



WEB COPY

W.A.No.278



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2781 of 2022
and
CMP.No.22576 of 2022

1. The State of Tamil Nadu,
Rep.by the Secretary to Government,
Home Department, Secretariat,
Chennai - 600 009.
2. The Director General of Police,
State of Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
3. The Deputy Inspector General of Police,
Western Zone, Coimbatore.
4. The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board,
Old Commissioner of Police Campus,
Egmore, Chennai - 600 008.
5. The Superintendent of Police,
Tiruppur District, Tiruppur.

.. Appellants

Versus

C.Dinesh
Respondent

..



Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 05.01.2022 made in WP.No.12523 of 2021.

For Appellants : Mr.P.Kumaresan, Additional Advocate General
assisted by Mrs.Muthreye Chandru,
Special Government Pleader

For Respondent : Mrs.Kavitha Rameshwar

JUDGMENT

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

Assailing the order dated 05.01.2022 passed by the learned Judge in W.P.No.12523 of 2021, the appellants / State have preferred this writ appeal.

2.The respondent herein is the writ petitioner. He preferred the aforesaid writ petition praying to set aside the order dated 25.05.2021 passed by the third appellant herein as illegal, incompetent and ultra *vires* and consequently, direct the appellants to appoint him in the post of Sub-Inspector. According to the respondent, originally, the fourth appellant Recruitment Board issued a Notification in Notification No.2/2019 dated 08.03.2019 for common recruitment to the post of Sub-Inspector of Police (Taluk Armed Reserve and Tamil Nadu Special Police), 2019. The respondent applied for the same and was permitted to participate in the selection process. He passed the written examination and also came out successfully in the



physical test conducted by the Board. When he was awaiting for the appointment order, he was issued with an order rejecting his candidature on the ground that he had suppressed the criminal case registered against him and also the consequent acquittal.

3.Before the writ court, it was contended on the side of the respondent that for a petty quarrel, a case in Cr.No.289/2014 on the file of Kangeyam Police Station, was registered against the respondent for the alleged offences under sections 323, 294(b) and 506(i) IPC, which culminated in CC No.132 of 2017 on the file of the Judicial Magistrate, Kangeyam and after trial, he was acquitted from the charges, *vide* order dated 25.04.2018. Thereafter only, the notification for recruitment, came to be issued on 08.03.2019 and at that point of time, there was no pendency of criminal case against him. Hence, there was no suppression / concealment of material information about the criminal antecedents of the respondent. On the other hand, a detailed counter affidavit was filed by the authorities, *inter alia* stating that the respondent had suppressed the information of his involvement in the criminal case and therefore, his candidature was not considered for appointment to the post in question.

4.After taking note of the decision of the Hon'ble Supreme Court in ***Avtar Singh v. Union of India [2016 (8) SCC 471]*** and the earlier orders passed by this court, the learned Judge held that even if disclosure of the involvement in the criminal



case would not have rendered the candidate unfit for the post in question, denying an opportunity to the respondent to serve in Police Force in the face of the charges against him being flimsy, not serious enough and further branding the respondent as criminal for him to be debarred from gaining employment in Police Force at all for his life time is opposed to good conscience and justice. Ultimately, the learned Judge set aside the order impugned therein and directed the appellants to pass appropriate orders granting appointment to the respondent on the basis of his selection in the subject recruitment.

5.Challenging the order so passed by the learned Judge in the writ petition, the present writ appeal has been filed by the authorities.

6.The learned Additional Advocate General appearing for the appellants submitted that as evident from the criminal court judgment, the complainant turned hostile and there was no witness available to prove the offence against the accused and hence, the respondent was acquitted from the charges based on the compromise memo filed by him. Thus, according to the learned Additional Advocate General, the said acquittal was only on the benefit of doubt and was not a honourable acquittal and therefore, the respondent shall be treated as a person involved in a criminal case, in the light of Special Rules for the Tamil Nadu Police Subordinate Services, more particularly, Rule 13(e) – Explanation (1). Accordingly, his candidature was not



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considered for selection to the post in question and an order of rejection dated 25.05.2021 came to be issued by the third appellant. However, the learned Judge erred in setting aside the same and directing the authorities to pass appropriate orders, granting appointment to the respondent, by the order impugned herein. Referring to various decisions of the Hon'ble Supreme Court and this Court, the learned Additional Advocate General submitted that acquittal in a criminal case does not automatically entitle the respondent for appointment to the post and it is still open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. Stating so, the learned Additional Advocate General prayed to allow this appeal by setting aside the order passed by the learned Judge.

7.Per contra, the learned counsel for the respondent strenuously contended that after trial, the respondent was acquitted from the charges; that, at the time of notification, he was not involved in any criminal case and no case was registered or pending against him; and hence, there was no question of suppression of the criminal case registered against him and consequent acquittal, on the part of the respondent. While so, the denial of opportunity by the appellant authorities to the respondent to serve in the police force, is utterly fallacious and contrary to law. Placing reliance on the plethora of decisions passed by the Hon'ble Supreme Court as well as this Court, the learned counsel submitted that the learned Judge has passed the order impugned herein, after taking note of the facts and circumstances of the case in a proper manner and hence, the same need not be interfered with by this Court.



