



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19314 of 2021

and

W.M.P. (MD) Nos.16047 & 16048 of 2021

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M.Prabakaran

... Petitioner

vs.

1.The Director General of Police
Mylapore, Chennai-600 004

2.Tamil Nadu Uniformed Service Recruitment Board
rep.by its Member Secretary
Egmore, Chennai-600 008

3.The Superintendent of Police
Thoothukudi District
Thoothukudi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records on the file of the 3rd respondent in connection with the impugned order of rejection passed by him vide his Proceedings in Na.Ka.No.A5/19292/2019 dated 16.06.2021 and quash the same as illegal and arbitrary and consequently direct the respondents to appoint the petitioner in the post of Grade-II Police Constable based on the provisional selection list published by the 2nd respondent in the light of the order passed in the case of Avtar Singh vs Union of India and others, reported in 2016 (8) SCC 471 or in the post of Grade-II Jail Warden or Fireman by following the Tamil Nadu Jail Subordinate Service Rules or Tamil Nadu Fire Subordinate Service Rules respectively within the time stipulated by this Court.

For Petitioner : Mr.Thalaimutharasu.G.

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, dated 16.06.2021, passed by the third respondent, rejecting the candidature of the petitioner for recruitment to the post of Grade-II Police Constable, is under challenge in this writ petition.



2. The petitioner participated in the process of selection for recruitment to the post of Grade-II Police Constable and he was successful in the written examination and allowed to participate in the physical verification test and endurance test. During verification, it was found that the petitioner suppressed the fact regarding registration of a criminal case against him and therefore, the Selection Committee formed an opinion that the character and antecedents of the petitioner are not satisfactory and rejected his candidature.

3. The learned counsel for the petitioner strenuously contended that at the time of submitting application for recruitment, the petitioner was not aware of registration of the criminal case. Furthermore, the criminal case was ended with an order of acquittal and not on benefit of doubt. This apart, the alleged offence was under Section 160 I.P.C., which is trivial in nature. Therefore, the candidature of the petitioner cannot be rejected and he must be selected and the impugned order is liable to be set aside.

4. The learned Additional Advocate General appearing for the respondents objected the said contentions by stating that the petitioner suppressed the fact regarding registration of criminal case against him at the time of submitting application. The Selection Committee found that the character and antecedents of the petitioner are not satisfactory. The order of acquittal was passed under Section 255 of the Code of Criminal Procedure on the grounds that the prosecution failed in fixing the place of occurrence and no independent witness was examined with reference to the alleged occurrence and therefore, such offence was not made out against the accused.

5. This Court has to consider whether the rejection of the petitioner's candidature is in accordance with the established principles or not.

6. Though the petitioner contends that he was not aware of the fact regarding registration of the criminal case, the original files produced by the respondents reveals that the petitioner was arrested on 09.02.2018 and released on bail. When the petitioner was arrested, the very submission that he had no knowledge about the registration of criminal case against him cannot be trusted upon. As rightly pointed out by the learned counsel for the petitioner, the criminal case was ended with an order of acquittal under Section 255 Cr.P.C. However, ignorance of the fact regarding registration of criminal case was incorrect and therefore, suppression of material fact in the application is made against the petitioner. Though the petitioner informed the same during verification, since it was suppressed at the time of submitting application, it was taken against the petitioner by the Selection Committee.



7. This Court is of the considered opinion that when the petitioner pleaded that he had no knowledge about the registration of criminal case and the respondents produced the original file and established that the petitioner was arrested on 09.02.2018, the very submission made before this Court that the petitioner had no knowledge about the registration of criminal case against him itself is incorrect. However, the Selection Committee formed an opinion that the character and antecedents of the petitioner are not satisfactory. Even before this Court, the petitioner has not placed the correct facts regarding his arrest.

8. Even recently, the Honourable Supreme Court of India in the case of **Commissioner of Police vs. Raj Kumar**, by Judgment dated 25.08.2021, passed in C.A.No.4960 of 2021, has 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 [(2008) 2 SCC 119] 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



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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."

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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."

9. This Court is of the considered opinion that the verification of suitability, eligibility and antecedents of the candidates are of paramount important. The decision of the Selection Committee in this regard becomes final. High Court cannot interfere with the decision of the Selection Committee regarding the assessment of suitability, eligibility and verification of the antecedents. Hence, this Court do not find any infirmity in respect of the order impugned rejecting the candidature of the petitioner.

10. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Director General of Police,
Mylapore, Chennai-600 004.
- 2.The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board,
Egmore, Chennai-600 008.



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

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-14744[F]
dated 28/03/2022)

+1 CC to M/s.SPL GP (SR-14851[F] dated 28/03/2022)

W.P. (MD) No.19314 of 2021

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24.03.2022

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