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W.P.No.9444 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9444 of 2022
and WMP.Nos.9185 & 9188 of 2022

B. Soundarrajan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Home Department,
Rep. by its Secretary,
Fort St. George, Chennai – 600 009.

2.The Director General of Police,
Office of the Director General of Police,
Chennai – 600 004.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Dharmapuri District, Dharmapuri – 636 705.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order in Rc.No.1797856/Rect I(2)/2021 dated 23.03.2022 and to quash the same and directing the 2nd respondent to appoint the petitioner as Special



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Police Youth Brigade as reserved in order dated 06.03.2014 in W.P.No.6588 of 2014 or any post equivalent to the same immediately as deem fit and proper in the circumstances of the case.

For Petitioner : Mr.G. Prabhakar

For Respondents : Mr.S. Prabhakaran
Government Advocate

ORDER

The petitioner had participated in the selection process conducted by the respondents herein, for the year 2013-2014. On the ground that the petitioner was involved in a criminal case in Crime No.78 of 2009 on the file of the Judicial Magistrate cum Judicial Magistrate at Pappireddypatti, Dharmapuri District, for the offence under Sections 147, 148, 323, 324 and 506(ii) of IPC, his candidature was rejected on 08.02.2014. Challenging the same, the petitioner had filed a Writ Petition in WP.No.6588 of 2014. Through an interim order dated 06.03.2014, it was directed to the respondents to keep one post vacant under the reserved category for Scheduled Caste in the post of II Special Police Youth Brigade (Male). Subsequently, on 09.12.2021, the original



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order of rejection dated 08.12.2014 came to be set aside and by placing reliance on various decisions of the Hon'ble Supreme Court, as well as the Division Bench of this Court, this Court has remitted the matter back to the second respondent to consider the petitioner's case, by taking note of the decisions cited in the order and pass fresh orders, within a period of 12 weeks. The relevant portion of the order reads as follows:-

..... “8. It is an admitted fact that the petitioner had participated in the earlier recruitment process for the post of Police Constable during 2008 as well as in the year 2012 and he had successfully cleared the Written Examination and Physical Endurance Test, however his candidature for appointment was rejected on both occasions on the ground that on police verification, it was found that the petitioner was implicated in a criminal case. The fact remains that the petitioner was implicated in the criminal case in Crime No.78/2008, on the file of the Kadathur Police Station for the alleged commission of offences under Sections 147, 148, 323, 324 and 506(ii) IPC and the said case has culminated into STC.No.255 of 2019, on the file of the District Munsif cum Judicial Magistrate, Pappireddipatti and after full fledged trial, the petitioner got Honourary Acquittal, vide judgment dated 26.05.2009.

9. The petitioner, challenging the rejection of his



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candidature in the year 2012, had filed W.P.No.16318 of 2012, wherein this Court, by placing reliance upon the Full Bench decision of this Court in Manikandan v. Chairman, T.N. Uniformed Services Recruitment Board reported in 2008 (2) CTC 97, wherein it was held that “if a person who is aspiring for police selection, who was involved in a criminal case, need not be considered in the first selection and if acquitted in the criminal case, he can be considered in the next selection” and also Explanation (2) to Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978, which says that “a person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently, ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment” has dismissed the writ petition by granting liberty to the petitioner by observing that the said order will not preclude the petitioner from participation in the second selection in 2012.

10. It is the contention of the petitioner that inspite of getting the benefit of honourary acquittal in the criminal case as well as the specific direction given by this Court in W.P.No.16318 of 2012 dated 04.07.2012, the impugned order of the fourth respondent rejecting the candidature of



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the petitioner to the post of Tamil Nadu Special Police Youth Brigade for the year 2013 on the very same ground of his implication in a criminal case, is totally unsustainable.

11. The aforesaid contention of the learned counsel for the petitioner merits acceptance for the reason that the Full Bench decision of this Court (cited supra) as well as Explanation 2 to Rule (b) of the Tamil nadu Special Police Subordinate Service Rules, 1978 quoted above clearly states that there is no impediment for the petitioner to participate and get selected in the subsequent recruitment process, since the petitioner had already got himself the benefit of honourary acquittal by the Criminal Court before participating in the selection process for the post of Tamil Nadu Special Police Youth Brigade.

12. At this juncture it is useful to refer to the decision of the Hon'ble Supreme Court in Avtar Singh Vs. Union of India [2016 (8) SCC 471] wherein it was held as follows:

“23. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form



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opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has



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protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of ?material? information presupposes that what is suppressed that ?matters? not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services



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and power has to be exercised on due consideration of various aspects.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the



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case may be adopted : ~

In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass



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appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits?



