



W.P.(MD).No.17080 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17080 of 2023

and

W.M.P(MD)No.14295 of 2023

T.Pugalenth

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Old COP Office Campus,
Pantheon Road,
Egmore, Chennai – 600 008.

2.The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board,
Old COP Office Campus,
Pantheon Road,
Egmore, Chennai – 600 008.

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

4.The Inspector of Police,
Kandarvakottai Police Station,
Pudukkottai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the third respondent in Na.Ka.No.A2/9478/Cr-III/2023, dated 11.05.2023 quash the same and consequently directing the third respondent to appoint the petitioner in the post of Grade II Constable in the Tamil Nadu Uniform Services, namely Police Department.

For Petitioner	: Mr.S.K.Mani
For Respondents	: Mr.P.Veera Kathiravan Additional Advocate General Assisted by Mr.D.S.Neduncheliyan

ORDER

The prayer of the Writ Petition is as follows:-

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the order of the third respondent in Na.Ka.No.A2/9478/Cr-III/2023, dated 11.05.2023 and consequently directing the third respondent to appoint the petitioner in the post of Grade II Constable in the Tamil Nadu Uniform Services, namely Police Department.



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2.The petitioner is a graduate with B.Sc Physics degree. He participated in the selection process for the post of Grade II Police Constable in Tamil Nadu Uniform Services, namely the Police Department. He appeared for the examination conducted for the said recruitment process and passed in the written examination and other examinations for the physical fitness and endurance test for the said post. Furthermore, he also became successful in the interview. Despite getting qualified through all the examinations and interview, the third respondent vide the impugned order dated 11.05.2023 rejected the petitioner's application, thereby declining to appoint the petitioner to the post of Grade II constable for the following reasons:

“(i) Suppression of the registration of Crime No.206 of 2018 registered for the offences under Section 294(b), 323 and 324 of IPC on 12.07.2019 which culminated in the criminal case of C.C.No.23 of 2020 on the file of the learned Judicial Magistrate, Kandharvakottai on 27.01.2021, which concluded in the acquittal of the petitioner under Section 248(1) of the code of Criminal Procedure, in the application form.



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(ii) The petitioner's involvement in such a criminal case, has resulted in concluding him to be a person with previous criminal antecedent."

Assailing the same, this writ petition came to be filed.

3.The learned counsel for the petitioner submitted that, the alleged offences which culminated in the filing of a charge sheet in a case in C.C.No.23 of 2020 on the file of the learned Judicial Magistrate cum District Munsif for the offences under Sections 294(b), 324 and 323 of IPC are trivial in nature. The prosecution case is to the effect that the petitioner is alleged to have spoken obscene words, which were objected to by P.W.1 and P.W.2 and such obscene words were alleged to have been spoken in front of their house. Such inflammatory quarrel resulted in causing a simple injury and the same happened without any premeditated plan or intention.

4.The learned counsel for the petitioner further submitted that the entire incident has taken place spontaneously without any basic ill will or previous enmity. There was no *mens rea* and the simple



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injuries sustained will not come under the explanation of grave offence. The case ended in acquittal not because of the fact that witnesses 4 to 7 turned hostile, but the prime witnesses 1 to 3 were not able to establish the case in evidence under Sections 294(b) and 324 of IPC against the petitioner. The learned counsel vehemently submitted that, the trial Court has observed after analysing the evidence that the material object being 'aruval', the same could not be recovered by the police and from the evidence of all the eye witnesses, the Trial Court tacitly found that nothing could be found relating to the occurrence.

5.Per contra the learned Additional Advocate General for the respondents emphatically contended that the petitioner had suppressed the registration of a criminal case and the consequent criminal trial in the case of C.C.No.23 of 2020 on the file of the learned District Munsif cum Judicial Magistrate Court at Kandharvakottai which ended in acquittal, in his application form, which itself would disentitle him to the post of Grade II constable. He further submitted that any person who is acquitted due to the fact that the witnesses turned hostile shall be treated as a person involved in the criminal case. This is a clear case where the witnesses 4 to 7 have turned hostile as a



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result of which the petitioner has been acquitted and hence he has to be considered as a person who is involved in a criminal case as per Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules. He further insisted that the purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service. The person who suppressed the material information cannot claim any right for appointment. The standard expected of a person intended to serve in Uniformed Service is quite distinct from other services, and therefore any deliberate statement or omission regarding vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

6.Heard the learned Counsel for the petitioner and the learned Additional Advocate General for the respondents and perused the materials available on record.



