



W.P.(MD)No.5421 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5421 of 2023

and

W.M.P(MD)No.5071 of 2023

P.Manikandan

... Petitioner

Vs

1.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Complex,
Pantheon Road, Egmore, Chennai – 600 008.

2.The Director General of Police,
Tamil Nadu Police, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

3.The Deputy Inspector General of Police,
Tamil Nadu Police South Zone, Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to endorsement in Letter No. Na.Ka.No.A3/3608686/2022 dated 22.02.2023 issued by the third respondent and quash the same and consequently direct the respondents to appoint the petitioner as Sub-Inspector of Police (Taluk and AR) 2022.



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For Petitioner : Mr.G.Vijayakumar

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.K.Balasubramani
Special Government Pleader

ORDER

The writ petitioner is an aspirant for the post of Sub-Inspector of Police. The Tamil Nadu Uniformed Services Recruitment Board issued notification dated 08.03.2022 calling for applications from eligible candidates for the said post. The petitioner applied in response thereto. He took part in the written examination held on 25.06.2022. He successfully cleared the same. Subsequently, he was called for Certificate Verification, Physical Measurement Test, Endurance Test, Physical Efficiency Test, and viva-voce. He cleared them all. He was, however, disqualified on the ground that he suppressed his involvement in Crime No.32 of 2022 registered on the file of Dhalavaipuram Police Station, Virudhunagar District while filling up the application form. Endorsement to this effect was issued by the third respondent on 22.02.2023. Challenging the same, the petitioner filed the present writ petition.



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2.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit and the additional affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

3.The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. The stand of the respondents is that the petitioner was figuring as A4 in Crime No.32 of 2022 registered on the file of Dhalavaipuram Police Station, Virudhunagar District. The defacto complainant belongs to a Scheduled Caste. Mareeswaran, the brother of the petitioner, had physical intimacy with her by promising to marry her. He subsequently declined to honor his promise. When the defacto complainant insisted that Mareeswaran must marry her, all the members of the petitioner's family abused the victim by referring to her community. The complaint given by the victim implicates the petitioner also.

4.The learned Additional Advocate General would point out that this FIR was registered on 03.03.2022. It implicates not only Mareeswaran but also the petitioner and his parents and siblings. Mareeswaran was arrested and remanded. Bail petition was filed. When all the members of the family have been implicated, the petitioner would obviously be in the know of things.



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Recruitment notification was issued on 08.03.2022. Application was submitted by the petitioner on 02.04.2022. In response to the question if he was involved in any criminal case, the petitioner answered in the negative. The learned Additional Advocate General would point out that this was a clear case of suppression. A catena of decisions of the Hon'ble Apex Court has been placed to drive home the point that an applicant guilty of suppression of material facts regarding the involvement in a criminal case was unfit to be a member of an uniformed force. In **Satish Chandra Yadav v. UOI (2022 LiveLaw (SC) 798**, it was held that 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. The impugned disqualification order was rightly passed and no case for interference has been made out. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record.



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6.Two issues arise for consideration – a) whether the petitioner is guilty of suppression and b) whether his involvement in the criminal case can lead to his disqualification.

7.The employer who alleges suppression on the part of the candidate is obliged to make good his allegation. An act of suppression presupposes knowledge. It denotes the presence of the element of dishonesty. In such cases, the accuser has to prove. The candidate against whom allegation is made can only plead ignorance. He cannot be called upon to prove the negative. The principle of presumption of innocence is very much applicable. It is not enough to show that the statement made by the candidate was erroneous. Suppression means deliberate non-disclosure of a material fact. In other words, the candidate must have knowingly withheld the information from the employer. The employer must satisfy himself on the strength of objective material that the candidate had done so. When the question comes up for consideration before the Court, the employer is obliged to demonstrate the same. This burden cast on the employer will not shift. The employer can of course establish that the candidate had knowledge from the attendant circumstances. Such an approach has to be adopted because the fundamental right of a candidate to be considered for public employment is at stake.



