



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.24153 of 2018

and

W.M.P.(MD)No.21847 of 2018

V.Raman

... Petitioner

vs

1. The Director General of Police,
Office of the Director General of Police,
Chennai - 600 004.
Tamil Nadu.

2. The Superintendent of Police,
X Cell, Chief Office,
Avadi, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 1st respondent in his proceedings in RC No.079476 Rect.II(2)/2018 dated 06.06.2018 and quash the same and consequently direct the respondents to appoint the petitioner as Grade II Band PC.

For Petitioner : Mr.H.Velavadhas

For Respondents : Mr.S.Kameswaran
Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 06.06.2018 and direct the respondents to appoint the petitioner as Grade II Band PC.

2. The brief facts of the case are that the respondents had called for applications from the eligible candidate for the post of Grade II Band Police Constable in the year 2007 for attending the interview on 05.05.2008. The petitioner received a call letter from the respondents on 09.04.2008. The petitioner was selected as



Grade II Band PC. In the meantime, on 27.09.2009 a false case was registered against the petitioner in Crime No.413 of 2009 under Sections 147,148, 324 and 506 (ii) of IPC in K.K. Nagar Police Station, Trichy and the petitioner's name was arrayed as fourth accused. The contention of the petitioner is that it is a case and counter case and the petitioner's name has been included and no allegation against the petitioner in the FIR. The respondent through order dated 05.02.2010 declined to consider the petitioner's appointment for the reason that the petitioner is involved in criminal case. The petitioner submitted an explanation on 05.03.2010 and the respondent considered the said representation and passed an order dated 29.04.2010 whereby, rejection of the appointment was confirmed. In the meantime, the Inspector of Police, K.K.Nagar filed a final report in Crime No.413 of 2009 in CC.No.34 of 2010 and after trial the petitioner was acquitted in the criminal case. Therefore, the petitioner approached the respondents to grant appointment. In the meantime, the petitioner submitted a representation to the Chief Minister's cell. Again, the first respondent without any enquiry has passed an order dated 06.06.2018 rejecting the petitioner's claim.

3. The first respondent have filed a counter affidavit stating that the petitioner was selected provisionally for appointment to the post of Grade II Band Police Constable for the year 2007. Because of the involvement in the criminal case, the petitioner was not conferred with an appointment. As per the Rule 14(b) of Special Rules for the TNPSS, if any person is involved in a criminal case and a person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile shall be treated as a person involved in a criminal case. In Explanation (2), it is stated that a person involved in criminal case at the time of police verification and the case is yet to be disposed and subsequently ended up in Honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim for an appointment only by participating in the next recruitment. As per the above Rules, the petitioner is not eligible for the appointment since the petitioner was acquitted on the benefit of doubt. The learned Counsel appearing for the respondents relied on the judgment rendered in **J.Alex Ponseelan's vs Director General of Police, in W.P. (MD)No.8345 of 2011** and this Court, vide order, dated 27.02.2014 has held that the Explanations 1 and 2 of Rule 14(b) (iv) of the Tamil Nadu Special Police Subordinate Service Rules, 1978 is legally valid and has upheld the Rule. Therefore, the petitioner is not entitled to.

4. Heard Mr.H.Velavadas, learned Counsel appearing for the petitioner and Mr.S.Kameswaran, learned Counsel appearing for the respondents.



respondents.

5. It is an admitted fact that the petitioner was selected on 19.04.2008 for the post of Grade II Band Police Constable. Thereafter, on 27.09.2009 a false case was registered against the petitioner in Crime No.413 of 2009 which was taken up for trial in C.C.No.34 of 2010 on the file of Judicial Magistrate No.2 Trichy, the petitioner was acquitted, wherein it has been held that the complainant himself has submitted before the Magistrate Court that the accused has not hit him and such an incident was not happened at all. Based on the submission of the complainant the criminal case came to be dismissed. It is not the case of robbery and any other serious offence. The issue of appointment for the candidates who have involved in criminal case was considered by Supreme Court, reported in 2011-4-L.W.138, where it has been held that, when the incident was happened the respondent must have been 20 years of age. At that age young people often commit indiscretions and such indiscretions can often been condoned. After all youth will be youth. They are not expected to behave in as mature way as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than brand them as criminals for the rest of their lives. In the present case, the petitioner is 31 years at the time of selection, until today the petitioner could not get any job. Because of the criminal case there was a stigma.

6. On perusing the Trial Court judgment, it is seen that even the complainant has stated that no such incident had occurred. The clash between two groups and two peoples will lose its importance as time goes. In this present case, after two years, the clash between the petitioner and the complainant has lost its importance as rightly pointed out by the Supreme Court. Any serious offence is there that ought to be considered. In the present case there was only clash between the two groups.

7. Therefore, this Court is of the considered opinion that the petitioner claim needs consideration. Therefore, the respondents are directed to consider the petitioner's candidature and appoint the petitioner as Grade II Band PC. Moreover, it is a Band PC post where the petitioner would be playing Band and Musical instruments, music will definitely create a better petitioner in future. Therefore, this Court is of the considered opinion that the impugned order is liable to be set aside and hence the impugned order is set aside and the respondents are directed to confer appointment order to the petitioner within a period of four weeks from the date of receipt of the copy of the order.



8. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Director General of Police,
Office of the Director General of Police,
Chennai - 600 004.
Tamil Nadu.

2. The Superintendent of Police,
X Cell, Chief Office,
Avadi, Chennai.

+1 CC to M/s.H. VELAVADHAS, Advocate (SR-16763[F] dated 06/04/2022)

+1 CC to M/s.SPL.GP (SR-17031[F] dated 06/04/2022)

Order made in
W.P. (MD) No. 24153 of 2018
05.04.2022

nsn(CO)
TR(25.05.2022) 4P 5C