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WA No. 2260 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM :

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

Writ Appeal No. 2260 of 2022
and
CMP. No. 17209 of 2022

S. Arun

.. Appellant

Versus

1. The Secretary to Government
Home (Police-II) Department
Fort St. George, Chennai - 600 009

2. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai - 600 004

3. The Superintendent of Police
Ranipet District
Ranipet

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 04.08.2022 passed in WP No. 8078 of 2022 on the file of this Court

For Appellant : Mr. S. Senthilnathan

For Respondents : Mr.M.Babu Muthumeeran,
Additional Public Prosecutor



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JUDGMENT

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The appellant has filed this intra-court appeal questioning the correctness of the order dated 04.08.2022 passed by the learned Judge, dismissing the Writ Petition No. 8078 of 2022 filed by him.

2. For the sake of convenience, the relief sought in the aforesaid writ petition is extracted below:

"To issue a writ of certiorarified mandamus, calling for the records of the 3rd respondent in connection with the order passed by him in Na.Ka.No.A3/14060/429/2021 dated 18.03.2022 and quash the same and direct the respondents to appoint the petitioner as Grade II Police Constable and send him for institutional training and grant him all consequential service and monetary benefits."

3.1. According to the appellant, in response to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board, inviting applications from eligible candidates for selection and appointment to the post of Grade-II Police Constable (Men and Women), he submitted his application on-line on 17.10.2020. In the application, it was specifically indicated that he is one of the accused in the case in Crime No. 394 of 2017 on the file of Arakkonam Police Station for the offences punishable under Sections 341 and 294 (B) of the Indian Penal Code. Based on his application, the appellant was



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called upon to attend a written examination on 13.12.2020. Accordingly, he also participated in such examination and secured 45 marks. Similarly, in the physical efficiency test/ physical endurance test conducted on 21.04.2021 and on 26.07.2021, he secured 15 marks. Based on the marks secured by the appellant, his name was included in the provisional selection list published by the Recruitment Board. He was subsequently directed to appear for the medical examination on 08.12.2021 and he subjected himself to all the medical tests. Thereafter, on 10.12.2021, the appellant appeared before the third respondent, when his antecedents were sought to be verified. On that date, he himself produced a copy of the judgment dated 25.01.2021 passed by the learned Judicial Magistrate, Arakkonam in C.C. No. 2 of 2021 acquitting him of the criminal case. Thus, even in the application for selection and appointment to the post of Grade-II Police Constable as well as during the antecedent verification, the appellant had duly intimated about his involvement in the criminal case and the subsequent judgment of acquittal passed against him. However, the third respondent passed the order of rejection dated 18.03.2022 by stating that as per Rule 14 (b) (ii) and (iv) of the Special Rules for Tamil Nadu Police Subordinate Services, the appellant is not eligible for being selected and appointed to the post of Grade-II Police Constable in view of his bad antecedents. Aggrieved by the order of rejection



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dated 18.03.2022 passed by the third respondent, the appellant has filed WP No. 8078 of 2022 before the writ Court.

3.2. The learned Judge, on considering the rival submissions, refused to interfere with the order of rejection passed by the third respondent and dismissed the writ petition filed by the appellant on 04.08.2022. However, liberty was given to the appellant to participate in the next selection drive that may be conducted by the respondents, if he is otherwise qualified. The relevant portion of the order dated 04.08.2022 of the learned Judge is quoted below for ready reference:

"8. As rightly pointed out by the learned Additional Government Pleader, as on the date of submitting application, a criminal case is pending against the petitioner and therefore considering the gravity of offence in the criminal case, the petitioner is not eligible for the post of Grade II Police Constable. However, as per Rule 14 (b) of Tamil Nadu Special Police Subordinate Services (For TSP candidates), the petitioner can claim for appointment only by participating in the next recruitment, if he is otherwise eligible.

9. In view of the above, the writ petition stands dismissed with the above liberty. No Costs. Connected miscellaneous petitions are closed."

3.3. Challenging the aforesaid order dated 04.08.2022, the appellant is before this Court with the present intra-court appeal.

4. The learned counsel for the appellant would mainly contend that in the application dated 17.10.2020 submitted by him, the appellant has duly disclosed his involvement in the criminal case without any suppression.