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Otherwise, the employer can accuse the candidate of suppression and arbitrarily deny him employment. That would be contrary to Articles 14 and 16 of the Constitution of India.

8.Final report in Crime No.32 of 2022 on the file of Dhalavaipuram Police Station was filed on 22.04.2022 confining the prosecution to Thiru.Mareeswaran alone. The charge-sheet was taken on file in Special S.C.No.41 of 2022 on the file of Special Court for SC/ST Cases, Srivilliputhur. If the petitioner had filed any petition for anticipatory bail under Sections 438/482 Cr.P.C, then, obviously knowledge can be presumed. The petitioner had not filed any such petition. Merely because the entire family had been implicated in the criminal case, that does not necessarily mean that the petitioner was aware of the facts. The stand of the petitioner is that during the relevant time, he was away in Chennai and preparing for Civil Services Examinations and that he was unaware of his implication in the criminal case. It is quite possible that the elders of the family screened the relevant details from the petitioner. They might have done so to avoid causing stress to the petitioner. We all know that Mahatma Gandhiji's mother passed away when he was pursuing legal education in Britain but this information was not passed on to him. Gandhiji writes thus in his Autobiography :



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“My elder brother had come to meet me at the dock

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I was pining to see my mother. I did not know that she was no more in the flesh to receive me back into her bosom. The sad news was now given me, and I underwent the usual ablution. My brother had kept me ignorant of her death, which took place whilst I was still in England. He wanted to spare me the blow in a foreign land. The news, however, was nonetheless a severe shock to me. But I must not dwell upon it. My grief was even greater than over my father's death. Most of my cherished hopes were shattered. But I remember that I did not give myself up to any wild expression of grief. I could even check the tears, and took to life just as though nothing had happened.”

9.I went through the explanation given by the petitioner in the additional affidavit. Paragraphs 2 to 4 of the said affidavit read as follows:

“(02)I submit that I was staying all along with another brother at No.15/3, Vinayagar Koil Street, Kalivanar Colony, Collector Nagar, Anna Nagar West Extension, Chennai – 600 101. My brother along with his friends are residing at above address and are preparing for UPSC examination. I submit that since, staying with them will be helpful to clear my examination for appointment as Sub Inspector of Police, I came and stayed with them. I submit that my application for the post of Sub – Inspector was made by me from Chennai and hence, I preferred



the centre for examination in Chennai only. I submit that even prior and after filing of the above mentioned First Information Report, I was in Chennai and preparing for the examination. Hence there is no iota of knowledge to me over the alleged offence and about the registration of the FIR against me.

(03) I submit that as I was staying in Chennai and preparing for my exams, I was not informed about the above mentioned FIR either by my parents or through my brother Mr.Mareeswaran as they believed that the same would affect my concentration over the studies. I submit that the above mentioned FIR was lodged due to some love affair between my brother Mr.Mareeswaran and the de-facto complainant in which my family members or I have no role to play. I submit that the said de-facto complainant had falsely implicated myself and my family members with intention to hand twist the said Mr.Mareeswaran for their whims and fancies.

(04) I submit that my parents, who are not educated have approached an advocate from Rajapalayam, regarding that case. The advocate appeared for Mr.Mareeswaran have taken care of the case, however, they were not informed that FIR is lodged against all the family members. The fact remains that my parents have not informed anything about this case as they apprehended that this may psychologically impact in our preparation for exams. I submit that when I got information about this case through some of my friends and enquired my



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parents, they advised that they have handed over the issue to an able advocate who will take care of the same and advised me not to involve in these issues and further advised to concentrate on preparation for the SI selection.”

The petitioner's version is quite probable and no material has been placed by the respondents to show that the petitioner had knowledge of his implication in the criminal case and that he suppressed the same.

10. In the case on hand, the police verification was done on 03.12.2022 and the petitioner disclosed his implication in the case and subsequent deletion in the final report while filling up the verification form. The learned Additional Advocate General initially asserted that the petitioner had once again made a false statement while filling up the form during police verification. Column 18 reads as follows:

“Are where any civil or criminal cases pending against you?”

