



W.A.No. 2746 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>Pronounced on</i>
08.03.2023	16.06.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.A.No. 2746 of 2018
and CMP.No. 22611 of 2018

1.The State of Tamil Nadu
Rep. by the Secretary,
Home (Police) Department,
Fort St. George Fort, Chennai.

2.The Director General of Police,
The DGP's Office,
Mylapore, Chennai-600 004.

3.The Superintendent of Police,
O/o.The Superintendent of Police,
Vellore District, Vellore.

..Appellants

Vs

S.Govindaraj

.. Respondent

Prayer: Appeal is filed Under Clause 15 of Letter Patent to set aside the order dated 11.11.2016 passed in W.P.No. 5718 of 2013.



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For Appellants : Mr.P.Kumaresan, AAG
Assisted by Mr.J.Daniel, GA
For Respondents : Mr K.S.Karthik Raja

JUDGMENT

(Judgment of the court was made by D.KRISHNAKUMAR,J.)

Challenging the order passed by the learned Single Judge in W.P.No.5718 of 2013 dated 11.11.2016, the instant writ appeal has been filed by the Department.

Brief facts:

2. The writ petitioner/respondent had participated in the recruitment process for selection to the post of Grade-II Police Constable and passed the written test, physical endurance test, physical efficiency test and medical test and he was disqualified since he was acquitted in a criminal case viz.Crime No.46 of 2011. The 3rd appellant herein has passed rejection order in Na.Ka.No. A2(3)/49777/2012 dated 03.01.2013. Challenging the same, the respondent has filed a writ petition in W.P.No.5718 of 2013, the learned Judge allowed the said writ petition directing the appellants



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herein to select the writ petitioner in the selection process. Challenging the same, the appellant/Government has preferred the instant Writ Appeal.

3. The learned Additional Advocate General appearing for the appellants would submit that though the petitioner had passed the written test, physical endurance test, physical efficiency test and medical test, he was disqualified on the basis of his involvement in criminal case and acquittal on the benefit of doubt. The learned Single Judge without considering the fact that a person acquitted on benefit of doubt or discharged from his criminal case, can still be considered as qualified for selection to Police Service, has allowed the writ petition filed by the appellant.

4. On the other hand, the learned counsel appearing for the respondent/writ petitioner would submit that the criminal case initiated against the respondent ended in acquittal. The learned Single Judge has rightly considered the said aspect and quashed the rejection order passed by the 3rd appellant. Therefore, the order of the learned Single Judge does not warrant any interference by this Court.



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5. We have heard the learned Additional Advocate General appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

6. A perusal of the impugned order passed by the learned Single Judge would disclose that the learned Single Judge has observed that the acquittal of the writ petitioner by the Criminal Court was after due consideration of the prosecution evidence and the prosecution had miserably failed to prove the charges leveled against the accused, therefore it can possibly be said that the accused was honorably acquitted. The relevant portion of the order of the learned Single Judge is extracted below;

*"6.From a reading of the judgment of the Sessions Court, it is seen that the acquittal of the petitioner was after due consideration of the prosecution evidence and after it was found the prosecution had failed to prove the charges against the petitioner. **The Hon'ble Supreme Court in Inspector General of Police Vs. S.Samuthiram (2013) 1 SCC 598** has held that when the accused is acquitted after full consideration of the prosecution evidence and that the prosecution had*



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miserably failed to prove the charges leveled against the accused, it can possibly be said that the accused was honorably acquitted. In this case also the petitioner was honorably acquitted from the Criminal Case.

7. The consequent issue to be addressed in this case, as to whether the honorable acquittal could disqualify the petitioner from the appointment has been answered by the Honorable Supreme Court in **Joginder Singh Vs. Union Territory of Chandigarh and Others 2015 2 SCC 377**. The relevant observation is extracted below;

"19.Further, 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."

"25.Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the appellant was not up to the mark to appoint him to the post. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been



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placed on the decision of this Court in Jagtar Singh V.CBI which states as under:(SCC pp.50-51,para 4)

"4....It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to government service. We are of the view that the appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service



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Commission."

"26.Thus, we are of the opinion 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. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind."

7.In view of the above findings and the law laid down by the Honorable Supreme Court, the impugned order passed by the third respondent is quashed. Consequently, the respondents are directed to complete the selection process and issue suitable appointment order to the petitioner in the post of Second Grade Constable, subject to any other qualification/tests that may have to be satisfied within a period of eight weeks from the date of receipt of copy of this order.

7. At the outset, it is required to be noted that the post on which the writ petitioner is seeking the appointment is the post of



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Police Constable Grade II. It cannot be disputed that the duty of the constable is to maintain law and order. Therefore, it is expected that he should be honest, trustworthy and that his integrity is above board and that he is reliable. An employee in the uniformed service presupposes a higher level of integrity, as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated.

8. In the present case, though the trial Court had acquitted the respondent on benefit of doubt, the learned Single Judge by relying upon the decision of the Hon'ble Supreme Court in ***Inspector General of Police Vs.S.Samuthiram [(2013) 1 SCC 598]*** held that when the accused is acquitted after full consideration of the 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 honorably acquitted. We do not find any error in the order passed by the learned Single Judge.

