



W.P.No.4990 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4990 of 2021

S.Chitrarasan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Home Department,
Fort St. George, Chennai 9.

2.The Director General of Police,
Chennai 4.

3.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Chennai 2.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the second respondent in Rc.No.371236/REct.1(2)/2020, dated 11.03.2020 served on 20.03.2020 and quash the same and consequently direct the respondents to appoint the petitioner as Grade II Constable in the Tamilnadu Special Police Service recruitment for the year 2007-2008 or 2008-2009 with notional seniority without backwages.



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For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.P.Kumaresan, Addl. Advocate General
Assisted by Mr.T.Chezhiyan
Additional Government Pleader

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ORDER

The petitioner has filed this Writ Petition seeking to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the second respondent in Rc.No.371236/REct.1(2)/2020, dated 11.03.2020 served on 20.03.2020 and quash the same and consequently direct the respondents to appoint the petitioner as Grade II Constable in the Tamilnadu Special Police Service recruitment for the year 2007-2008 or 2008-2009 with notional seniority without back wages.

2. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.P.Kumaresan, learned Additional Advocate General for the respondents.

3. The petitioner appeared for the recruitment for the year 2008-09



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and found to be qualified for the post of Grade – II Constable and he came out successful in both physical and written examination. However, appointment was not offered to him by stating that he had suppressed the material particulars with regard to the pendency of a criminal case against him.

4. Mr.S.N.Ravichandran, learned counsel for the petitioner submitted that during the first selection pertaining to the recruitment for the year 2007-08, the petitioner disclosed that a criminal case was pending. Even though the case was pending during selection, at the time of passing of rejection order dated 19.10.2009, the petitioner got acquitted by virtue of the judgment dated 06.02.2009 made by the learned District Munsif-cum-Judicial Magistrate, Neyveli in C.C.No.251 of 2008. Even though the petitioner got acquitted, he filed a criminal revision in CrI.R.C.No.1327 of 2010 by stating that he is entitled for honourable acquittal, not just an acquittal on benefit of doubt. The said revision was allowed by considering the petitioner's acquittal on merits. The relevant portion of the order passed in CrI.R.C.No.1327 of 2010 is



extracted hereunder:

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"10.As far as the case on hand is concerned, a perusal of the impugned order passed by the learned Magistrate reveals that the learned Magistrate has given a specific finding to the effect that there is absolutely no evidence available on record to arrive at the conclusion that the accused including the revision petitioner have committed the offence alleged against them in this case. It is also pertinent to note that in the order of acquittal, it is clearly stated that the prosecution has failed to prove its case beyond reasonable doubt. The learned Magistrate has not observed or given any finding to the effect that the accused has been acquitted by giving benefit of doubt. Therefore, it is crystal clear that the accused in this case including the revision petitioner have been acquitted as there is no evidence available on record against anyone of the accused much less, the revision petitioner, who has been arrayed as A1 in this case. Therefore, this Court is of the considered view that it is very clear that the order of acquittal passed by the learned Magistrate, Neyveli, dated 06.02.2009 in C.C.No.215 of 2008 is one of honourable acquittal."



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5. In the subsequent selection for the year 2008-09 also the petitioner cleared the physical and written examination successfully. However, by virtue of an order dated 06.04.2010, once again the petitioner's appointment was rejected by stating that the petitioner had suppressed the earlier criminal case. The petitioner did not bring it to the notice of the second respondent as he got an acquittal in the above case. Subsequently, the petitioner has filed Writ Petitions in W.P.Nos.21831 & 21832 of 2010 for seeking direction to set aside the order of rejection. In the above said Writ Petitions an order has been passed on 20.12.2019. Paragraph No.5 and 6, which are more relevant are extracted hereunder:

"5.The Writ Petitions were filed in the year 2010 and the respondents have also filed counter affidavit dated 26.10.2010. It proceeded on the basis that the petitioner fall within Explanation-I to Clause (iv) of Rule 14(b) of the Tamil nadu Special Police Subordinate Service Rules, 1978. But subsequently, on 28.02.2011, this Court has declared that the petitioner was Honourably acquitted and therefore, in the present circumstances, the respondents have to consider the



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candidature of the petitioner in the light of the order passed in Crl.R.C.No.1327 of 2010 dated 28.02.2011.

6.In view of the same, both the Writ Petitioners are disposed of with a direction to the respondents to consider the candidature of the petitioner in the light of the order passed in Crl.R.C.No.1327 of 2010 dated 28.02.2011 and pass appropriate orders, in accordance with law. This exercise shall be completed by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs."

6. Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents submitted that the confirmation of the acquittal of the petitioner as that of honourable acquittal by virtue of the order passed in Crl.R.C.No.1327 of 2010 relates to the date 28.02.2011, but the petitioner appeared for the recruitment for the year 2009. It is further submitted that the petitioner did not disclose in his application about his involvement in the criminal case and that he had got acquittal and hence the petitioner is not entitled to make any submission that his acquittal in the Appellate Court relates back to the date of the judgment



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passed in the Lower Court. Since the material facts were suppressed by the petitioner, the petitioner's request does not warrant any consideration.

In the impugned order dated 11.03.2020, the second respondent has passed the order of rejection by placing reliance on the judgment passed in W.A(MD) Nos.285 & 286 of 2015. In paragraph No.9 of the impugned order, it is observed as under:

"9.The Hon'ble High Court of Madras in its orders, dated 20.04.2015 in Writ Appeals(MD) Nos.285 of 2015 and 286 of 2015 filed by Tr.S.Balakrishnan Pradeep and others have observed as follows:-

"30.As observed earlier, there cannot be any suppression, on the part of the appellants, at the time when they submitted their applications. But after completion of the written tests and during police verification, conviction and payment of fine, had come to the knowledge of the authorities. Discovery of the said fact cannot be ignored. Criminal Revision (MD) No.772 of 2010, has been disposed of, on legal grounds. Evidence has not been discussed. Therefore, with due respect, we



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are not in agreement with the contention of the learned counsel for the appellants, that the facts on hand is similar to Ram Kumar's case. Even taking it for granted that conviction has been set aside in 2010, it cannot be retrospectively applied, to the non selection of the appellants which was conducted in the year 2008. Selection or non selection, depends upon the satisfaction of the required criteria, at the time of scrutiny of application, during the process of selection and if a person is disqualified, during such process, on account of conviction and if the same, is set aside, at a later point of time, by a higher forum, the judgment rendered acquitting the candidate, cannot be applied retrospectively, to the period of selection and in the case on hand, when the selection has already been finalised in 2008 itself. Eligibility criteria has to be satisfied on the date of submission of application, during the selection process and till it is finalised."



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7. Pursuant to the above, it was observed that the acquittal of the petitioner on the date of the judgment could have been considered as only an acquittal by giving the benefit of doubt and not an honourable acquittal.

8. Before advertng into the applicability of the observation made in the impugned order dated 11.03.2020 to the facts of this case, one clarity has to be made in respect of the order made in CrI.R.C.No.1327 of 2010. The petitioner was acquitted in the criminal case pending against him in C.C.No.251 of 2008 by virtue of the judgment dated 06.02.2009. However, he filed a criminal revision by claiming that the acquittal in the above case is an honourable acquittal not just an acquittal on benefit of doubt. In the order passed in the revision, a clarification has been given that the acquittal of the petitioner on the materials relied by the learned Trial Judge would only amount to honourable acquittal and it is not a mere acquittal by giving benefit of doubt. In fact, the Court has made an observation that there is no material available against the petitioner during the trial and hence his acquittal has to be considered only as an



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honourable one.

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9. In the impugned order, a reference has been made about the case in W.A(MD) Nos.285 & 286 of 2015. In those cases, the case against that petitioner had ended in conviction and later on challenge, it was reversed and the person involved was acquitted subsequently. Hence, it is rightly held that the order of acquittal due to reversal in the Appellate Court cannot be considered as acquittal relating back to the date of judgment of the Trial Court.

10. But in the case of the petitioner, the petitioner was never convicted either by the Trial Court or by the Appellate Court by way of reversing the Trial Court's judgment. The petitioner on his own volition sought clarification on the order passed by the Trial Court that his acquittal is an honourable acquittal. Even if the petitioner omitted to file a Criminal Revision, the fact remains that he got acquitted on 06.02.2009, when the judgment of the Criminal Court was passed. The petitioner applied to the next recruitment (i.e) 2008-09, only on



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07.06.2009, on which date there was no case pending against him.

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11. The allegation is that in the application, the petitioner did not mention about his acquittal in the criminal case. In case, the petitioner had not filed the Criminal Revision, still he had the order of acquittal in his favour and it is for the second respondent to appreciate whether it should be taken as an honourable acquittal or not, irrespective of the words ‘beyond reasonable doubt’ employed by the Trial Court in its concluding part of the judgment.