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7.Relevant provisions of Law:

7.1.Rule 14(b) of the Tamil Nadu Special Police Subordinate

Service Rules is extracted as follows:

"14.(b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfied the appointing authority that:

(i) that he is sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and

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

(iii) that such a person does not have more than one wife living and

(iv) that he has not involved in any criminal case before police verification.

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



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acquittal or treated as a 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."

8.The Director General of Police has issued a communication on 22.02.2021, under which instructions have been issued to the Commissioner of Police and Superintendent of Police of the respective Districts for verification of provisionally selected candidates vide Office Memo in C.No.1268/20889/Rect.II(1)/2015 dated 17.12.2015 in which paragraph Nos.6 to 11 are extracted as follows:

"6.All the appointing authorities are requested to go through the relevant rules. court orders (Full Judgement available in High Court website), details of criminal case, role of the candidate in that case, present stage of case, Judgement delivered etc, in a careful manner and issue necessary endorsement regarding rejection of their candidature under proper acknowledgement.

7. The following points should also be considered before issuance of the endorsement.



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- a. Every case has to be judged on its merit.
- b. "Honourable acquittal" restores the right of individual. Hence honourable acquittal before the date of police verification means that the candidate must be considered favourably.
- c. A case referred on "Mistake of Fact" has to be favourably viewed for the candidate.
- d. Discharge on technical grounds (hostile witnesses) does not entitle the candidate for automatic clearance and the appointing authorities may still reject the candidature on ground of unsuitability to do the nature of the duty.
- e. Suppression of involvement in a case still under investigation or trial or not ending in honourable acquittal is a ground sufficient for rejection of the candidate.
- f. Petty cases should not lead to over penalization.

8. It is also informed that the following types of candidates were considered for appointment to the post of SI of Police/ Gr.II. PCs on earlier occasions.

- i) The candidates acquitted honourably prior to Police Verification.
- ii) The persons released under probation of offenders act were treated as not involved in a criminal case, in view of section 12 of the PO Act 1958 which stipulates that convicts released on Probation of Conduct



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Act or after admonition by the Court shall not suffer any disqualification attached to the conviction.

iii) The persons released under Juvenile Act were treated as not involved in a criminal case. Section 19 of the Juvenile Justice (Care and Protection of Children) Act 2000 which stipulates that a juvenile has committed an offence and has been dealt with under provision of this act shall not suffer disqualification, if any attached to conviction of an offence under such law.

iv) If any political affiliation on the candidate comes to notice during the Police Verification, it will not be held against him, unless he is having other bad antecedents. However, he shall be instructed not to involved in such activities as per conduct rules.

v). The candidates whose names are deleted from the charge sheet.

vi). The cases treated as Mistake of fact prior to police verification.

vii). Some of the candidates involved in petty cases were considered.

viii). Accident cases were considered if the case was pending at the time of police verification and if there was no suppression of fact.

ix). The case in which the I.O registered the case against a minor candidates under IPC and not under Juvenile Justice Act, his case were considered for appointment.



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x) *The cases where fine was imposed upto Rs. 2000/- were considered.*

9. *The date of Police Verification is the date on which the verifying Officer (ie Not below the rank of SI of Police) is Counter signing the verification Roll.*

10. *The persons who are acquitted under benefit of doubt (or) hostility of complainant will be treated as involved in criminal case and he will not be considered for appointment as per Rule 14 (b) of TNSPSS Rules (or) Rule 13 of TNPSS Rules.*

11. *Regarding "Honourable acquittal", the Hon'ble Supreme Court of India in SLP (Civil Appeal No. 4842/2013 in their orders, dated 02.07.2013 (arising out of SLP (Civil) No. 38886/2012) filed by the Commissioner of Police, New Delhi and another (Appellants) - Versus-Mehar Singh have made observations in para 21 of the said orders and the same may be referred.*

10. *The Hon'ble Supreme Court of India in its orders, dated 08.01.2018 in Civil Appeal No.67 to 70 of 2018 (Arising out of SLP(C) No.20750 of 2016 etc.) filed by Union Territory, Chandigarh Administration and others Versus Pradeep Kumar and another in para- 15,16 & 17 have observed as follows:-*

"15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasoning's for their acquittal and taken the decision. While



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deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasoning's for their acquittal and took decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per guideline 2(A) (b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