8. Heard the learned counsel on either side and perused the records carefully and meticulously.

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9. Concededly, the respondent was involved in a criminal case in Cr.No.289 of 2014, which ended in acquittal, by judgment dated 25.04.2018 in CC No.132 of 2017 passed by the Judicial Magistrate, Kangeyam. Thereafter, he applied for the post called for in the notification dated 08.03.2019 issued by the fourth appellant Board and he successfully cleared the examinations, but the respondent was not issued with the order of appointment. By the order dated 25.05.2021, his candidature was rejected mainly on the ground that he had suppressed the criminal case registered against him, while making application for recruitment. Whereas, the documents enclosed in the typed set of papers would candidly go to show that that the criminal case said to have been registered against the respondent, ended in acquittal prior to the issuance of the Recruitment Notification itself and thus, there was no pendency of criminal case at the time of making application. In such circumstances, a normal prudent candidate is expected to fill up the column pertaining to 'Additional Details - Whether any criminal case have been filed against you?', in the application for Sub Inspector of Police (TK, AR, TSP) - 2019, as 'No'. Accordingly, the respondent stated 'No' in the application. In view of the same, the question of suppression of criminal case registered against the respondent earlier in the selection, does not at all arise.



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10. It is also to be noted that the criminal case was registered against the respondent due to a petty quarrel with the neighbour; and that, the trial court, after examining the oral and documentary evidence made available before it, and also based on the compromise entered into between the parties, acquitted the accused from the charges, which according to the appellants, was not a honourable acquittal and hence, the candidature of the respondent for appointment was rejected by the order impugned in the writ petition.

11. There cannot be any dispute that a candidate wishing to join the police force must be a person of utmost rectitude and he must have impeccable character and integrity; that, a person having criminal antecedents will not fit in this category; even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case, because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force [*Refer: Commissioner of Police, New Delhi and another v. Mehar Singh, 2013 (7) SCC 685*]. However, it is important to point out that the employer has to apply his mind to each and every case, where the candidate was involved in the criminal case and the discretion cannot be applied uniformly and rigidly leading to the rejection of the candidature solely on the basis of the involvement in the criminal case and not disclosing about the same in the application

form.

<https://www.mhc.tn.gov.in/judis>



12.The Hon'ble Supreme Court in ***Avtar Singh's case (surpa)***, has ruled in paragraph no.38.4.1, 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, as follows:

“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.”

13.In similar circumstances, the Hon'ble Supreme Court in ***Joginder Singh v. Union Territory of Chandigarh and others [(2015) 2 SCC 377]*** referred to its earlier decision in ***Inspector General of Police v. S.Samuthiram [(2013) 1 SCC 598]***, wherein, it was held that as follows:

*“The meaning of the expression 'honourable acquittal' came up for consideration before this court in ***RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541]***. In that case, this court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. **When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.**”*

Pointing out the above, it was observed in ***Joginder singh's case (supra)*** that “an acquittal of the appellant is an honourable acquittal in every sense and purpose.

Therefore, the appellant should not be deprived from being appointed to the post,



in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him". Having

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observed so, the Hon'ble Supreme Court was of the view that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Taking note of the fact that there has been no concealment of any relevant fact by the appellant, it was ultimately concluded by the Hon'ble Supreme Court that the respondents were not justified in denying the said post to the appellant and thus, they were directed to comply with the order of the CAT by issuing appointment letter to the appellant within a period of four weeks.

14. Similarly, a Co-ordinate Bench, in the ***State of Tamil Nadu v. E.Sugumar [W.A. No. 2367 of 2021 dated 21.09.2021]***, wherein, the application for recruitment was made in the year 2019, whereas, the criminal case registered against the appellant therein, ended in an acquittal, pursuant to the compromise entered into between the parties, in the year 2016, has observed as follows:

"10. In the present case on hand, on the date of application, there was no criminal case pending against the Respondent and the family dispute culminated into a criminal case was amicably settled. Learned Single Judge, considered all those aspects and granted the relief to the Writ Petitioner. The Apex Court in (2018) 8 SCC 733 drew a distinction between acceptance and rejection of the candidature in Paragraph No.14 of the said judgment and the present case on hand falls under the exceptional category as found mentioned in clause 38 of Paragraph No.12 of the judgment, as the



offence is not a serious one.

11. Considering the totality of the circumstances, we are in entire agreement with the views taken by the learned Single Judge and are not inclined to interfere with the order of the learned Single Judge.”

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The Government challenged the aforesaid judgment passed in WA.No.2367 of 2021 by filing SLP (C) No.4426 of 2022, which was dismissed by the Hon'ble Supreme Court, by order dated 21.03.2022. Pursuant to the same, the appellant therein was issued with appointment order dated 23.03.2022.

15.As already stated above, there was no suppression of material relating to pendency of the criminal case registered against the respondent herein at the time of making the application for recruitment. In the light of the position of law as referred to above, the order rejecting the candidature of the respondent for appointment, is totally non-application of mind and abandonment of duties on the part of the appellant authorities. Having found so, the learned Judge has rightly observed that when the discretion is vested with the authority to take a decision about the validity of the candidature of the candidates who are involved in the criminal cases, the same must be discharged objectively and validly; and such discretion cannot be mutely and mechanically surrendered to inanity merely on the basis of the fact that there was an act of suppression on the part of the candidate in not disclosing the criminal case pending or framed against him; and ultimately, set aside the rejection order and directed the appellants to pass appropriate orders granting appointment to the respondent based on his selection in the recruitment in question.



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16. Finding no merits, the writ appeal stands dismissed. The appellants are directed to comply with the directions issued by the learned Judge in the order impugned herein, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
17.11.2023

Index : Yes / No
Internet : Yes / No
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To

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