



W.P.No.20781 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:15.06.2023

Delivered on: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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B.Vijay

... Petitioner

Vs.

1.Government of Tamil Nadu
represented by Principal Secretary
to Government
Home (Police) Department
Chennai-9

2.The Member-Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai-8

3.The Director General of Police
Tamil Nadu
Chennai-4

4. The Superintendent of Police
Cuddalore District
Cuddalore

... Respondents



For Petitioner : Mr.M.Ravi

For Respondents : Mr.M.Shahjahan
Spl.Government Pleader

ORDER

The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus to quash the order in Na.Ka.No.A4/333/TSP/2017-6 dated 09.10.2017 on the file of the 4th respondent and to consequently direct the respondents to appoint the petitioner as Police Constable Grade II.

2. The facts which are projected by the Writ Petitioner in the affidavit



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in support of the Writ Petition are as hereunder:

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The petitioner belongs to Schedule Caste community. He came across a notification issued by the Tamilnadu Uniformed Services Recruitment Board inviting applications for direct recruitment to the post of Grade II Police Constables. He applied for the said post and he was assigned enrollment number 0502431. He was successful in all the tests conducted by the respondents and he was on the verge of selection. However, the Superintendent of Police, Cuddalore on the basis of information received from the 2nd respondent on 05.09.2017 with regard to antecedents and conduct of the petitioner, informed the petitioner that he was involved in a criminal case in Cr.No.182/2016 which was filed U/s. 294(b),323,324 and 506(i) of IPC. The petitioner had suppressed the said fact in the verification form and therefore the impugned order was passed holding that the petitioner was not eligible to be appointed to the post of Police Constable Grade II.

3. This Court heard the learned counsel for the petitioner Mr.Ravi and the learned Government Advocate representing Mr.Shahjahan, Special



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Government Pleader for the respondents on 09.06.2023.

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4. On hearing the counsel and also perusing the records produced before me, I allowed the Writ Petition on the same day i.e., 09.06.2023 by dictating the order in open Court. The order was not signed. However, subsequently, Mr.Shahjahan, Special Government Pleader represented the matter and stated that the respondents have filed a typedset of papers which were not brought to my notice and therefore sought for permission to re-argue the matter. Therefore, the matter was posted for 'being mentioned' on a subsequent date and with the consent of both the counsel for the petitioner and the counsel for the respondents the matter was re-argued at length and I have heard the rival submissions made by learned counsel for the petitioner and the learned Special Government Pleader. I have also perused the entire materials available on record, including the typedset of papers filed by both parties as well as the original records produced by the learned Special Government Pleader.



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5. The respondents filed a counter affidavit along with the typedset of papers and in the counter affidavit filed by the 4th respondent, it has been specifically stated that on verification, it was specifically found that the petitioner was known by the name Balasundaram apart from his original name B.Vijay. The respondents however, admitted to the fact that the case ended in acquittal. The respondents contended that the factum of failure to disclose about the petitioner's involvement in a criminal case would not entitle him to appointment. A perusal of the counter affidavit does not disclose any other reasons for rejecting the claim of the petitioner excepting for the fact that he had suppressed information about the criminal case in the verification form.

6. A rejoinder affidavit has been filed by the Writ Petitioner, where he has stated that he was never involved in the criminal case. However, he was arrested and subsequently as admitted by the respondents the case ended in acquittal. With regard to his being known as Balasundaram apart from B.Vijay, the petitioner has categorically stated that he does not have any alias



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name and his name is only B.Vijay and he was not named in the FIR. In the FIR, the name of the accused is only Balasundaram and his name B.Vijay does not find a place.

7. On perusal of the records, it is also seen that in the rejoinder affidavit filed by the petitioner, he has specifically averred that at the time of filing up the verification form, he confided with the then Sub-Inspector of Police, one Mr.M.Gnanasekar at Thukkanapuram Police Station and enquired as to whether he should disclose the details of the criminal case when his name was not available or found in the FIR and there is a categorical assertion that the said Police officer told him that since his name was not there in the FIR, there is no necessity for him to fill in the details with regard to the case and if he disclosed the same, it would spoil not only his chances for appointment but also his criminal case as well. This positive assertion is not denied by the respondents.