On behalf of the respondent, much reliance was placed upon Joingder Singh v. Union Territory of Chandigarh and Others (2015) 2 SCC 377. In the said case, the appellant thereon was charged under Sections 148, 149, 323 325 and 307 IPC but acquitted by the trial court holding that the prosecution has failed to prove the charges levelled against him since complainant as well as injured eye witnesses failed to identify the



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assailants and the complainant had stated that his signature was obtained on a blank sheet by the Investigating Officer. The case involved was a family dispute. In such facts and circumstances, this Court held that acquittal of appellant Joginder Singh was an honourable acquittal and hence, he should not be denied appointment to the post in question. The decision in Joginder Singh case does not advance the case of the respondents herein.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is a mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgement is liable to be set aside.

18. In the result, the impugned judgment is set aside and the appeals are allowed. The cancellation of candidature of the respondents is upheld."



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11. In view of above circumstances stated, it is informed that constitution of screening committee may not serve the purpose as the present system that is followed a strictly in accordance with the directions of the Hon'ble Supreme Court and as per relevant rules Hence, constituting screening committee for verifying the suitability of persons those who involved in the criminal case is not necessary and the present system may be followed."

9.The Hon'ble Apex Court in the case of ***Avtar Singh vs Union of India and others*** reported in ***(2016) 8 SCC 471***, in a similar case has made several observations and the relevant portion of the same is extracted as follows:-

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

While passing order of termination of services or cancellation of candidature for giving false information,



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the employer may take notice of special circumstances of the case, if any, while giving such information. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 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."



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10. In another case of **Pawan Kumar vs Union of India** **and another** reported in **2022 STPL 5864 SC**, the Hon'ble Apex Court in a case of service matter under Railway Protection Force Rules, 1987 dealing with suppression of material facts during the recruitment process for appointment to the post in Railway Protection Force has held as follows:

"38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

.....

18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force.



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Taking into consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside."

11.The impugned order of the third respondent rejecting the petitioner's candidature for the post of Grade II constable is primarily on two grounds, namely the suppression of a criminal case in which the petitioner was already acquitted, while filling the application form and the petitioner's involvement in criminal case proving his previous criminal antecedent.

12.To decide about the aspect of suppression of material facts, it is necessary to extract the relevant portion of the application form filled by the petitioner and the same is extracted as follows:

"Whether any criminal case have been registered against you? / உம் மீது ஏதேனும் குற்ற வழக்கு பதிவு செய்யப்பட்டுள்ளதா?"



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The words "has been" and "have been" are present perfect continuous used to indicate that an action that started in the indefinite past has come to completion, or is still in progress, at present. However, the Tamil equivalent translation in the application form relates to the fact as to, whether any criminal case is registered against you, that is in a present perfect tense excluding the past. For which the answer could be, "for the present" "No", since a previously registered crime which culminated in a criminal case has already concluded in acquittal.

13.The specific question in the application form ought to have been,

- a) Have you ever been arrested? Yes/No.
- b) Have you ever been prosecuted? Yes/No
- c) Whether any criminal case has been registered against you ever? Yes/No

As discussed by the Hon'ble Apex Court in the case of **Pawan Kumar vs Union of India and another** reported in **2022 STPL 5864 SC**.



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14.Thus the confusion emanated from the vague Tamil translation and it is no more *res integra*, that for determining suppression or false information, the application/verification form has to be specific and not vague. If information not asked for but comes to the knowledge of the employer later, the same has to be considered in an objective manner, without prejudice to the applicant. Thus the first ground for rejecting the petitioner in appointing him to the post of Grade II constable post, that the petitioner suppressed the registration and prosecution of a criminal case as against him in the past, does not hold good.

15.Explanation (1) to Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, while dealing with the category of persons against whom already criminal cases have concluded, disqualifies only those persons who are acquitted or discharged on the benefit of doubt and those persons who are acquitted due to the fact that the complainant turned hostile.

16.However in the instant case, a critical reading of judgment in C.C.No.23 of 2020 would reveal that the defacto



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complainants, namely, Govinda Raj and Rajamoni were examined as P.W.2 & P.W.3 and have deposed evidence only to the effect that the accused persons conversed looking at them. There is a specific mention in the operative portion of the trial Court judgment that P.W.2 & P.W.3 neither deposed evidence substantiating that the accused indulged in filthy/obscene conversation annoying them nor the first accused/petitioner attacked P.W.2 with Aruval. It is only the other P.W. 4 to P.W.7 have become hostile.

