



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.5947 of 2022

M.Dhinakaran

Petitioner

vs.

1.The Tamil Nadu Uniformed Services Recruitment Board,
Rep. by its Vice Chairman,
Having office at
Old Commissioner of Police Office Campus,
Pantheon, Egmore,
Chennai – 600 008

2.The Director General of Police,
Director General of Prisons and Correctional Services,
Emore,
Chennai – 600 008.

3.The Member Secretary,
The Tamil Nadu Uniformed Services Recruitment Board,
Having office at
Old Commissioner of Police Office Campus,
Pantheon, Egmore,
Chennai – 600 008.

4.The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore District,
Cuddalore – 607 001.

Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 07.04.2021 bearing Order No. 32134/EW .1/2019 passed by the 2nd Respondent and to quash the same and direct the Respondents to issue appointment to the post of Jail Warder under the 2nd Respondents office.

For Petitioner : Mr.V.Jai Bharathi

For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by
Mr.Ru.Dinesh Rajkumar
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 07.04.2021 and for a consequential direction to the respondents to appoint the petitioner to the post of Jail Warder.

2.The brief facts of the case are as under:

- (a) The petitioner is the holder of Post Graduate Degree in M.C.A. The 3rd respondent issued a recruitment notification, dated 06.03.2019 calling for applications to fill up the post of Jail Warder. The petitioner also submitted his application to participate in the selection. Even at the time of submitting the application, the petitioner had disclosed that there was a



criminal case registered against him and the same ended in an acquittal.

(b) The petitioner was permitted to write the examination and on successful completion of the written examination, the petitioner was called for physical examination. The petitioner was successful in the physical examination also. Thereafter, he was called for certificate verification on 30.11.2019.

(c) The respondents ultimately published the results in February 2020 and in the provisional selection list, the petitioner was placed at S.No.17. Thereafter, the petitioner was called for medical test and the petitioner was expecting the appointment order to be issued to him.

(d) To the shock and surprise of the petitioner, the 2nd respondent through the impugned proceedings dated 07.04.2021, refused the candidature of the petitioner by assigning the following reasons:

Taking into consideration, all the facts and the law points discussed above, the plea of the petitioner for appointment to the post of Grade II Warder could not be accepted as per Rule No.6 Appendix Sub Rule (f), Explanation 1 and 2 of Tamil Nadu Jail Subordinate Service He is not found eligible for the recruitment of Grade II Warder for the year 2019 as his previous character and antecedents are not satisfactory. Hence, his candidature is not considered for appointment during the year 2019.



(e) Aggrieved by the rejection order passed by the 2nd respondent, the present writ petition has been filed before this Court.

3. The 2nd respondent for himself and on behalf of other respondents has filed a counter affidavit. A specific stand has been taken in the counter affidavit to the effect that the special Rules for the Tamil Nadu Jail Subordinate Services Rules clearly provides that a person who is involved in a criminal case will not be considered for selection. Even, if such a person is acquitted or discharged on a benefit of doubt or because the witnesses have turned hostile, that will not in any way bind the department. In the counter affidavit, the earlier judgments passed in ***Avtar Singh vs. Union of India and others*** reported in **2016 8 SCC 471** and the judgment in ***Pradeep Kumar*** arising in Civil Appeal Nos.67 to 70 of 2018, dated 08.01.2018, has also been relied upon. Ultimately, at Paragraph No.17 of the counter affidavit, it has been stated as follows:

17. It is humbly submitted that the Trial Court had taken into consideration that PW1 and PW2 has turned hostile and after consideration of all these aspects, the judgment of acquittal has been passed. As such, the judgment of acquittal in C.C.o.199 of 2015 was considered as deemed to be an Honourable acquittal. Hence, as per G.O.Ms.No.1410, Home (Pri) Department, dated 17.10.2008, he is not eligible for appointment to the post of



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Grade II Warder for the year 2019. He can claim right for appointment only by participating in the next recruitment. Therefore, the orders passed by the 2nd respondent is not contrary to law. The orders were passed based on the rules and regulations enabled by law.

4. Heard Mr.V.Jai Bharath, learned counsel appearing on behalf of the petitioner and Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the respondents.

5. The short issue that arises for consideration in the present case is as to whether the 2nd respondent was right in rejecting the candidature of the petitioner for selection to the post of Jail Warder by pointing out to the earlier criminal case that was registered against the petitioner and in which the petitioner was ultimately, acquitted and it was also held by this Court in CrI.O.P.No.24941 of 2019, dated 17.09.2019, to be a Hon'ble acquittal.

