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W.P.No.26583 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26583 of 2017
and W.M.P.No.28299 of 2017

P.T. Vasantharajan

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai – 600 004.

2.The Chairman,
Tamil Nadu Uniformed Services,
Recruitment Board,
Anna Salai, Chennai.

3.The Superintendent of Police,
Erode District,
Erode.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 03.10.2017 under proceedings in Na.Ka.No.A2/10882/2017 passed by the third respondent, quash the same and consequently direct the respondents to appoint the petitioner as a Grade-II Police Constables pursuant to the selection made by virtue of the



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selection year 2017 issued by the Tamil Nadu Uniformed Services Recruitment Board for recruitment to the post of Grade-II Constables 2017.

For Petitioner : Mr.L. Chandrakumar
for M/s.P.T. Ramadevi

For Respondents : Mr.P. Kumaresan,
Additional Advocate General
Assisted by Mr.T. Chezhiyan,
Additional Government Pleader

ORDER

The petitioner herein had participated in the selection process for the year 2017 for the post of Grade-II Police Constable. Prior to the notification, he was involved in a criminal case in SC.No.104 of 2012 in the Court of Assistant Sessions Judge, Gobichettipalayam, for an offence under Section 366(A) of Indian Penal Code. By judgment dated 19.04.2013, the petitioner who was arrayed as a second accused was acquitted of a criminal charges. The fact of his involvement in a criminal case was disclosed by the petitioner in his application. Though the petitioner herein had successfully passed in the written test, physical test and medical test and obtained total marks of 75 out of 100, his candidature was rejected by the third respondent through his impugned order dated 03.10.2017 by stating



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that since the petitioner was acquitted from the criminal charge on benefit of doubt, he is not entitled for appointment in view of Rule 13(e) of the Tamil Nadu Police Subordinate Service Rules, 1978. Challenging the same, the present Writ Petition has been filed.

2. The learned counsel appearing for the petitioner submitted that though the Sessions Court had used the phrase 'benefit of doubt', the judgment would reflect that he was honourably acquitted and in view of the Rules governing the Tamil Nadu Uniformed Services Recruitment Board (TNUSRB), such an honourable acquittal will not be an impediment for selection process.

3. Per contra, the learned Additional Advocate General appearing for the respondents placed reliance on a recent decision of the Hon'ble Supreme Court in the case of '*Satish Chandra Yadav Vs. Union of India & others*' reported in '*2022 SCC OnLine SC 1300*' and submitted that since the police force is a disciplinary force and the judgment of the Criminal Court had acquitted the petitioner on benefit of doubt, there is no infirmity in the reasoning adopted in the impugned order.



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4. This issue on the entitlement of the candidate to seek for appointment in view of his acquittal in a criminal case has been a subject matter of discussion in various decisions of the Hon'ble Supreme Court, as well as this Court. In the earliest case, in '**Avtar Singh Vs. Union of India**' reported in '**(2016) 8 SCC 471**', it was held as follows:-

..... *“38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.....”*

(emphasis supplied)

5. In the case of '**Satish Chandra Yadav**' (*supra*), it was held that in other latest decision in the case of '**Union of India & others Vs. Methu Meda**' reported in '**(2022) 1 SCC 1**', the decision in '**Avtar Singh**' (*supra*), as well as the various decisions were taken into account by the Hon'ble Supreme Court and ultimately, it was held as follows:-

..... *“17. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of Avtar Singh case, it is*



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clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.....”

(emphasis supplied)

6. In all the aforesaid decisions, the object of the ratio laid down therein, is that the judgment in the criminal case requires to be examined to see whether the candidate has been completely exonerated in the case, the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt, because the witnesses turned hostile or of some other serious flaw in the prosecution and the propensity of such person to indulge in similar activities in future. This exercise ought to be adopted by the Screening Committee.



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7. In the instant case, the third respondent herein is stated to be the One Man Screening Committee. Unfortunately, in the impugned order dated 03.10.2017, the third respondent seems to have extracted a stray sentence from the judgment of acquittal and had come to the conclusion that he was acquitted under Section 235(1) Cr.P.C., on benefit of doubt. On the other hand, the Sessions Court seems to have deliberated on the evidences let in before it and thereby, had come to the conclusion that the offence under Section 366(A) IPC was not made out and on that basis, seems to have acquitted the petitioner herein, as well as the other accused. In view of this, the reason for rejection of the petitioner's candidature may not be appropriate and which may require re-consideration by the One Man Screening Committee, namely, the third respondent herein.

8. Since the petitioner was fully qualified in the selection process held in 2017 and is now said to have crossed the upper age limit, such consideration by the third respondent herein, shall be without reference to the upper age limit.



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9. In the light of the above observations, the impugned order dated 03.10.2017 passed by the third respondent, is quashed and the matter is remitted back to the third respondent herein for fresh consideration. The third respondent shall give a detailed consideration of the judgment passed in SC.No.104 of 2012 and thereby, come to a subjective satisfaction, as to whether the acquittal was on benefit of doubt or otherwise and thereafter, pass fresh orders in accordance with the decision stated *supra*. Such an exercise of consideration and passing of orders shall be made atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition stands partly allowed. No costs.
Connected miscellaneous petition is closed.

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Speaking/Non-speaking Order
Neutral Citation: Yes/No
Index: Yes/No
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M.S.RAMESH,J.

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To

- 1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai – 600 004.
- 2.The Chairman,
Tamil Nadu Uniformed Services,
Recruitment Board,
Anna Salai, Chennai.
- 3.The Superintendent of Police,
Erode District,
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