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W.A.No.2112 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.2112 of 2021
and
C.M.P.No.13381 of 2021**

1.The Superintendent of Police,
Police Superintendent of Police,
Near Dharmapuri Collectorate,
Dharmapuri,
Dharmapuri District - 636 705.

2.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.71, Adhithanar Road,
Pudupet, Komaleeswaranpet,
Egmore, Chennai - 2.

... Appellants

Vs.

L.K.Starnesh

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.06.2020 passed by the learned Judge in W.P.No.17530 of 2019.

For Appellants : Mr.P.Kumaresan, Additional Advocate General
assisted by Mr.C.Selvaraj
Additional Government Pleader

For Respondent : Mr.M.Muruganantham



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal is directed against the order dated 02.06.2020 passed by the learned Judge in W.P.No.17530 of 2019.

2.The necessary facts leading to filing of this writ appeal are as follows:

2.1. The respondent appeared in the selection conducted by the second appellant-Board for appointment to the post of Police Constable Grade-II, in the year 2012 and he was provisionally selected in the written examination. However, the final result of the respondent was withheld by the proceedings of the first appellant in Na.Ka.No.13100/2012/A3 dated 07.01.2013 stating that he had suppressed the information about his acquittal in a criminal case in Crime No.141 of 2009.

2.2. Challenging the aforesaid proceedings of the first appellant dated 07.01.2013, the respondent had filed W.P.No.3616 of 2013 on the ground that the charges framed against him, were dropped by the District Munsif-cum-Judicial Magistrate, Pappirettipatti, Dharmapuri on 23.08.2010 itself ie., even prior to the notification called for by the second appellant for the post of Police Constable Grade II. *Vide* order dated 22.03.2013, the learned Judge, taking note of the observation made by the Hon'ble Supreme Court in ***Commissioner of Police and others v. Sandeep Kumar [(2011) 4 MLJ 1006 (SC)]***, directed the



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appellants to consider the respondent for appointment by ignoring his alleged involvement in the criminal case and appoint him, in case he falls in the merit for selection.

2.3. As against the order dated 22.03.2013, the Department filed Writ Appeal No.633 of 2017. By judgment dated 23.11.2017, the Division Bench, by referring to the decision of the Larger Bench of the Hon'ble Supreme Court in ***Avtar Singh v. Union of India and others [(2016) 8 SCC 471]***, modified the order of the learned Judge in W.P.No.3616 of 2013 and directed the appellants to reconsider the case of the respondent, after affording an opportunity of personal hearing to him and take a decision in accordance with law.

2.4. Pursuant to the aforesaid judgment dated 23.11.2017, the first appellant considered the case of the respondent and ultimately, rejected his request for appointment to the post of Police Constable Grade II, *vide* proceedings dated 21.08.2018. Challenging the same, the respondent again approached this court by filing W.P.No.17530 of 2019. The learned Judge, after hearing both sides, set aside the proceedings of the first appellant dated 21.08.2018 and directed the appellants to consider the claim of the respondent for appointment to the post of Grade-II Police Constable in any existing vacancy or in future vacancy, in case the respondent's selection in his category falls within the meritorious zone. Aggrieved by the same, the Department/appellants are before this court with the present Writ Appeal.



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3.The learned Additional Advocate General appearing for the appellants has made the following submissions:

(i) The respondent had wilfully suppressed the material fact as to his involvement in the criminal case, which is one of prime importance of being mandatorily disclosed in the application form and its non-disclosure would disqualify his candidature for selection to the post in question.

(ii) When the core issue is suppression of his involvement in the criminal case which is a material fact to be disclosed in the application form and the same being fatal to the otherwise eligibility and compatibility for the uniformed and disciplined force, the acquittal of the respondent by the trial Court cannot be considered as a sole criterion.

(iii) It is incorrect to state that the applicability of Rule 14(b) of the Special Rules for the Tamil Nadu Special Police Subordinate Services (in short, "the Service Rules") is only with regard to the pending criminal cases as on the date of application and not to the disposed cases and hence, the details of involvement of the criminal cases no longer be required to be disclosed in the application form in case of acquittal.

However, the learned Judge has erroneously allowed the writ petition and directed the appellants to consider the case of the respondent for appointment to the post of Police Constable Grade II in the existing vacancy or in future vacancy, if he falls within the meritorious zone. Therefore, the learned Additional Advocate



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General prayed for allowing this writ appeal by setting aside the order of the learned Judge passed in the writ petition.

4. Refuting the submissions so made on the side of the appellants, the learned counsel appearing for the respondent submitted that the respondent was acquitted from the charges by the Criminal Court on 23.08.2010, i.e., even before the issuance of the notification by the second appellant-Board for recruitment to the post of Police Constable Grade II. Regarding the concealment of material facts of the respondent's involvement in the criminal case, the learned counsel submitted that in the application form, the respondent was asked to answer the question, "whether any criminal case is pending against you? Yes/No" and in the verification roll, he was required to fill up the columns viz., Have you ever been concerned in any criminal case as defendant? and Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, provide details with C.C.No. and Court. Thus, the questions have been drafted in a 'yes' or 'no' format and as the respondent was acquitted much before the notification was issued, he has filled up the application form by stating that no criminal case was pending; and in the verification roll, he has duly disclosed of his acquittal from the criminal charges. As such, there is no suppression of material fact on the part of the respondent. Taking note of all these aspects, the learned Judge has correctly directed the appellants to consider