6. Even at the inception, the exercise of power by this Court under Section 482 of Cr.P.C., to declare an acquittal as an Hon'ble acquittal has been held by the Division Bench of this Court to be beyond the scope of the power of this Court. Useful reference can be made to the judgment in **Rakesh Tiwari,**

Advocate vs. Alok Pandey, Chief Judicial Magistrate reported in **2019 6 CTC**



465. Hence, just because this Court has declared the acquittal of the petitioner to be a Hon'ble acquittal, the same does not in any way stand in the way of the respondents to deal with the application submitted by the petitioner on its own merits and in line with the Rules and judgments of the Hon'ble Apex Court.

7. Before going into the reason for rejecting the candidature of the petitioner, it will be apposite to take note of the judgment of the Apex Court in ***Commissioner of Police and Other vs. Sandeep Kumar*** case reported in **2011 4 SCC 644** and Paragraph No.8 of the judgment is extracted hereunder:

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

8. The learned Additional Advocate General also brought to the notice of this Court the latest judgment of the Apex Court in ***Union of India and Others***



vs. Methu Meda reported in **2022 1 SCC 1** and the following paragraphs were

relied upon:

13. The expression "honourable acquittal" has been considered in *S. Samuthiram* after considering the judgments in *RBI v. Bhopal Singh Panchal* and *R.P. Kapur, Raghava Rajgopalachari*; this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.

14. Recently, this Court in *State (UT of Chandigarh) v. Pradeep Kumar*, relying upon the judgment of *S. Samuthiram* said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be



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inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in Mehar Singh holding non-examination of key witnesses leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said that nature of acquittal is necessary for core consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues.

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21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned.



Therefore, the impugned orders passed by the learned Single Judge of the High Court in Methu Meda v. Union of India and the Division Bench in Union of India v. Methu Meda are not sustainable in law, as discussed hereinabove.

9. There is absolutely no quarrel on the proposition that where a person has been acquitted by giving him the benefit of doubt, from the charges of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle the participant for employment and more particularly in the disciplined force. It was always considered that such elements who have a criminal case, should be nipped at the bud even before coming into the service and cause more damage to the disciplined forces.

10. While dealing with cases of this nature, the most important factor to be taken into consideration by the Court is with regard to the nature of allegation and to see if it involves moral turpitude and it must also be seen at what age such an offence was committed by the concerned person.

11. In the instant case, the petitioner was aged about 19 years, when the criminal case came to be registered against Arun and six others, wherein, the petitioner was arrayed as A2, in Crime No.73 of 2015. On carefully going



temple and in the spur of the movement, the accused person are said to have attacked the injured with hands, wooden log and also a pipe. This dispute had happened in between persons who know each other well. On going through the judgment passed in C.C.No.199 of 2015, dated 18.02.2016, it is seen that even the *defacto* complainant and the person injured informed the Court that the matter has been compromised between the parties and sought for compounding the offences. Since one of the offence under Section 324 of IPC was non-compoundable, the trial Court went ahead with the trial and naturally the injured and the *defacto* complainant did not support the case of the prosecution. Ultimately, the petitioner and others were acquitted for charges under Section 294(b), 323, 324 and 506(ii) of IPC.

12.It is quite obvious that the petitioner turned to be a more responsible person and he pursued his education and completed his Under Graduation in B.Sc., Computer Science in the year 2015 and M.C.A., in the year 2017. The nature of offence that was committed, obviously did not involve any moral turpitude and it was an offence which emanated in the spur of movement.

13.In view of the above, the observation made by the Apex Court in ***Sandeep Kumar*** case will have a lot of significance. In fact Paragraph No.8 of



the judgment which has been extracted *supra*, perfectly falls in line with the facts of the present case.

14. In the light of the above discussion, this Court is inclined to interfere with the impugned proceedings of the 2nd respondent dated 07.04.2021 and the same is hereby quashed.

15. It is brought to the notice of this Court that the selection process for the post of Jail Warder came to an end and thereafter, applications were called for to fill up the post of Police Constable Armed Reserve through Advertisement dated 30.06.2022 and the petitioner had also submitted his application and has cleared his written examination. The petitioner has been called for physical examination on 07.02.2023. In the light of this development, the consequential direction sought for by the petitioner cannot be granted by this Court. It is made clear that the selection of the petitioner for the present selection will be based on the petitioner satisfying all the requirements and the earlier criminal case that was put against the petitioner should be disregarded in view of the order passed in this writ petition. This clarity given by this Court will sufficiently safeguard the interest of the petitioner.



WEB COPY 16. In the result, this writ petition stands allowed in the above terms. No

Costs.

23.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

Note: Issue Order Copy on 30.01.2023

To

1. The Vice Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Having office at
Old Commissioner of Police Office Campus,
Pantheon, Egmore,
Chennai – 600 008
2. The Director General of Police,
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Office of the Superintendent of Police,
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N. ANAND VENKATESH, J.

SSI

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