



W.P.(MD) No.19844 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19844 of 2021

P.Saravanan

... Petitioner

vs.

1.The Chairman

Tamil Nadu Uniform Services Recruitment Board
Old Commissioner of Police Office Campus
Pantheon Road, Egmore
Chennai-600 008

2.The Director of General of Police

Law and Order, Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai-600 004

3.The Superintendent of Police

Thanjavur District
Thanjavur

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the first respondent to consider the Petitioner for appointment to the post of Grade - II Police Constable / Grade II Jail Warder / Fireman based on the merit list in the selection conducted by the first respondent for the year 2012 in the light of the Supreme Court Judgement rendered in Avtar Singh - vs - Union of India reported in (2016) 8 SCC 471 read with judgement rendered by this Court in Crl.R.C(MD) No.354 of 2016, dated 13.07.2016.

For Petitioner : Mr.Gopalan.A.K.

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader



O R D E R

The relief sought for in this writ petition is to direct the first respondent to consider the petitioner for appointment to the post of Grade - II Police Constable / Grade II Jail Warder / Fireman, based on the merit list in the selection conducted by the first respondent for the year 2012 in the light of the decision of the Honourable Supreme Court in **Avtar Singh vs. Union of India**, reported in **(2016) 8 SCC 471** and the Judgement rendered by this Court in Crl.R.C(MD) No.354 of 2016, dated 13.07.2016.

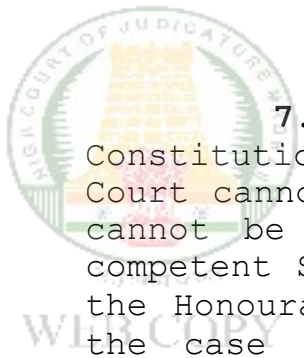
2. The petitioner participated in the process of selection for recruitment to the post of Grade-II Police Constable and he was successful in the written examination and allowed to participate in the physical verification test and endurance test.

3. A criminal case was registered against the petitioner in Crime No.305 of 2012, on the file of Kumbakonam West Police Station, under Section 294(b) I.P.C. The petitioner was convicted and paid a fine of Rs.300/-. However, he filed a revision petition in Crl.R.C. (MD) No.354 of 2016 and this Court by order dated 13.07.2016 allowed the revision petition.

4. The learned counsel for the petitioner made a submission that the offence alleged to have been committed by the petitioner is trivial in nature and as per the decision of the Honourable Supreme Court in **Avatar Singh's** case (cited supra), which was reiterated in the case of **Umesh Chandra Yadav vs. the Inspector General and Security Commissioner, R.P.F., Northern Railway, New Delhi and others**, reported in **2022 LiveLaw (SC) 300**, the case of the petitioner is to be considered.

5. The learned counsel for the petitioner relying upon the decision in the case of **Umesh Chandra Yadav** (supra) submitted that certain offences, which all are trivial in nature, need not be held against the candidate. The said proposition laid down in **Avatar Singh's** case by the Apex Court is referred in the recent case.

6. No doubt, in **Avatar Singh's** case (supra), the Honourable Supreme Court has laid down the principles. The principles are relatable to the deliberation of the competent Selection Committee. By picking up one condition in **Avatar Singh's** case (supra), a candidate cannot claim that he should be selected. In **Avatar Singh's** case (supra), many principles are laid down and all those principles are to be considered by the competent Selection Committee while taking a final decision. However, High Court can exercise the power of judicial review only if such a decision is tainted with mala fide or directly in violation of the statutory Rules in force.



7. The power of judicial review, under Article 226 of the Constitution of India, in the matter of selection is limited. High Court cannot act as a selection body. The power of judicial review cannot be extended to interfere with the decision taken by the competent Selection Committee. In all such principles laid down by the Honourable Supreme Court in **Avatar Singh's** case (supra) and in the case relied on by the petitioner i.e. **Umesh Chandra Yadav** (supra), considerations to be deliberated by the Selection Committee have been enumerated. However, a candidate approaching High Court cannot site one such principle and seek a direction for selection from the High Court. Overall verification of antecedents and character of the candidate is paramount important for the selection to the Uniformed Services. The Uniformed Services Personnel are responsible for the maintenance of law and order in the Society. They are equipped with arms and ammunitions. Their character is important to deal with the public as they are empowered to register criminal cases against the citizen. If a person is not suitable to be appointed as a Policeman, the same will result in denial of fundamental right to the citizen. Therefore, verification of antecedents and character and assessment of suitability and eligibility are all paramount important.

8. In the matter of selection, High Court cannot interfere with as stated above, only if allegation of *mala fides* are tainted or violation of statutory provisions is established, but not otherwise. In all other cases, each case is to be considered based on its own facts and circumstances and on merits.

9. The power of judicial review of the High Court in the matter of selection has been well enumerated in the yet another decision of the Honourable Supreme Court in the case of **Commissioner of Police vs. Raj Kumar**, by Judgment dated 25.08.2021, passed in C.A.No.4960 of 2021, wherein it has been 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



WEB COPY

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...

XXXXXXXXXXXXXXXXXXXX

30. We fail to understand how the Tribunal can sit as an Appellate 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."

...

...

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."

10. In the present case, the petitioner involved in a criminal case. He was convicted and paid fine amount, subsequently, the revision petition filed by him was allowed by this Court. According to the respondents, the petitioner has suppressed the fact regarding registration of criminal case while submitting application. The factum of suppression of material fact is established. Therefore, the said ground is sufficient for rejecting the candidature of the petitioner. However, in the matter of selection to the Uniformed Services, overall 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.



WEB COPY

W.P.(MD) No.19844 of 2021

11. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

krk

To:

1.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai-600 008.

2.The Director of General of Police,
Law and Order, Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

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

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.AK.GOPALAN, Advocate (SR-14364[F] dated 24/03/2022)

+1 CC to M/s.SPL GP (SR-14881[F] dated 28/03/2022)

W.P. (MD) No.19844 of 2021

24.03.2022

MGJ(05.04.2022) 6P 8C