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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.7828 of 2020

and

WMP.No.9241 of 2020

G.Ajith

...

Petitioner

Vs.

1. The Chairman, Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Campus,
Pantheon Road, Chennai-8
2. The Director General of Police,
Dr. Radhakrishnan Road,
Mylapore, Chennai-4.
3. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Secretariat, Chennai- 9.
4. The Superintendent of Police,
Vellore District, Vellore.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of certiorarified mandamus, calling for records in the impugned



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order in Na. Ka.No. A2(3)/171/18801/PV/2019 dated 01.05.2020 on the file of the 4th respondent and quash the same and direct the respondents to appoint the petitioner for the post of Grade-II Police Constable.

For Petitioner : Mr.D.Rajagopal for Mr.R.Rajarajan,

For Respondents : Mr.P.Kumaresan, Additional Advocate General
assisted by Mr.G.Nanmaran,
Special Govt.Pleader for the respondents.

ORDER

This Writ Petition has been filed under Certiorarified Mandamus seeking to call for records in the impugned order in Na. Ka.No. A2(3)/171/18801/PV/2019 dated 01.05.2020 on the file of the 4th respondent and quash the same and direct the respondents to appoint the petitioner for the post of Grade- II Police Constable.

2. It is the case of the petitioner that the petitioner got selected for the post of Grade- II Police Constable, but was not given with the appointment order in view of the impugned order of the 3rd respondent dated 01.05.2020. The order has been passed subsequent to the police enquiry made with regard to the petitioner's past conduct and character. It is stated in the impugned order that there are two cases registered against the petitioner in Cr.Nos.40/2017 and 41/2017 on



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04.03.2017 and 05.03.2017 respectively, under Section 151 Cr.P.C of
Tiruppathur Town Police Station.

2.1. It is further alleged that the petitioner was arrested as a preventive measure in view of the proposed protest to be demonstrated against the State and Central Governments for opposing the Hydrocarbon project. On this premise, it is presumed that there are possibilities that the petitioner could have aligned himself with the leftist parties and be rebellious. So the Tiruppathur Rural Inspector of Police has made a discreet enquiry and came to the conclusion that the petitioner was in touch with the political groups and hence, his conduct and character are not satisfactory and on that ground, his appointment for the post of Grade- II Police Constable for the year 2019 was denied.

3. Heard Mr. D.Rajagopal, learned counsel for Mr.R.Rajarajan, appearing on behalf of the petitioner and Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.G.Nanmaran, learned Special Government Pleader for the respondents.

4. Mr. D.Rajagopal, the learned counsel for the petitioner submitted that both the cases were registered in Cr.Nos.40/2017 and 41/2017 on 04.03.2017



and 05.03.2017 respectively, under Section 151 Cr.PC and they were registered on two consequent days; hence that should not be taken as a hurdle and on that score, the petitioner's conduct and character cannot be concluded to be unworthy for his appointment.

5. However, Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.G.Nanmaran, learned Special Government Pleader for the respondents submitted that the petitioner had wantonly suppressed his involvement in the above two criminal cases and hence, there is suppression of material facts. Making a false statement in the application Form as against those column regarding arrest, prosecution and conviction etc., will have a clear bearing on the conduct, character and antecedents of an applicant and only on consideration of these facts the impugned order was issued.

6. The attention of this Court was attracted to the judgment of the Hon'ble Division Bench of this Court rendered in WA.(MD).No.938 & 939 of 2020 batch dated 05.06.2023. In that case, the petitioners had chosen three grounds to challenge the rejection of their appointment. For the sake of clarity, it is extracted



hereunder:

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“8. The Writ Appeals and the Writ Petitions that are listed before us challenging the rejection of the candidature or accepting the candidature can be classified on the following grounds:

“(1). Honourable acquittal, discharged mistake of fact, quashing of F.I.R/charge sheet.

(2). Acquitted on benefit of doubt or due to hostility of the witnesses.

(3). Proceedings quashed on compromise between the parties.”

7. While dealing with those grounds, the Court has touched upon the various decisions rendered by the Hon'ble Supreme Court on the above subject. While discussing about the suppression of involvement in a criminal case, a reference was made to the judgement of the Hon'ble Supreme Court rendered in a case of ***Avtar Singh vs Union Of India & Ors*** reported in **2016 (8) SCC 471**, wherein the Hon'ble Supreme Court held that before a person is held to be guilty for suppressing a fact or giving false statement, his knowledge about the fact must be attributable to him. So the sum and substance of the said judgement is that if a candidate has knowledge about his involvement in a criminal case, not being a severe case and suppressed the same at the time of filing the application, he is not entitled to seek any appointment. But, in the cases where information was not furnished in the application Form relating to an offence 'not being trivial



in nature', the employer in his discretion is entitled to consider his candidature by

considering his conduct and character and past antecedents. The position of law

cut to chase in WA.(MD).No.938 & 939 of 2020 and batch is as below :

“(D). SUMMARY OF PREPOSITION OF LAW:

....

....