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8. This Court has also gone through the original records that have been filed by the counsel for the respondents. In the FIR the name of the 1st accused is only Balasundaram. It does not carry the name of B.Vijay or Balasundaram alias B.Vijay. The complainant is one Muthuvel, who is a neighbour of the petitioner's family. The case itself arises out of a minor quarrel that ended up in a verbal and abusive duel. No doubt, the petitioner has mentioned that he has not been concerned with any criminal case and that he has not been arrested or convicted or underwent any sentence of imprisonment or payment of fine in any criminal case or offence. The records produced by the learned Special Government Pleader reveal that at the time of enquiry before the Police Officials, the petitioner has mentioned his name as Balasundaram and that he has also come out on bail only as Balasundaram. The criminal case has also been conducted only in the name of Balasundaram. Pointing out to these facts, learned Special Government Pleader would vehemently contend that the petitioner has been involved in impersonation and forgery which are grave criminal offences and in any event, the petitioner ought to have disclosed the factum of the criminal case



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filed against him in the verification form. Learned Special Government Pleader, also seriously contended that the impugned order was wholly justified and there is absolutely no material warranting interference by way of Writ Petition to set aside the impugned order.

9. Per contra, learned counsel for the petitioner countenancing the arguments of the learned Special Government Pleader would submit that the petitioner is not denying the fact that he was arrested or that he continued the case as if he was Balasundaram. He would only contend that as per his criminal lawyer's advice, he had to apply for bail only in the name of Balasundaram, and if he had taken a stand that he was only Vijay and not Balasundaram, he would have been in prison for longer and it was not in his interest to disclose the fact that his name was only B.Vijay and not Balasundaram. It is only on such circumstances, that he was forced to represent himself as the person named in the FIR, especially since he was arrested as if he was Balasundaram.



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10. This Court has perused the Higher Secondary School Certificate, Secondary School Leaving Certificate, Community certificate, Conduct certificate, transfer certificate, ration card as well as voter id of the petitioner. None of these documents contain the name of Balasundaram. All the certificates produced in original by the respondents themselves only point out to the fact that the petitioner has no alias name and his name is only B.Vijay. Infact, the Police Authority has also caused a verification from the ST.Josephs College of Arts and Science regarding the petitioner's name and through out in all the records produced, it is clear that the petitioner's name is only B.Vijay. That apart, the Police Inspector, Reddichavadi Taluk, Cuddalore district has also obtained letter from two local residents, viz., R.Mayavan and K.Ezhumalai, both of them have clearly stated that the petitioner's name is B.Vijay and he has no political connections whatsoever and that he never indulged in any unlawful or immoral activities. All these apart, even in the criminal case in and by final orders, the charges against all the accused have been held not proved and the complaint itself has been dismissed. Even the nature of the criminal case referred to herein above is not



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something which involves moral turpitude of the petitioner. It is only a petty quarrel between neighbours that got enlarged into a verbal and abusive alleged assault resulting in the FIR and the criminal complaint. The version put forth by the petitioner that he had to represent himself as Balasundaram in order to come out on bail appears to be convincing and probable as well.

11. Though learned Special Government Pleader, would seriously oppose the Writ Petition, that other two accused were none other than parents of the petitioner and when the petitioner has admitted his name to be Balasundaram in Police Station and subsequent Court proceedings they would not have remained silent and would have immediately stated that their son's name is Vijay and not Balasundaram. However, this limb of argument is not acceptable in the light of the justification of the petitioner for representing himself as Balasundaram. It is common practice in such criminal cases, where a person is arrested not as himself, but as a different person. It is not the case of the respondents that there is another person by Balasundaram and that the petitioner impersonated him. It is the specific case of the



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petitioner that his name is only B.Vijay which fact is also borne out by several documents produced by the respondents themselves and only for the simple reason that he was arrested as one Balasundaram, he was forced to project himself as Balasundaram to come out on bail. Moreover, the petitioner cannot be held solely responsible for this, since the petitioner would have been guided by the legal and professional advice given to him, by his criminal lawyer.