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Subsequently, during the antecedent verification, he produced a copy of the Judgment dated 25.01.2021 passed by the learned Judicial Magistrate, Arakkonam in C.C. No. 2 of 2021. The learned counsel also invited the attention of this Court to the judgment dated 25.01.2021 passed in C.C. No. 2 of 2021 to show that the appellant was given a clean chit by the Criminal Court. Thus, according to the learned counsel, the judgment dated 25.01.2021 was passed by concluding that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt and hence, the criminal case has been falsely foisted against the appellant and is *per se* vexatious. However, the learned Judge, by placing reliance on the Full Bench decision of this Court in ***Manikandan & others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board*** reported in **2008 (2) CTC 97**, which has no application to the case of the appellant, dismissed the writ petition. Further, in para No.7 of the impugned order, the learned Judge observed that at the time of verification of antecedents, the involvement of the appellant in the criminal case has been noticed. Such observation is fallacious inasmuch as the appellant himself, at the time of submission of the application for selection to the post, has indicated his involvement in Crime No. 394 of 2017 and handed over the copy of the Judgment in C.C. No. 2 of 2021 during antecedent verification. In any event, the Judgment of the Criminal Court in C.C. No. 2 of 2021 clearly



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indicated the innocence of the appellant. While so, it cannot be said that the antecedent of the appellant is bad, warranting rejection of his candidature for selection to the post in question. The learned counsel therefore prayed for setting aside the order of the learned Judge and allowing this writ appeal.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondents would contend that as per Rule 14 (b) (ii) and (iv) of the Special Rules for Tamil Nadu Police Subordinate Services, there is a bar for appointing the appellant in the present recruitment drive. Rule 14(b)(ii) provides that before appointing a person to the police force, the appointing authority must satisfy that the character and antecedents of the candidate are such as to qualify him for such service. Sub-rule (iv) of Rule 14 (b) states that those candidate, who has involved in any criminal case before Police Verification, is ineligible for being selected and appointed to any post in the Police Force. The learned Judge, taking note of the aforesaid Rules, has granted liberty to the appellant to participate in the next recruitment drive and dismissed the writ petition. It is further submitted that the Full Bench of this Court in *Manikandan's case* has clearly held that *"the non-selection of the writ petitioners or the rejection of their candidate either on the basis of their involvement in criminal case or on the basis of the suppression of their*



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involvement is perfectly valid and justified." The Special Leave Petition filed against the Full Bench decision of this Court vide SLP (C)No. 4679 to 4681 of 2009 was also dismissed by the Honourable Supreme Court on 23.03.2012. Therefore, the learned counsel for the respondents submitted that on the basis of the Full Bench decision of this Court, the learned Judge is wholly justified in dismissing the writ petition filed by the appellant. It is also submitted that the disclosure of the involvement of the appellant in the criminal case at the time of submission of his application for recruitment to the post will not cure the defect and the appellant has not made out any case for interference. Thus, the learned counsel for the respondents prayed for dismissal of this writ appeal.

6. We have heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor appearing for the respondents and also perused the materials placed before us.

7. On appreciation of the entire records, it is evident that even at the time of submission of the application for selection and appointment to the post of Grade-II Police Constable, the appellant has clearly indicated that he is one of the accused in Crime No. 394 of 2017. Thus, without any suppression, the



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appellant has truly disclosed the pendency of criminal case registered against him. According to the appellant, the criminal case has been falsely registered against him and it is *per se* vexatious as could be evident from the judgment of acquittal passed by the Criminal Court. The third respondent, without taking note of the above aspects, has rejected the candidature of the appellant for selection to the post of Grade II Police Constable.

8. In this backdrop, it has to be examined, whether mere disclosure of the criminal case at the time of submission of the application for selection and appointment to the post of Grade-II Police Constable, would entitle the appellant for being selected to the post. In this context, the decision rendered by the Full Bench of this Court in *Manikandan* case mentioned supra, will give a fitting answer. In that case, the questions that were considered (i) Whether the acquittal or discharge of a person in a criminal case on benefit of doubt would amount to a stigma on the life of a person so as to make him ineligible as per Rule 14(b), Explanation-1 of the Tamil Nadu Special Police Subordinate Rules; and (ii) Whether the non-disclosure of involvement in a criminal case, which has ultimately ended in acquittal, but in some cases disclosed after acquittal, can be a ground for disqualifying the persons concerned from entering into the Government service. The Full Bench of this Court held as follows:-



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"22. The Code of Criminal Procedure, 1973, refers to "acquittal" under Sections 232, 235, 248, 255 and 300. The word "discharge" is used in the Code in Sections 227, 239 and 245. Section 227 enables a Court of Session to discharge an accused if upon consideration of the record of the case and the documents submitted, he considers that there is no sufficient ground for proceeding against the accused. Section 232 enables a Court of Sessions to order the acquittal of a person, if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence to show that the accused committed the offence. Thus, discharge under Section 227 can be ordered before recording the evidence and the acquittal under Section 232 can be ordered after the evidence for the prosecution is recorded.