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the case of the respondent for appointment to the post in question and therefore, the same need not be interfered with, at the hands of this court.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6. We now will analyse the case in detail. This is the second round of litigation. Originally, the respondent had participated in the selection conducted by the second respondent Board for appointment to the post of Police Constable Grade II in the year 2012. Even though he came out successful in the examination, his final result was not announced on the ground that while filling up the application form, he had suppressed the information of his acquittal in a criminal case in Crime No.141 of 2009 culminated in CC No.170 of 2009, on the file of the District Munsif-cum-Judicial Magistrate, Pappirettipatti, Dharmapuri. Feeling aggrieved, the respondent had preferred W.P.No.3616 of 2013, which, by order dated 22.03.2013, was allowed by directing the appellants to ignore the alleged involvement of the respondent in the criminal case and to consider him for appointment, in case he falls within the merit for selection. Thereafter, on the appeal preferred by the Department in W.A.No.633 of 2017, the Division Bench by judgment dated 23.11.2017 modified the order passed in the writ petition and directed the authorities to reconsider the case of the respondent, after affording



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an opportunity of personal hearing and strictly in terms of the guidelines laid down by the Larger Bench of the Hon'ble Supreme Court in ***Avtar Singh case*** (cited supra) and take a decision in accordance with law, within a period of three months. Pursuant to the said judgment, the first appellant herein passed the order on 21.08.2018, rejecting the claim of the respondent herein. Challenging the same, the respondent filed another W.P.No.17530 of 2019, which was allowed on 02.06.2020 directing the appellants to consider the claim of the respondent herein for appointment to the post of Grade-II Police Constable in any existing vacancy or in future vacancy, in case the respondent's selection in his category falls within the meritorious zone, within a period of eight weeks. Therefore, the present writ appeal by the State / appellants.

7.It is the specific case of the appellants that the respondent, while filling up the application form, did not disclose his previous acquittal in the criminal case and therefore, he was disqualified for selection to the post in question. The same was seriously refuted on the side of the respondent, by stating that as on the date of submitting his application form, there was no criminal case pending and hence, there was no suppression of material fact on the part of the respondent and his candidature should be considered for recruitment.



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8. Before appreciating the rival contentions, it will be useful to look into the legal proposition on this issue. In ***Avtar Singh v. Union of India and others [(2016) 8 SCC 471]***, the Hon'ble Supreme Court, even though enumerated several points to be followed by the employer while taking a decision, it has ultimately held that the employer has to be satisfied about the suitability of the candidate regardless of the fact whether a person is acquitted in a criminal case or not. Even in ***Satish Chandra Yadav v. Union of India and others [Civil Appeal No.6955 of 2022 arising out of SLP (Civil) No.20860 of 2019, dated 26.09.2022, MANU/SC/1243/2022 : 2022(6) SLR 168 (SC)]***, the Hon'ble Supreme Court, has held as follows:

"69. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [See Commissioner of Police v. Raj Kumar (2021) 8 SCC 347]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a



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clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d)The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' 67 conduct, should not enter the judicial verdict and should be avoided.

e)The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

Thus, it is apparent from the aforesaid decisions of the Hon'ble Supreme Court that total discretion has been given to the authorities to take a decision about the fitness or suitability of the candidates for recruitment to the uniformed services / police force.

9.Reverting to the present case, the learned Judge has examined the rival submissions in detail and came to the conclusion that the acquittal of the respondent herein cannot be doubted. It is settled law that power and discretion vested in the authority concerned to assess the suitability of the candidate in cases where the candidates were involved in criminal cases and were acquitted, are not beyond the judicial review of the Court. As such, the discretion delegated to the employer as per the direction of the Hon'ble Supreme Court, has not been properly exercised, rather it has been dutifully exercised. This is what the learned Judge has observed in the order impugned in this appeal. As a matter of fact, it is



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to be noted that Explanation (2) to Rule 13(e) of the Special Rules provides that if a person is honourably acquitted, he shall be treated as a person not involved in a criminal case and his appointment can be considered in the subsequent recruitment. Thus, we are of the considered view that the order impugned in the writ petition from which the present appeal has emanated, has been passed without considering the judgment of the Criminal Court in proper perspective. As rightly observed by the learned Judge, the authority, who is to exercise his discretion in considering such cases, is expected to display due empathy and larger understanding, before being subjectively satisfied of his decision. At this point of time, this Court has to necessarily emphasise that the order passed by the authority is always subject to the judicial review and the matter has to be dealt with, according to the facts and circumstances of the case concerned. Even though broad principles have been devised in the judgments of the Hon'ble Supreme Court referred to above, while following those principles, the authorities have to take a pragmatic decision, by properly understanding the concept. Hence, the findings of the learned Judge that the authority has not properly analysed the issue and simply passed the order impugned in the writ petition, by exercising discretion vested with him, are perfectly correct and the same do not call for any interference by this court.



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10. In fine, the writ appeal stands dismissed and the appellants are directed to consider the claim of the respondent for appointment to the post of Grade-II Police Constable in any existing vacancy or future vacancy, in case the respondent's selection in his category falls within the meritorious zone. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
19.04.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes /No

To

1. The Superintendent of Police,
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Near Dharmapuri Collectorate,
Dharmapuri,
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