9. This Court in a similar circumstances, in a batch of cases filed before the Madurai Bench of Madras High Court in ***W.A.(MD) No.938***



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of 2020 etc., batch dated 05.06.2023, in which one of us is a party [D.Krishnakumar, J.], has elaborately discussed on various factors to be considered in respect of police recruitment and observed with regard to Honourable acquittal as follows:

"(C). DISCUSSION

8.The Writ Appeals and the Writ Petitions that are listed before us challenging the rejection of the candidature or accepting the candidature can be classified on the following grounds:

"(1). Honourable acquittal, discharged mistake of fact, quashing of F.I.R/ charge sheet.

(2).Acquitted on benefit of doubt or due to hostility of the witnesses.

(3). Proceedings quashed on compromise between the parties."

(1). Honourable acquittal, discharge mistake of fact, quashing of F.I.R/ charge sheet.

(a).Rule 14(b)(iv) of Tamil Nadu State and Subordinate Service Rules lays down that a candidate should not be involved in any criminal case before police verification. Explanation (2) to the above said Rule lays down that in case if a candidate has been honourably acquitted or the criminal case has been closed as a mistake of fact, the same shall be treated as not an involvement of the criminal case. The Rules further lay down that the said candidate can make a claim for



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appointment only by participating in the next recruitment. However, the communication of Director General of Police dated 17.12.2015. If the candidate has been honourably acquitted before the date of police verification or referred as mistake of fact may be favourably viewed for candidate.

(b). The communication further points out that the candidate whose name was deleted from the charge sheet can also be considered for appointment in the said selection itself.

(c). Therefore, it is clear that if a candidate has been discharged or the case has been closed as mistake of fact or if the F.I.R or charge sheet have been quashed on merits, this will lead to only one conclusion that the candidate was not at all involved in the said criminal case. His candidature should be considered in the said selection itself without relegating him to the next selection process.

(D). SUMMARY OF PREPOSITION OF LAW:

19. In the light of the above said deliberations, the preposition of law could be summarized as follows:

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself. (emphasis supplied)

(b). Where the candidate has been acquitted on the ground of benefit of doubt or hostility of witnesses (before the date of police verification), that would not confer any right upon the candidate to claim appointment as a matter of right. It is for the employer to consider the suitability of the candidate based upon his conduct and antecedents only if the offences are trivial in nature.



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(c).Where the criminal case has been quashed (before police verification) on the basis of a compromise and the offence is of trivial in nature, the same can be considered in favour of the candidate in the current selection itself. However, if the offence involved is not of a trivial in nature, the same cannot be considered for appointment.

(d).Where a candidate having knowledge about his involvement in a criminal case had suppressed the same in his application and the said offence is not trivial in nature, he is not entitled to seek any appointment. On the other hand, in cases of trivial offences, without knowledge about his involvement or after having knowledge had suppressed his involvement, the employer in his discretion is entitled to consider the candidature by considering his character and past antecedents.

(e).Where the candidate is involved in petty/trivial cases like family dispute or dispute with neighbors or shouting of slogans or traffic offence where fine was imposed, the same can be considered to be offence of trivial/petty in nature. However, the offence against women, children or under NDPS Act should never be considered to be an offence of trivial in nature.

(f).Where the candidate is involved in criminal offences under Juvenile Justice Act, he/she is to be considered in the light of the Division Bench Judgment of this Court dated 01.03.2023 in Rev.ApIn.No.17 of 2023 in W.A.No.2759 of 2018 (The Superintendent of Police, Villupuram District Vs.S.Rajeshkumar)

(g). Pending the recruitment process, if a candidate is discharged from the criminal case or acquitted in the criminal case, he/she shall be eligible to be considered for the next recruitment process as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules."

10. The case on hand is squarely covered by the proposition laid down in Para 19(a) of the Division Bench decision cited supra. It is clear from the records that the criminal case registered against the respondent/writ petitioner had ended in honourable acquittal. The Writ



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Court has rightly considered these aspects in proper perspective and directed the department to complete the selection process and issue suitable appointment order to the writ petitioner.

11. In the light of the aforesaid discussion, we do not find any reason to interfere with the order of the Writ Court. Accordingly, this Writ Appeal stands dismissed, confirming the order of the Writ Court dated 11.11.2016 made in W.P.No.5718 of 2013. The appellants are directed to consider the candidature of the respondent/writ petitioner as laid down in paragraph 19(a) of the judgment of the Division Bench of this Court cited supra and also in the light of the communication of the Director General of Police dated 17.12.2015 and issue necessary appointment orders to the respondent/writ petitioner, subject to the antecedents and character of the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K., J.) (K.G.T., J.)
16.06.2023

Index : Yes/No
Internet : Yes
Speaking Order/Non Speaking Order
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To

1.The Secretary,
Home (Police) Department,
Fort St. George Fort,
Chennai.

2.The Director General of Police,
The DGP's Office,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
O/o.The Superintendent of Police,
Vellore District,
Vellore.



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D.KRISHNAKUMAR,J.
AND
K.GOVINDARAJAN THILAKAVADI, J

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Pre Delivery Judgment in
W.A.No. 2746 of 2018
and CMP.No. 22611 of 2018

16.06.2023