Since by then he had been deleted from the final report, the petitioner rightly gave a negative answer. Clause 16 is as follows:

“16. Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with C.C.No and Court.”

The petitioner had truthfully answered as follows:



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“குற்ற எண்.32.2022

தளவாய்புரம் காவல்நிலையம்

U/S 147, 417, 294 (b), 323, 376, 506(2) IPC and Sec 3(1)(r),
3(1)(s), 3(1)(w)(i), 3(2)(va) of SC/ST (POA) Act.

மேற்படி வழக்கில் குற்ற இறுதி அறிக்கையில்
என் பெயர் நீக்கம் செய்யப்பட்டுள்ளது. அதை
நீதிமன்றமும் ஏற்றுக் கொண்டுள்ளது. அதன்
நகலை இத்துடன் இணைக்கிறேன்.”

I am satisfied that the petitioner cannot be charged with suppression of
implication in the criminal case. The first issue is answered in favour of the
petitioner.

11.The petitioner had been disqualified by invoking Rules 13(b) and (e)
of Special Rules for Tamil Nadu Police Subordinate Service. The said Rules
read as follows:

“Rule 13. Qualifications. No person shall be eligible for
appointment to the service by direct recruitment unless he
satisfies the appointing authority.

(a)....

(b) that his character and antecedents are such as to qualify him
for such service;

(e) that he has not involved in any criminal case before the
police verification;

Explanation (1). - A person who is acquitted or discharged on
the benefit of doubt or due to the fact that the complainant



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turned hostile, shall be treated as a person involved in a criminal case.

Explanation (2). - A person involved in a criminal case at the time of Police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment.”

The application of the rule has had and is having unfortunate and sometimes unfair consequences. Its validity has been upheld by the Hon'ble Full Bench in Manikandan case and by the Larger Bench in Alex Ponseelan case. Since it is a disqualification clause, it has to be applied strictly. Its scope cannot be expanded. Rule 13(e) opens with this expression “he has not involved”. The word used is “has” and not “is”. There is also a distinction between “implication” and “involvement”. If a person is falsely implicated he cannot be said to be involved in the first place. I am tempted to dwell on “has/is” and “involvement/implication”. I refrain from undertaking the exercise since Explanation (1) defines who shall be treated as a person involved in a criminal case. Two categories are referred to – Persons acquitted or discharged. The reason therefor should be due to benefit of doubt or on account of the complainant turning hostile. Only such persons can be considered as persons involved in a criminal case. If the name of the candidate implicated in a



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criminal case was deleted in the final report before police verification stage, he cannot be treated as a person involved in a criminal case. This position has been laid down by the Hon'ble Division Bench in ***WA(MD)No.938 of 2020 etc., (The Director General of Police and ors v. K.Indhu Kumar) dated 05.06.2023***. Such a person should be considered in the current selection itself [Para 19(a)]. Explanation (2) deals with persons whose cases pending at the time of police verification but subsequently ending in honourable acquittal or mistake of fact. Such persons can claim right of appointment only by participating in the next recruitment. Since in this case, the case had been closed against the petitioner long before the police verification took place, Explanation (2) cannot be invoked against the petitioner. In fact, there appears to be a policy decision in favour of candidates whose names were deleted in the final report. Relying on an official communication, a learned Judge of this Court had allowed WP(MD)No.7773 of 2021 (S.Arunkumar v. Director General of Police and ors).

12.From a reading of the complaint, one can come to the conclusion that the dispute is primarily between the petitioner's brother and the defacto complainant. In such cases, the victims do have the tendency to implicate all the family members even though they may have grievance only against particular persons.



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13. In view of the conclusion that the petitioner had not indulged in suppression and since the disqualification rule is not attracted, the order impugned in this writ petition is set aside. The respondents are directed to appoint the petitioner as Sub-Inspector of Police forthwith. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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Pantheon Road, Egmore, Chennai – 600 008.
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G.R.SWAMINATHAN, J.



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