



W.A(MD)No.46 of 2013

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 16.03.2023**

**CORAM:**

**THE HON'BLE MR JUSTICE R. SURESH KUMAR  
AND  
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

**W.A(MD)No.46 of 2013**

G.Baskaran

... Appellant/Petitioner

.Vs.

1.The Director General of Prisons,  
Chennai-5.

2.The Additional Director  
General of Prisons,  
No.1, Gandhi Irwin Road,  
Egmore,  
Chennai-8.

...Respondents/Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 10.11.2010 made in W.P.(MD)No.9492 of 2006.



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For appellant : Mr.C.Susi Kumar  
For Respondents : Mr.Veera Kathiravan  
Additional Advocate General  
Assisted by  
Mr.B.Saravanan  
Additional Government Pleader

### **JUDGMENT**

**(Order of the Court was made by R. SURESH KUMAR,J.)**

This Intra Court appeal is directed against the order passed by the writ Court, dated 10.11.2010 made in W.P(MD)No.9492 of 2006.

2.Before the writ Court, the appellant has filed the writ petition seeking for a writ of mandamus directing the respondent to issue an order of appointment to the petitioner as a Grade-II Warder in the respondents department.

3. Though the appellant/writ petitioner was selected as a Warder-II in the respondents department, subsequently, on verification, they found that the character and antecedents of the petitioner/appellant was not fit to be considered



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for the appointment because he had already involved in a criminal case in Cr.No. 498 of 1998 on the file of the Inspector of Police, Puliangudi Police station.

4. Therefore, the appointment order had not been given. Only at this juncture, the appellant/petitioner had moved the writ petition on the ground that, subsequently the criminal case was acquitted by the District Munsif-cum-Judicial Magistrate, Sivagiri in C.C.No.177 of 1999, dated 29.03.2000 and therefore, in the light of the acquittal and he having disclosed the same in the attestation form, he should be considered for appointment and appointment order to be given to him. That was the contention he raised before the writ Court.

5. Repelled the same, the learned Judge, who dealt with the matter, has held that insofar as the Rule 14-B of the Tamil Nadu Police Subordinate Service Rules is concerned, subsequently, an amendment has been made, where, an explanation has been given, wherein, it was stated that a person is acquitted or discharged on benefit of doubt or due to the fact that the complainant has turned hostile, even those acquittal can be treated as the person involved in a criminal case.



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6. The learned Judge has also stated that the Constitutional validity of Rule 14-B along with the explanation having been considered was upheld by the judgments. One by Full Bench in *Manikandan and others. Vs. The Chairman, Tamil Nadu Uniformed Services, Recruitment Board* reported in (2008 (2) CTC 97) and another one is by a Larger Bench in *Veeramani and another Vs. State of Tamil Nadu Rep. by the Secretary to Government, Home Department and others* reported in (2007) (3) MLJ 676. Accordingly, the learned Judge had rejected the said plea and dismissed the writ petition through the impugned order.

7. Heard Mr.C.Susi Kumar, learned counsel appearing for the petitioner, who would submit that since except the Investigating Officer i.e., I.O., no other witness had made any deposition in favour of the prosecution and the entire case was a cooked up one, based on which, the petitioner/appellant even though was fit enough and got selected appointment cannot be denied.

8. However, Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents has submitted that the law in this regard has been well settled by number of cases, including the two cases referred by the learned



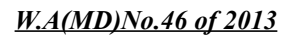
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WEB COPY Judge in the impugned order. That apart, the learned Additional Advocate General has relied upon a latest decision of the Hon'ble Supreme Court of India in ***Satish Chandra Yadav vs. Union of India and others*** reported in **2022 SCC Online SC 1300**, where, the learned Additional Advocate General has relied upon Para-90, which reads thus:-

*“90.In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:*

*a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials-more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [See Raj Kumar (supra)]*

*b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is*



c) *The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.*

*d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.*

*e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.*

f) Is there any element of bias in the decision of the Authority?

g) *Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"*

9. The situation that has been culled out and was held by the Hon'ble Supreme Court is concerned, the learned Additional Advocate General has heavily relied upon the sub para (b), under which, it is stated that even in a case



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where, the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

10. Relying upon this content as that has been held by the Hon'ble Supreme Court in the latest decision cited supra, the learned Additional Advocate General would submit that the petitioner/appellant though had been acquitted, but such an acquittal is not an honourable acquittal as the witness since turned hostile, the trial Court had no other option except to acquit the petitioner/appellant.

11. Even then, still the right of the party as to whether he is entitle to get a job in a disciplined force is the matter to be decided only by the employer as has been consistently held by the law courts concluded in the latest judgment referred to above, therefore, the learned Additional Advocate General seeks dismissal of the writ appeal.



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12. We have given our anxious consideration to the submissions respectively made by the learned counsel for the parties and perused the materials placed.

13. As has been rightly pointed out by the learned Additional Advocate General appearing for the respondents that right to give employment is always vest with the employer, especially, in the disciplined force, where if a member is to be enlisted, his criminal antecedents must be looked into that is why, this procedure, especially, by following Rule in this regard is contemplated. In this context, Rule 14(b) of the Tamil Nadu Police Subordinate Service Rules is a crucial one and the validity of the same including the explanation made by subsequent amendment having been challenged was considered and that has been upheld by the decision of the Full Bench as well as the Larger Bench in the judgments referred to above.

14. The situation that has been mentioned in para-90 of the afore stated judgment of the Hon'ble Supreme Court, especially, Clause-b makes it very clear that the employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate and the acquittal in a criminal case would not



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15. Accordingly, the writ appeal fails and it is dismissed. No costs.

**[R.S.K.,J.] [K.K.R.K.,J.]**  
**16.03.2023**

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Internet : Yes / No  
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Chennai-5.
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**R. SURESH KUMAR, J.**  
**and**  
**K.K.RAMAKRISHNAN, J.**

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**JUDGMENT MADE IN**  
**W.A(MD)No.46 of 2013**

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