(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 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.Appln.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. ”



8. The main focus of Mr.P.Kumaresan, learned Additional Advocate General for the respondents is point (d). So it is submitted that the petitioner who had been taken to the police station for consecutive two days could have been aware of his arrest and such important information ought not to have been concealed by him while submitting his application.

9. The summary of preposition of law arrived on the basis of the earlier Supreme Court judgements and the dictum laid down in *Avathar Sign case (cited supra)* is that for cases trivial in nature, exemption can be given. It is obviously because of the fact that the person concerned himself could not have been aware of his involvement in a trivial case, if the police happened to register an FIR by including his name. As per the police regulations or rules of criminal procedure code, we do not have the habit of issuing the copy of the FIR to the accused immediately after registering the same. What is mandated after registering the FIR is to furnish a copy to the complainant.

10. In the case in hand, the petitioner is said to have been arrested on 04.03.2017 and 05.03.2017 respectively, as a preventive measure and he was



brought to the police station with other group of persons and they were let free in the same day evening. Two cases have been registered in Cr.Nos.40/2017 and 41/2017 on 04.03.2017 and 05.03.2017 respectively. It is understood that the petitioner and others were arrested after they demonstrated a protest. In that case, the petitioner could have got the knowledge that he is being taken to the police station only because he was arrested. People are taken to the police station for several reasons including enquiry. While executing arrest as a preventive measure, normally there can not be any resistance on the part of persons who are being taken to the police station. Because the persons concerned most probably would be released in the same day evening.

11. This is especially so, when arrests are made in connection with any protest demonstrated or proposed to be demonstrated for any reasons. So before finding fault with the petitioner that he had suppressed any information that he had been arrested and involved in the above two trivial cases, it should be made clear that the petitioner had the knowledge about his arrest and despite that he suppressed the information. The impugned order does not have any materials including the copy of intimation of arrest if any alleged to have been given to the



petitioner on those days.

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12. Even as per the submission of Mr.P.Kumaresan, learned Additional Advocate General for the respondents that on those two days, the petitioner was taken to the police station with others and they were let free in the evening. The Final Reports filed pursuant to the above First Information Reports would show that further action has been dropped and First Information Reports have been closed in one and the same day. In such cases, it is very difficult to presume that the petitioner was aware of even the Crime numbers and the provision of law under which they have been registered against him. It is also not known whether the petitioner was aware of the fact that he was arrested. He could have even thought that he was simply asked to come to the police station and there is no acceptable materials produced to show that the petitioner was aware that his name has also been included in the First Information Reports.

13. Only in view of the above said factors, even when law was settled on this exemption was given to the trivial offences, unless it is made crystal clear that the person concerned had knowledge about his involvement in the trivial case.



Even in the impugned order it has not been stated that the petitioner had suppressed the essential facts even though he had the knowledge. Since essential facts have not been taken into consideration, the petitioner cannot be found guilty for suppressing any important information.

14. In the impugned order, it is observed that both the cases have been closed as '*further action dropped*'. The impugned order has been passed based upon the presumption made by the enquiry officer that there is likelihood that the petitioner can have a connection with leftist parties and be rebellious. There is a fine line difference between being political and having any political ideology. As a citizen of the country each one has a right to vote and in fact it is the duty of every citizen. Unless a person believes in any ideology and sympathise the party which he believes to be having such an ideology, he can not exercise his right to vote. Right to vote can not be denied to the government servants including those in police force. Just because there are possibilities that a person could hold a particular political ideology, his conduct and character can not be suspected for denying him an appointment. However, he is at a risk if he conducts himself politically and exhibits attitudes aligning to any political identity after joining the



service. In fact an such conduct, he is even liable to face disciplinary action.

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15. As stated already the petitioner has been asked to come to police station on 04.03.2017 and 05.03.2017 with several others and he was allowed to go home by evening. Even at some stretch of imagination, if the petitioner and others were asked to affix their signatures in any of the police records, it cannot be presumed that they had affixed by having the knowledge that a case was registered against them. If an one is asked by the police to come to police station, he will simply go and cooperate for their enquiry, including an affixture of a signature without questioning much. In normal case, the common public do not raise any objections to the commands of the police.

16. Since the impugned order has been passed without having any solid ground materials that the petitioner had wantonly suppressed the information of involving in a trivial case, his appointment ought not to have been rejected. As already stated, the impugned order also does not state that the petitioner had knowledge about his involvement in the trivial cases. In such context of the matter, I feel the impugned order is liable to be set-aside.

In the result, the Writ Petition is **allowed** and the impugned order of the



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4th respondent vide Na. Ka.No. A2(3)/171/18801/PV/2019 dated 01.05.2020 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 2019 with notional seniority without back wages, within a period of twelve weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
speaking/ Non speaking order
jrs



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To

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Old Commissioner of Police Campus,
Pantheon Road, Chennai-8
2. The Director General of Police,
Dr. Radhakrishnan Road,
Mylapore, Chennai-4.
3. State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Secretariat, Chennai- 9.
4. The Superintendent of Police,
Vellore District, Vellore.
5. The Public Prosecutor,
High Court of Madras.



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R.N.MANJULA, J.
jrs

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WMP.No.9241 of 2020

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