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13. A Division Bench of this Court in the decision in *W.A(MD)No.3877 of 2019 dated 13.11.2019* has observed as hereunder:

“33. The question of merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is “involvement”. The word “involvement”, therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether ?he was involved in a criminal case or not”.

*34. The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of *M.Manohar Reddy and another vs. Union of India and others*, reported in 2013 (3) SCC 99. Whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it-s impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice, or pure subjectivity in the decision making process. It is here that a play in the*



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joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to receive an objective consideration. The question as to whether a person involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appointment did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. We, accordingly allow the appeal and set aside the impugned judgment dated 27.04.2019 as well as the impugned order dated 08.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today.”



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14. *This Court also in an identical issue in W.P.(MD)Nos.15726 of 2021 dated 25.10.2021 [P.Ramki v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board, Chennai and Others], following the aforesaid decision of the Hon'ble Apex Court in Avtar Singh's case (cited supra) and the First Bench Judgment of this Court in W.A.(MD)No.3877 of 2019 dated 13.11.2019, had quashed the impugned orders and directed the respondents to consider the claim of the petitioner's therein afresh.*

15. *In view of the aforesaid facts and the settled legal position, this Court has no hesitation to hold that the impugned order of the fourth respondent is liable to be set aside.*

16. *Accordingly, the impugned order of the fourth respondent in Na.Ka.No.A3/22978/2013 dated 08.02.2014 is set aside and the writ petitioner is allowed and the matter is remitted back to the second respondent to consider the matter afresh by taking note of the decisions cited supra and pass orders, as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”*



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2. The aforesaid extract is self-explanatory. Apparently, the reason for setting aside the original rejection order dated 08.02.2014, was in view of several decisions of the Hon'ble Supreme Court, as well as the Division Bench of this Court, in which this Court had placed reliance and set aside the order.

3. While remitting back the matter, this Court has subsequently directed the respondents to consider the matter by taking note of the decisions cited in the order. However, in the present impugned order of rejection dated 23.03.2022, there is absolutely no reference to the decisions relied upon by this Court in the order passed in WP.No.6588 of 2014 dated 09.12.2021.

4. On the other hand, the respondents seem to have once again taken note of the earlier character and antecedent of the petitioner and rejected his candidature. In other words, they have once again placed reliance on the complaint on the petitioner's involvement in Crime No.78 of 2008 registered on 16.02.2008. Such a reasoning is unacceptable.



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5. First of all, the petitioner is honorably acquitted from the criminal case through the judgement dated 26.05.2009 passed in STC No.255 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Pappireddipatti. The petitioner had also disclosed about his involvement in the criminal case while he had made an application for 2013-2014 recruitment process.

6. When this Court had taken note of these facts and had rejected the ground raised by the respondents for invalidating his candidature for his involvement in a criminal case, placing reliance on the same criminal case and passing the impugned order of rejection, is not sustainable.

7. This apart, when this Court had directed the respondents to consider all the decisions relied upon in its order passed in WP.No.6588 of 2014 dated 09.12.2021, there is a total deviation from the directions, in the impugned order wherein, no reference at all has been made to any of the decisions relied upon by this Court. Thus, the consequential impugned order dated 23.03.2023, not being in conformity with the



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earlier directions, requires to be set aside and the petitioner would be entitled for appointment.

8. Learned Government Advocate appearing for the respondents, on instructions submitted that there are no vacant post in the selection process and that the acquittal was not honorable. Such a submission cannot be sustained for the following reason:

a) As observed earlier, through an interim order dated 06.03.2014 passed in MP.No.3 of 2014 in WP.No.6588 of 2014, the respondents ought to have kept one post vacant under the reserved category for Scheduled Caste in the post of second Special Police Youth Brigade (Male).

b) Likewise, the submission that the petitioner was not honorably acquitted, is not the reason assigned in the impugned order and therefore, the respondents cannot now improve the case by bringing in a new plea.

9. Accordingly, the respondents shall pass appropriate orders of appointment, by filling up this one vacant post as ordered by this Court.



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10. In the light of the above findings and observations, the impugned order dated 23.03.2022 on the file of the second respondent, is hereby quashed. Consequently, the second respondent shall pass orders appointing the petitioner as II Special Police Youth Brigade (Male) under the reserved category for Scheduled Caste, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

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Speaking Order
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M.S.RAMESH,J.

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To

- 1.The Secretary to State of Tamil Nadu,
Home Department,
Fort St. George, Chennai – 600 009.
- 2.The Director General of Police,
Office of the Director General of Police,
Chennai – 600 004.
- 3.The Superintendent of Police,
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