



W.P.(MD)No.7945 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7945 of 2018

and

W.M.P.(MD)Nos.7522 and 7523 of 2018

R.Muthu Murugan

... Petitioner

Vs.

1. The Tamil Nadu Uniformed Services Recruitment Board,
Represented by its Chairman,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore,
Chennai - 600 008.

2. The Director General of Police,
Office of the Director General of Police,
Beach Road,
Chennai.

3. The Additional Director General of Police /
Inspector General of Prisons,
Venals Road,
Egmore,
Chennai - 600 008.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order in No. 3583/இடபிள்யு.1/2017-12 dated 17.11.2017 passed by the third respondent and quash the same as illegal and consequently, direct the third respondent to appoint the petitioner as a Grade-II Jail Warder.

For Petitioner : Mr.S.Malaikani

For Respondents : Mr.M.Veerakathiravan
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the impugned order in No.3583/இடபிள்யு.1/2017-12 dated 17.11.2017 passed by the third respondent, quash the same as illegal and consequently, direct the third respondent to appoint the petitioner as a Grade-II Jail Warder.

2. The case of the petitioner is that he belong to Hindu Scheduled Caste Community and he has participated in the selection process to the post of Uniformed Services, namely, Grade-II Constables, Warders in the year 2017 and he has also passed in the physical efficiency test, but he was



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not given appointment. When he approached the third respondent, the third respondent served the impugned order by stating that the criminal case has been registered against him in Crime No.38 of 2016 on the file of Theriruvveli Police Station. Pending criminal case against the petitioner, he was not eligible for the said post. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the case in Crime No.38 of 2016, has been registered against the petitioner for the alleged offences punishable under Sections 147, 148, 294(b), 323, 324, 307 and 427 of Indian Penal Code and also under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, in which, the petitioner has been arrayed as accused in the FIR and no specific charge has been implicated against him. Another case in Crime No.42 of 2016 has been registered against the petitioner under Section 107 of Criminal Procedure Code and it is a petty case. Hence, rejecting the petitioner's appointment is not sustainable one.



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4. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Avtar Singh vs Union Of India and Others*** reported in ***(2016) 8 SCC 471*** more particularly, in the following observations as under:

"38 (6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case."

5. The learned Additional Advocate General appearing for the respondents would submit that the issue that arises in the present Writ Petition is no longer *res integra* and the same has already been decided by the Hon'ble Supreme Court in the case of ***Satish Chandra Yadav vs Union of India*** in ***S.L.P.No.20860 of 2019*** categorically held that *"in a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate. Even the acquittal in a criminal case would not automatically entitle him for appointment to the post."* Since the



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petitioner was involved in three criminal cases, he cannot be allowed to appoint in the uniformed service. Hence he prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The issue that arises in the Writ Petition whether the petitioner is entitled for appointment to the Uniformed Service, even if the criminal cases are pending against the petitioner. The Hon'ble Supreme Court, in the case of **Satish Chandra Yadav vs Union of India** in **S.L.P.No.20860 of 2019** has laid down the following principles:

"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



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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.

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."

8. A perusal of the above decision makes it clear that even if the incumbent is acquitted from the criminal case, even then he cannot claim employment as a matter of right. The criminal antecedents has to be considered only by the appointing authority viz., the employer. The Hon'ble Supreme Court has time and again held that an employee must provide truthful information about his previous criminal antecedents including



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prosecution and conviction for accessing his character for the purpose of employment. The employer shall take into consideration the Government orders / instructions / rules, applicable to the employee, at the time of taking the decision. It is the discretion of the employer to choose the perfect candidate particularly in the disciplinary force, which authority cannot be interfered with by this Court exercising jurisdiction under Article 226 of the Constitution of India. Hence, the prayer sought for in the Writ Petition cannot be granted.

9. Accordingly, this Writ Petition is dismissed in the above terms.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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