of unsuitability to do the nature of the duty.

e. Suppression of involvement in a case still under

investigation or trial or not ending in honourable acquittal is a ground sufficient for rejection of the candidate.

f. Petty cases should not lead to over penalization.

8. It is also informed that the following types of candidates were considered for appointment to the post of SI of Police/Gr.II. PCs on earlier occasions.

(I) The candidates acquitted honourably prior to Police Verification.

(ii) The persons released under probation of offenders act were treated as not involved in a criminal case, in view of section 12 of the PO Act 1958 which stipulates that convicts released on Probation of Conduct Act or after admonition by the Court shall not suffer any disqualification attached to the conviction.

(iii) The persons released under Juvenile Act were treated as not involved in a criminal case. Section 19 of the Juvenile Justice (Care and Protection of Children) Act 2000 which stipulates that a juvenile has committed an offence and has been dealt with under provision of this act shall not suffer disqualification, if any attached to conviction of an offence under such law.

(iv) If any political affiliation on the candidate comes to notice during the Police Verification, it will not be held against him, unless he is having other bad antecedents. However, he

shall be instructed not to involved in such activities as per conduct rules.

(v) The candidates whose names are deleted from the charge sheet.

(vi) The cases treated as Mistake of fact prior to police verification.

(vii) Some of the candidates involved in petty cases were considered.

(viii) Accident cases were considered if the case was pending at the time of police verification and if there was no suppression of fact.

(ix) The case in which the I.O registered the case against a minor candidates under IPC and not under Juvenile Justice Act, his case were considered for appointment.

(x) The cases where fine was imposed upto Rs.2000/- were considered.

4. The learned Additional Advocate General appearing for the respondents made an attempt to persuade this Court for the proposition that in matters of recruitment for public employment in general and for the Uniformed Services in particular, the scope of interference in the selection process by the High Courts, have been restricted through various decisions of the Hon'ble Supreme Court, as well as the Hon'ble Division Benches of this Court. As such,

when the involvement of a candidate in a criminal case has been incorporated as a disqualification, the rejection of the candidature of such candidates, with antecedents of criminal involvement, should not be interfered with. According to him, since the petitioner herein was also involved in a previous criminal offence, his candidature does not require consideration.

5. The submissions of the learned Additional Advocate General, as well as the ratio laid down in the decisions of the Hon'ble Supreme Court and this Court, in this regard, cannot be disputed. In normal circumstances, when a candidate has previously involved himself in a criminal case and irrespective of whether he had disclosed his involvement in the application / police verification or not, the Appointing Authority would be well within their powers to reject the candidature on the ground of his criminal antecedents. Thus, the decisions relied upon by the learned Additional Advocate General on this aspect, does not require elaboration.

6. However, insofar as the recruitment process conducted by the Tamil Nadu Uniformed Services Recruitment Board is concerned, the Director General of Police had issued certain guidelines through his proceedings, dated

22.02.2021, for consideration of the candidature of such candidates, who had involved themselves in cases, which are insignificant in nature. The proceedings also laid down guidelines to the Appointing Authority to consider cases, where the TNUSRB had already condoned acts of involvement in criminal offences.

7. When the Director General of Police himself had issued the above guidelines for the purpose of relaxing the selection criteria in the selection process, insofar as the candidate's involvement in a criminal case is concerned, the need or necessity to place reliance on other case laws touching upon the consequence of a candidate's criminal antecedents, does not arise. As a matter of fact, the proceedings, dated 22.02.2021, came to be issued in the background of some of the orders passed by the Hon'ble Supreme Court and this Court. Thus, the instructions of the Director General of Police in this regard, would supersede all the earlier case laws governing the general principles in a recruitment process and these instructions of the Director General of Police alone would be the guiding factor for all recruitments made through a selection process conducted by the TNUSRB. It is also brought to the notice of this Court that though the selection process of TNUSRB has been challenged on

various occasions spreading over different recruitment processes, none of the decisions of this Court or the Hon'ble Supreme Court had dealt with the proceedings, dated 22.02.2021, passed by the Director General of Police and on this ground also, the case laws, which the learned Additional Advocate General relied upon, may not be of any assistance.

8. In the light of the above observations, the facts involved in the present case was looked into. Admittedly, the petitioner herein was acquitted in the criminal case registered against him. The petitioner herein had disclosed the registration of this complaint both in his application as well as during the time of police verification. As such, there is no suppression of facts from his side.

9. Under Clause 7(b) and 8(i) of the guidelines (supra), the candidates, who are acquitted honourably, were considered for appointment to the post of SI of Police/Grade II Police Constables on earlier occasions. The guidelines of the Director General of Police was laid down as a yardstick for the selection of the candidates, in addition to the disqualifications referred to under the notification, as well as the relevant rules. In other words, the aforesaid exception has been carved out from the disqualifications prescribed under the notification, as well

as the Rules. Since the involvement of the candidate for any offence, who was acquitted honourably, was considered to be an exception, in view of the proceedings of the Director General of Police, dated 22.02.2021, the petitioner herein would be entitled for appointment. Since the petitioner's case was rejected through the impugned order, dated 12.01.2022, the same is liable to be set aside for the aforesaid reasons.

10. Accordingly, the impugned order, dated 12.01.2022, on the file of the third respondent is quashed. Consequently, there shall be a direction to the third respondent herein to forthwith pass orders, in the light of the above findings and observations, granting posting orders to the petitioner for the post of Grade II Police Constable under the notification for common recruitment for the posts of Grade II Police Constables (Armed Reserve, Tamil Nadu Special Force), Jail Warder and Firemen in the Tamil Nadu Uniformed Services Recruitment Board for the year 2020, within a period of four (4) weeks from the date of receipt of a copy of this order. It is made clear that the petitioner herein shall not seek for seniority or other monetary benefits, on par with the successful candidates under the common recruitment notification and that his services will be reckoned from the date of the present appointment order.

11. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

26.08.2022

Index : Yes / No

Internet : Yes/ No

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