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W.P. No.2824 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.08.2023**

CORAM:

THE HON'BLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P. No.2824 of 2012

Elumalai

.. Petitioner

vs.

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
P.T.Chengalvarayan Maligai, Anna Salai,
Chennai – 600 002.

2. The Director General of Police,
O/o. Director General of Police,
Chennai – 600 004.

3. The Director,
Tamil Nadu Fire & Rescue
Service Department, Egmore, Chennai.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide his proceedings Na.Ka.No.419/035919/Niyamanam 1(2)/2011 dated 12.07.2011 and quash and consequently direct the respondents herein to appoint the petitioner as Grade-II Police Constable based on his notional selection order dated 08.03.2011.

[Prayer amended vide order dated 19.07.2023 made in WMP No.19862 of 2023 in WP No.2824 of 2012 by TKRJ]



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For Petitioner : Mr.Neethi Durai
For Respondents : Mr.Dr.T.Seenivasan
Special Government Pleader

ORDER

The petitioner herein has applied for the Gradet-II Police Constable pursuant to the recruitment notification issued by the respondents and the petitioner has not suppressed any material fact.

2. Admittedly, in the said application form, the petitioner has disclosed that he was acquitted from criminal case for the alleged offence under Sections 294(b), 323 and 506(ii) IPC in C.C.No.72 of 2007 on the file of the learned Judicial Magistrate No.2, Ulundurpet and other than that, there is no other case.

3. Though the petitioner was selected notionally for AR Police as Top Rank Holder, citing the above said case, the respondent herein has invoked Explanation.1 of Rule 14(b)(iv) of the Tamilnadu Special Police Subordinate Service Rules and passed the impugned order, whereby final order of posting was not given and hence, the writ petition.



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4. Initially the writ petition is filed for a prayer quashing the impugned order dated 12.07.2011 and consequently appoint him as a Fireman based upon his notional selection order dated 08.03.2011. After amendment in WMP No.19862 of 2023, the prayer was modified to appoint the petitioner as Grade-II Police Constable, based upon his notional selection order dated 08.03.2011.

5. The factum of the disclosure of the order of acquittal in the criminal case is not disputed by the respondents in the counter. They relied upon the Order 22(4) of the Tamilnadu Fire Service Manual.

6. Learned counsel for the petitioner drew my attention to the order passed by this Court in Crl.R.C.No.428 of 2011 dated 15.03.2013, wherein after the order of acquittal in the above stated CC No.72 of 2007, the acquitted accused Elumazhai has preferred the Criminal Revision wherein the learned Judge of this Court has held that it is not an acquittal on benefit of doubt, but it should be treated as 'acquitted honourably'.



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7. In the judgment dated 23.11.2017 made in WA Nos.741 of 2017 etc. batch, **[The Chairman, Tamilnadu Uniformed Services Recruitment Board and 3 others vs. V.Bharathan]** where I am also a party, the Division Bench of this Court has directed to consider and pass orders of appointment by ignoring the acquittal order since, it has no role to play. At paragraph No.16, it is held as follows:

“In the light of the decision of the Larger Bench, we hereby modify the order passed by the learned Single Judge, directing the appellants to reconsider the case of the respondents, after affording an opportunity of personal hearing to them and strictly in terms of the guidelines laid down by the Larger Bench of the Supreme Court in **Avtar Singh vs. Union of India and Others [(2016) 8 SCC 471]**, and take a decision in accordance with law, with regard to the appointment of the respondents for the post in question. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.”

8. It appears from the typed set of papers that the said decision has been followed by the Division Bench in WA Nos.211 and 632 of 2016 dated 10.04.2019. So also, batch of writ petitions viz., W.P.(MD) Nos.8072 of 2020 etc batch at Madurai Bench was allowed on 09.04.2021. Further, My brother Justice Abdul Quddhose in WP No.1516 of 2022 vide order dated 02.12.2022 has also ordered to issue



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the appointment order, however, the petitioner shall not claim the seniority and the seniority shall be from the date of his appointment.

9. Learned Special Government Pleader could contend that since the petitioner was involved in a criminal case, his name was not considered as per Order 22(4) of the Tamilnadu Fire Service Manual.

10. On perusal of the order passed by the trial Court, I find that the petitioner was arrayed as A2 in the said C.C.No.72 of 2007 for the alleged offence under Sections 294(b), 323 and 506 (ii) of IPC. Admittedly, the case has ended in acquittal and further upon the revision filed by him in CrI.R.C.No.428 of 2011, the learned Judge of this Court has held that it is not an acquittal on benefit of doubt, but it should be treated as 'acquitted honourably'.

11. The acquittal passed by the learned Judicial Magistrate No.2, Ulundurpet, is also disclosed by the petitioner in the application form. The offence are trivial in nature and it is also not in dispute that as on the date of submission of the petitioner's application for seeking for appointment as Grade-II Police Constable, pursuant to the recruitment



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notification, the criminal case which was earlier disposed of was also mentioned.

12. Even in the cases where criminal cases have ended in acquittal, this Court has followed the above said Division Bench judgment in *V.Bharathan's case*.

13. Here in the instant case, the petitioner stands on a better footing. He was acquitted in the criminal case and his acquittal was treated as 'honourable acquittal' by the High Court and the above said fact has been duly disclosed by the petitioner in the application form itself. Hence, I have no hesitation to follow the Division Bench judgment and the subsequent judgment, since it is being the consistent view of this Court.

14. Accordingly, the impugned order dated 12.07.2011 is hereby quashed and the respondents are directed to issue appointment order to the petitioner for the post of Grade-II Police Constable, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner



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shall not claim any seniority benefits on par with his batch mates.

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15. With the aforementioned directions, this writ petition is disposed of. No Costs.

02.08.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
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To

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RMT.TEEKAA RAMAN, J.

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