17.The Director General of Police vide his clarification letter dated 17.12.2015 communicated to all District Superintendent of Police, had clearly clarified that each case had to be judged on its own merits and the case of 'Honourable acquittal' restores the right of the individual, and hence honourable acquittal before the date of police verification means that the candidate must be considered favorably.

18.The instant case is a typical case of honourable acquittal. In this case, the petitioner who was the first accused in C.C.No.23 of 2020 on the file of the learned Judicial Magistrate cum District Munsif, Kantharvakottai after full consideration of prosecution



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evidence and the prosecution having miserably failed to prove the charges levelled against the petitioner, has resulted in the honourable acquittal of the petitioner.

19.The Honourable Apex Court in the case of the ***Deputy Inspector General of Police and others vs S.Samuthiram*** reported in ***(2013) 1 SCC 598*** in a similar case of honourable acquittal has held as follows:

"Honourable Acquittal"

21. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what



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is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of 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 honourably acquitted."

20.Article 11(1) of the Universal Declaration of Human Rights of the United Nations needs a special mention here, and the same is extracted as follows:-

"Article 11

1.Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

21.The International Covenant on Civil and Political Rights adopted by the United Nations in Article 14(2) mandated that, everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.



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22.This is a case where the petitioner was subjected to a full-fledged trial and was given an honourable acquittal by the trial Court and hence being a candidate acquitted honourably prior to Police verification and even before making an application to the recruitment process of Grade II constable, he should be considered for the appointment to the post of Grade II constable.

23.Before granting relief in cases of this kind, this Court has to be borne in mind the various cardinal principles pertaining to the appointment. The petitioner is an applicant belonging to the Scheduled Caste community who has made an application for the post of Grade II constable by duly filling up the application form. The petitioner has mentioned "no" to the query in the application form as to "whether any criminal case have been registered against you? / உம் மீது ஏதேனும் குற்ற வழக்கு பதிவு செய்யப்பட்டுள்ளதா?" No doubt, there is no pending criminal case against the petitioner. That apart from the criminal case registered against him in the year 2018, culminated in filing of charge sheet in C.C.No.23 of 2020 on the file of the learned District Munsif cum Judicial Magistrate Court at Kantharvakottai, which concluded in honourable acquittal after a full-fledged trial as early as



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on 27.01.2021. Obviously, the petitioner presuming his proven innocence has filled up the said query as "no". The petitioner has cleared the written examination, physical endurance test and interview and has proved his merit and ability. But he should not be disqualified as unsuitable, citing a mistake in filling up a vague query in the application form, and criminal antecedent based on a criminal case against him in which he was honourably acquitted after a full-fledged trial.

24.The query in question on critical reading would clearly reveal that it never meant whether any criminal case has been registered against the applicant ever. Hence, by answering 'no' it cannot be said that he had suppressed any material fact or had furnished any false information. In view of the vague language so far as the above-discussed query is concerned, the petitioner cannot be found guilty of any suppression.

25.Needless to say that verification of character and antecedents is one of the important criteria to assess suitability and it is open to the employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due



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consideration of all relevant aspects. In a case trivial in nature, where the accused has been acquitted honourably after a full-fledged trial, that would not render an incumbent unfit for the post and for determining suppression, the application form has to be specific and not vague. Here in this case information not asked for which is relevant though brought to the knowledge of the employer later, the third respondent ought to have considered the same in an objective manner, especially the fact that the petitioner hails from a downtrodden Scheduled Caste community, who is trying to climb up the ladder from the last step of the economic development of the Nation and ought to have offered him with employment, rather rejecting him on technical grounds.

26.In fine the impugned order passed by the third respondent in Na.Ka.No.A2/9478/Cr-III/2023, dated 11.05.2023 is hereby quashed and the entire file is remanded back to the third respondent, consequently directing the third respondent to consider the application of the petitioner in the line of the above discussion and provide him with an appointment order within a period of six weeks from the date of receipt of a copy of this order.



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27. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Old COP Office Campus,
Pantheon Road,
Egmore, Chennai – 600 008.
- 2.The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board,
Old COP Office Campus,
Pantheon Road,
Egmore, Chennai – 600 008.
- 3.The District Superintendent of Police,
Pudukkottai District,
Pudukkottai.
- 4.The Inspector of Police,
Kandarvakottai Police Station,
Pudukkottai District.



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L.VICTORIA GOWRI, J.

ps

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