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W.A.No.2309 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM :

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

**W.A.No.2309 of 2022
and
CMP No.17642 of 2022**

V.Subramania Siva

... Appellant

Versus

1.The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, P.T.Lee, Chengalvaraya Naicker Building,
Anna Salai, Chennai - 600 022.

2.The Director General of Police,
Office of the Director General of Police,
Dr. Radhakrishnan Salai Road,
Mylapore, Chennai,
Tamil Nadu - 600 004.

3.The Superintendent of Police,
District Police Office,
Collector Office Road,
Moovendar Nagar, Villuppuram,
Tamil Nadu - 605 602.

... Respondents



W.A.No.2309 of 2022

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.07.2022 made in W.P.No.19105 of 2020.

For Appellant : Mr.V.Prakash, Senior Advocate
for Ms.M.Karthikeyani

For respondents : Mr.P.Kumaresan, AAG assisted by
Mr.S.Yashwanth,
Additional Government Pleader

JUDGMENT

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

The challenge made in this Writ Appeal is to the order dated 27.07.2022 passed by the learned Judge in W.P.No.19105 of 2020.

2.Brief facts giving rise to the present appeal may be summarised as under:

Pursuant to the notification dated 06.03.2019 issued by the first respondent, the appellant applied for the post of Grade-II Police Constable. He attended the written examination on 25.08.2019 and was successfully completed the same. Thereafter, he cleared the physical tests conducted on 08.11.2019. Upon completion of certificate verification on 29.11.2019, the first respondent published the provisional list for selection to the post in



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question, in which, the appellant's name was found place at Sl.No.519.

However, *vide* communication/endorsement dated 23.03.2020, it was informed by the third respondent that the appellant was not found eligible for the recruitment of Grade II Police Constable for the year 2019, as his previous character and antecedents were not found satisfactory and hence, his candidature was not considered for appointment. Challenging the same, the appellant preferred WP.No.19105 of 2020, which by order dated 27.07.2022, was dismissed by the learned Judge, placing reliance on the decisions of Hon'ble Supreme Court in *Avtar Singh v. Union of India [2016 (8) SCC 471]* and *State of Madhya Pradesh and Bunt [2020] 17 SCC 654*. Aggrieved by the same, the appellant / writ petitioner is before this court with the present appeal.

3.The learned senior counsel for the appellant contended that no criminal case was pending against the appellant, at the time of submitting the application for the post of Grade II Police Constable. Adding further, the learned senior counsel submitted that the appellant has not committed any offence and he has been falsely implicated in Cr.No.537 of 2019, based on



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the complaint lodged by one Gopal, neighbour, to settle his personal score; and that, the said criminal case culminating in CC No.7 of 2020, ended in acquittal *vide* judgment dated 27.02.2020 by the Judicial Magistrate, Vanur. Elaborating further, the learned senior counsel submitted that the trial Court after considering the entire evidence, has come to a categorical conclusion that the prosecution has not produced any evidence to substantiate the charges framed against the appellant, which would only mean that the appellant was "honourably acquitted". Without properly appreciating the trial court judgment, the third respondent was of the view that the appellant was not found eligible for appointment as his previous character and antecedents were not found satisfactory. The learned Judge also erred in confirming the said opinion of the third respondent by the order impugned herein, which has to be set aside. It is also submitted by the learned senior counsel that the appellant was subsequently, selected as Grade II police constable, pursuant to the employment notification no.1/2020 dated 17.09.2020; and therefore, in the light of Explanation 2 to Rule 14(2) in sub rule (b)(iv) of the Tamil Nadu Special Subordinate Service Rules, 1978, the learned Judge ought to have directed the respondents to offer the appellant an appointment to the post of



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Grade II Police Constable, as the writ court has the power to take note of subsequent events during the pendency of a writ petition and mould the relief accordingly, so as to avoid further litigation. With these submissions, the learned senior counsel prayed for allowing this writ appeal.