23. Similarly, Section 239 enables a Magistrate to discharge the accused, if after considering the police report and the documents sent along with it under Section 173, he considers the charge against the accused to be groundless. In cases instituted otherwise than on police report also, the Magistrate is entitled to discharge an accused, if after taking all the evidence as is referred to in Section 244, he considers that no case against the accused has been made out.

24. While the acquittal or discharge referred to in the above provisions, relate to a stage prior to the conclusion of the entire trial, the acquittal contemplated U/s. 248 and 255, by a Magistrate in a warrant case or summons case, is after trial.

25. Thus it is seen that the entire scheme of the Code of Criminal Procedure, 1973, speaks only of acquittal and not of an "honourable acquittal" or "acquittal on benefit of doubt". These concepts appear to have been developed by courts over the years. But there seems to be a reason for this.

26. Section 300(1) of the Code prescribes that a person tried for an offence by a competent court and convicted or acquitted of such offence, shall not be liable to be tried for the same offence or on the same facts for any other offence which could have been charged against him in the same trial. However, the Explanation to Section 300 of the Code makes it clear that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of Section 300. Therefore, the bar under Section 300(1) for a 2nd trial for the same offence or for a 2nd trial on the same facts for any other offence, may not be applicable in certain cases, where an accused is discharged.

27. The reason as to why the Code does not make a distinction between an acquittal on benefit of doubt and an honourable acquittal, is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted or acquitted once. What is provided under Section 300(1) of the Code, is only a reassurance of the constitutional right guaranteed under Article 20(2). The principle behind this prescription under section 300 of the Code is to avoid double jeopardy to a person. If the Code recognises such a distinction, it may make inroads into this concept of



double jeopardy.

28. But the concept of double jeopardy, to some extent, is allergic to service law. In as many cases as one can think of, the Supreme Court has made it clear (i) that the imposition of a punishment and the denial of promotion did not amount to double jeopardy and (ii) that the conviction by a criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of misconduct, did not amount to double jeopardy.

29. Since the concept of "acquittal is an acquittal", is an off shoot of the principle of double jeopardy underlying section 300(1) of the Code, it cannot be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles applicable to Service jurisprudence. A person discharged does not even have protection under section 300 of the Code and hence such a person cannot assail the Explanation 1 to the impugned rule 14(b).

30. Therefore, we hold, in answer to the first issue referred to the Full Bench, that by virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified."

Thus, it is evident that the Full Bench of this Court declared that Rule 14 (b) of the Tamil Nadu Special Police Subordinate Service Rules is not *ultra vires* and it states that a person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved in criminal case.

9. In this case, to substantiate his claim, the appellant relied on the Judgment of acquittal passed by the Criminal Court in C.C. No. 2 of 2021. On a perusal of the same, it is clear that the complainant/PW1 himself has deposed



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contrary to his complaint and therefore he was treated as hostile witness. As

PW1 did not support the case of the prosecution, the trial court held that the prosecution failed to prove the charges against the accused and consequently the charge against A1 and A2 is held as not proved. Thus, the judgment of the Criminal Court in C.C. No. 2 of 2021 squarely falls within the scope and ambit of Rule 14(b) inasmuch as the complainant himself had turned hostile and it led to the acquittal of the accused in the criminal case. In such circumstances, in view of Rule 14(b) of the Rules, there is a bar for selection and appointment of the appellant to the post in question. The learned Judge, by placing reliance on the decision of the Full Bench of this Court, has rightly held that at the time of submission of the application for employment, a criminal case was pending against the appellant and therefore, he is not entitled to be selected to the post in a Police Force.

10. It is needless to mention at this juncture that merely because the appellant had disclosed the pendency of the criminal case, will not confer him any right to get selected to the post in a Police Force, as it is settled law that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still, it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. Therefore, we find



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no reason to interfere with the order passed by the learned Judge.

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11. In such view of the matter, the writ appeal deserves to be dismissed and is accordingly, dismissed. However, there is no impediment for the appellant to participate in the next recruitment drive, 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]

rsh

10.04.2023

Index : Yes / No

Internet : Yes / No

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