12. The petitioner who got acquitted on the date when he applied for the recruitment for the year 2008-09, seems to have presumed that on that date no criminal case was pending against him and hence he omitted to make any mention in column No.16 of the application. However, subsequent to his successful clearance in the written examination and physical fitness, during verification, the respondents could have very well known that the criminal case which was pending



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earlier had ended in acquittal. As on the date when the petitioner applied, there was no case pending against him.

13. So far as the criminal case was concerned, it was due to some alleged clash between two groups and cases in counter have been registered against this petitioner for the charges under Sections 147, 148, 294 IPC. The above charges are trivial in nature and hence, the case can be classified under the case involving trivial offences. It cannot be claimed that on the date when the order in Criminal Revision was passed, there was no order of acquittal. Since the order of acquittal was very well in existence, the reliance placed by the second respondent for rejecting the appointment of the petitioner on the judgment in W.A(MD) Nos.285 & 286 of 2015 is apparently incorrect. The interpretation given in the Criminal Revision about the nature of acquittal can also hold the result of acquittal to the date on which the judgement was pronounced by the Trial Court. So there is no question of giving retrospective effect for an order of acquittal and the acquittal stands as such with effect from 06.02.2009 only.



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14. So far as the suppression of material facts is concerned, I feel it is worthwhile to refer to the order passed by the Madurai Bench of this Court in ***W.A.(MD).Nos.938 & 939 of 2020 and batch dated 05.06.2023***, in which preposition of law has been summarised as under:

“(D). SUMMARY OF PREPOSITION OF LAW:

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of FIR / Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself.

(b). Where the candidate has been acquitted on the ground of benefit of doubt or hostility of witnesses (before the date of police verification), that would not confer any right upon the candidate to claim appointment as a matter of right. It is for the employer to consider the suitability of the candidate based upon his conduct and antecedents only if the offences are trivial in nature.

(c). Where the criminal case has been quashed (before police verification) on the basis of a compromise and the offence is of trivial in nature, the same can be considered in favour of the candidate in



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the current selection itself. However, if the offence involved is not of a trivial in nature, the same cannot be considered for appointment.

(d). Where a candidate having knowledge about his involvement in a criminal case had suppressed the same in his application and the said offence is not trivial in nature, he is not entitled to seek any appointment. On the other hand, in cases of trivial offences, without knowledge about his involvement or after having knowledge had suppressed his involvement, the employer in his discretion is entitled to consider the candidature by considering his character and past antecedents.

(e). Where the candidate is involved in petty/trivial cases like family dispute or dispute with neighbors or shouting of slogans or traffic offence where fine was imposed, the same can be considered to be offence of trivial/petty in nature. However, the offence against women, children or under NDPS Act should never be considered to be an offence of trivial in nature.

(f). Where the candidate is involved in criminal



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offences under Juvenile Justice Act, he/she is to be considered in the light of the Division Bench Judgment of this Court dated 01.03.2023 in Rev.Apln.No.17 of 2023 in W.A.No.2759 of 2018 (The Superintendent of Police, Villupuram District Vs.S.Rajeshkumar)

(g). Pending the recruitment process, if a candidate is discharged from the criminal case or acquitted in the criminal case, he/she shall be eligible to be considered for the next recruitment process as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules. ”

15. In the case in hand also, the case pending against the petitioner falls under trivial offences. Even in trivial offences, if the pendency of such case is within the knowledge of the applicant and he ought to have brought it to the notice of the authority concerned. However, the lack of understanding on the part of the applicant in construing the meaning of column No.16 that he is bound to reveal information only if a criminal case is pending, cannot be taken so seriously that the petitioner had wantonly suppressed the material fact. Had there been such an intention



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in the mind of the petitioner, he would not have mentioned it even during his earlier application filed for the recruitment of the year 2007-08. So the omission on the part of the petitioner to make a mention about his acquittal in the criminal case in Column No.16 of the application is due to sheer misunderstanding and not an intentional suppression.

16. The second respondent has passed the impugned order without taking into consideration of the relevant facts but wrongly placing reliance on a judgment in W.A(MD) Nos.285 & 286 of 2015 which is not applicable to the facts of this case. Hence I feel the impugned order is liable to be set aside and the petitioner is entitled to grant the relief as prayed by him.

17. In the result, this Writ Petition is allowed and the order passed by the second respondent in Rc.No.371236/REct.1(2)/2020, dated 11.03.2020 is set aside and the respondents are directed to appoint the petitioner as Grade II Police Constable in the Tamil Nadu Special Police Service recruitment for the year 2008-09 with notional seniority without back wages within a period of twelve weeks from the date of receipt of copy of this order. No costs.



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Index : Yes
Internet : Yes/No
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To

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R.N.MANJULA, J.

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