4. On the other hand, the learned Additional Advocate General appearing for the respondents, would submit that the appellant was involved in a criminal case in Kiliyanur Police Station Cr.No.537/2019 for the offences punishable under sections 147, 148, 294(b), 323 and 324 IPC; after filing of charge sheet, it was taken on file as CC No.7/2020, which ended in acquittal *vide* judgment dated 27.02.2020 passed by the Judicial Magistrate, Vanur, only on the ground of benefit of doubt as the complainant / PW1 turned hostile; and hence, the appellant was not eligible for appointment as per rule 14(2) in sub rule (b)(iv) and Explanation (1) & (2) of the Special Rules for the Tamil Nadu Special Police Subordinate Service Rules, 1978, and as per G.O.Ms.No.101, Home (Police IX) Department, dated 30.01.2003 as well as the relevant court orders. Thus, according to the learned counsel, the order dated 23.03.2020 passed by the third respondent in line with the relevant



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rules and court orders, was rightly affirmed by the learned Judge in the writ proceedings, by the order impugned in this appeal and hence, the same need not be interfered with by this court.

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

6.Concededly, at the time of submitting the application for the post of Grade II Police Constable, on 28.03.2019, there was no criminal case pending against the appellant. He was implicated as accused in Kiliyanur Police Station Cr.No.537 of 2019 only on 18.10.2019. It is also an admitted fact that in the provisional list published by the first respondent on 04.02.2020 for selection to the post in question, the appellant's name was found place at Sl.No.519. However, *vide* endorsement dated 23.03.2020, the third respondent informed to the appellant that his candidature was not considered for appointment for the reasons that the appellant was involved in Cr.No.537 of 2019 registered for the offences under sections 147, 148, 294(b), 323 and 324 IPC; that, the offence committed by him, was serious in



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nature and he was arrayed as A1; and that, he was acquitted on the ground of benefit of doubt by the Judicial Magistrate, Vanur, on 27.02.2020 in CC No.7 of 2020, as the complainant /PW1 turned hostile. Feeling aggrieved, the appellant approached the writ court by filing WP.No.19105 of 2020, which was dismissed by the learned Judge, following the decisions of the Hon'ble Supreme Court in *Avtar Singh* case and *State of Madhya Pradesh* case (cited supra). While so, the learned Judge observed that if otherwise eligible, the appellant can be considered for next selection as per Rule 14(2) sub rule (b)(iv) of the Special Rules for Tamil Nadu Special Subordinate Service Rules, 1978. The said order of the learned Judge is questioned by the writ petitioner / appellant herein.

7. According to the appellant, the criminal case was falsely registered against him and he was subsequently, acquitted from the charges by the trial court, by holding that the prosecution has not proved the case beyond reasonable doubt, which is a general observation in all the criminal cases and hence, the acquittal of the appellant is an honourable acquittal. That apart, there was no allegation on the part of the respondent authorities that the



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appellant had suppressed of his involvement in the criminal case. In such circumstances, the respondent authorities ought to have considered the appellant's candidature for appointment to the post of Grade II Police Constable, but they did not do so; and the learned Judge also erred in dismissing the writ petition. Whereas, the respondent authorities stated that the offence committed by the appellant was serious in nature; that, he was acquitted from the charges only on the ground of benefit of doubt; and therefore, he was not found eligible for recruitment of the post in question for the year 2019.

8.It is evident from the records that at the time of police verification, the appellant was involved in the criminal case and hence, he was not found eligible for appointment, though the said proceedings ended in acquittal. Accordingly, the respondent authorities have not considered the appellant's candidature for selection to the post of Grade II police constable for the year 2019, which was also affirmed by the learned Judge, in the light of the decisions of the Hon'ble Supreme Court referred to above, with the observation that if otherwise eligible, the appellant can be considered for next selection as per Rule 14(2) Sub Rule (b)(iv) of the Special Rules for the



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Tamil Nadu Special Subordinate Service Rules, 1978. Undoubtedly, acquittal in a criminal case does not automatically entitle the appellant for appointment to the post in question and it is open for the authority to consider the antecedents and examine whether he is suitable for recruitment to the post, as per the prevailing government orders / rules. Hence, there is no infirmity or illegality in the order so passed by the learned Judge, warranting interference, at the hands of this court.

9.In such perspective of the matter, the writ appeal fails and is accordingly, dismissed. However, the respondent authorities shall consider the appellant's candidature in the next recruitment drive, if he is otherwise eligible, as observed by the learned Judge in the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D.,J.] [M.S.Q., J.]
20.04.2023

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Speaking Order /Non-speaking Order

Internet : Yes.

Index : Yes /No



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