12. Learned counsel for the petitioner also relied on judgment of this Court in W.P.No.17239 of 2020 dated 13.08.2021, wherein this Court held that when the petitioner was not named originally in the FIR but subsequently his name was included at the time of recording the Section 161 Cr.P.C statement as one of the co-accused and when the petitioner had approached this Court and obtained bail, the benefit of doubt would have to be given to such a person and held that he could not be denied right of employment. Learned counsel for the petitioner also relied on the order passed by this Court in W.P.No.26583 of 2017 dated 01.0.2013, where this Court applied



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the ratio laid down by the Hon'ble Supreme Court in ***Satish Chandra Yadav Vs Union of India & Ors*** reported in ***2022 SCC Online SC 1300*** and ***Avatar Singh Vs Union of India*** reported in ***(2016) 8 SCC 471***. In the said case, this Court accepted the case of the petitioner and quashed the impugned order.

13. Coming to the suppression of the pendency of the case in the verification form, the fact remains that the petitioner has not chosen to mention about the said case. However, the reason given for not mentioning about the same is satisfactory and convincing. If the petitioner had disclosed that he was an accused in a criminal case, then and there he would have been disqualified. Moreover, he had also sought the advice of a Sub Inspector of Police in the local Police Station who has also been named in the reply affidavit. This fact is not controverted by the respondents. In any event, admittedly the FIR has been filed only in the name of Balasundaram. It is his specific case of the petitioner that he is never known as Balasundaram and only for various reasons which have already been discussed in detail herein above, he was forced to project himself as Balasundaram. Viewing all these



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factors cumulatively, this Court holds that the petitioner cannot be found fault with for having suppressed the pendency of the criminal case in the verification form, especially when the FIR did not contain his name, B.Vijay. The arguments advanced by the learned Special Government Pleader that the name of the father and address of both Vijjay and Balasundaram are one and the same and more over, the photograph also shows that it is only the petitioner and therefore no indulgence should be shown to the petitioner is concerned, this Court only reiterates that records reveal that the petitioner has no alias name and only for the reason that the petitioner was arrested as if he was one Balasundaram, he was necessitated to continue the said criminal case under the identity of Balasundaram. It is no body's case that the petitioner impersonated one another living person by the name of Balasundaram. Therefore, this Court feels that the petitioner cannot be said to have willfully suppressed the pendency of the case in which he was not even named in the FIR. In any event, the said case ended in acquittal and even the nature of the complaint based on which the case itself came to be filed, though subsequently ended in acquittal, was a very trivial offence involving a wordy



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duel between neighbours.

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14. This Court is of the view that therefore, on an overall assessment of the peculiar facts and circumstances of the case, the impugned order is liable to be set aside. The matter also is not one that requires reconsideration by way of remand to the authority for the subjective satisfaction regarding acquittal since this Court has called for the original records and satisfied itself with regard to the claims of the petitioner, especially his original name B.Vijay. Further, the additional factor that the criminal case also ended in acquittal and in all other aspects, the petitioner is found fit and qualified and eligible for the post, this Court therefore sets aside the impugned order Na.Ka.No.A4/333/TSP/2017-6 dated 09.10.2017 of the 4th respondent and direct the respondents to appoint the petitioner as Police Constable Grade – II, subject to available vacancy. In the event of there being no vacancy, the petitioner shall be given first preference as and when vacancy arises for the said post and the respondents shall take earnest steps to absorb the petitioner without any delay. This Court also makes it clear that this order is passed



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only in the peculiar facts involved in the present case and this order shall not be cited as a precedent in other cases.

With the above observations, the Writ Petition is allowed. No costs.

23.06.2023.

Internet: Yes

Index: Yes/No

Speaking order

Neutral Citation: Yes/No

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To

1. The Principal Secretary to Government
Government of Tamil Nadu
Home (Police) Department
Chennai-9

2. The Member-Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai-8

3. The Director General of Police
Tamil Nadu, Chennai-4

4. The Superintendent of Police
Cuddalore District, Cuddalore



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P.B.BALAJI, J.,
kpr

Pre-delivery order in
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