



W.A.(MD)Nos.431, 432, 434, 1385,
1386 of 2014 & 1182 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.431, 432, 434, 1385, 1386 of 2014 & 1182 of 2017
and
M.P.(MD)Nos.1, 2, 2, 3 & 3 of 2014

W.A.(MD)Nos.431 of 2014:

1.The Director General of Police,
Santhome, Chennai – 4.

2.The Superintendent of Police,
Theni District, Theni.

..Appellants

/Vs./

P.Marimuthu

...Respondent

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 16.04.2013 passed in W.P.(MD)No.16771 of 2012 on the file of this Court and allow this writ appeal.



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For Appellants : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.V.R.Shanmuganathan
For Respondents : No appearance

COMMON JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

This common order is passed in appeals filed by the State challenging two common orders, one dated 16.04.2013 (in the case of two respondents) and the other, dated 26.03.2013 (in the case of four respondents).

2. All writ petitioners were aspirants to the post of Grade-II Police Constable. They were successful in the written examination as well as physical test. Their applications had subsequently come to be rejected on the ground that there had been suppression by the writ petitioners / private respondents of their involvement in criminal cases. The tabulation of relevant particulars in regard to each of the writ petitioners is set out below:



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Writ Appeal relating to Writ Petition	Date of registering of FIR	Nature of Crime	CC Nos	Date of Judgment	Date of Application	Date of verification
WA(MD)No.431/2014 in WP(MD)No. 16771/2012 (P.Marimuthu)		Crime No. 312/2011 (147, 294(b), 323, 506(i) of IPC)	STC No. 219/2012	02.11.2012	13.04.2012	09.11.2012
WA(MD)No.432/2014 in WP(MD)No. 16753/2012 (M.Sakthivel)	30.12.2008	Crime No. 227/2008 (341, 323 & 506(ii) of IPC)	CC No. 11/2009	12.01.2009	28.03.2012	09.11.2012
WA(MD)No.434/2014 in WP(MD)No.5011/2013 (E.Vallanvan)	27.05.2009	Crime No: 115/2009 (341, 323 & 294 (b) of IPC)	STC No. 2570/2009	16.09.2009	28.03.2012	08.11.2012
WA(MD)No.1385/2014 in WP(MD)No.2504/2013 (M.Raju)	20.05.2010	Crime No. 237/2010 (75 of Tamilnadu City Police Act)	STC No. 1073/2010	25.10.2010	12.04.2012	20.11.2012
WA(MD)No.1386/2014 in WP(MD)No.1250/2013 (R.Pravin Kumar)	31.07.2009	Crime No. 284/2009 (341, 323, 324 & 506(ii) of IPC)	CC No. 12 / 2011	15.10.2012	09.04.2012	30.10.2012



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WA(MD)No.1182/2017 in WP(MD)No.5539/2013 (R.Reji)	15.05.2011	Crime No. 284/2011 (341, 294 (b), 323 & 506(ii) of IPC & 4 of Women Harassment Act)	CC No. 284 / 2011	11.08.2011	09.04.2012	30.10.2012
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3. The writ petitions came to be allowed and the writ petitioners/respondents in writ appeals, were directed to be selected, setting aside the orders of rejection. In accepting their pleas, the writ Court rendered a caveat to the effect that that order was subject to the decision of the Larger Bench, pending at that time in the case of *Avtar Singh Vs. Union of India and others* [2016 (8) SCC 471]. It is against those orders dated 16.04.2013 and 26.03.2013, that the State is in appeal before us.

4. An order of interim protection has been granted in favour of the State pending writ appeal. On 21.07.2016, three judges of the Hon'ble Supreme Court decided the question referred, being the cleavage of opinion between decisions of various High Courts on the impact of



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suppression of information or submission of false information in the application form or verification form as to whether a candidate for appointment in police services had been criminally prosecuted or arrested, or as regards the pendency of the criminal case, upon his candidature.

5. The question has been answered in the judgment in *Avatar Singh* to the effect that information given to an employer by a candidate must be true and must be no suppression or false mention of the required information. The employer however has wide discretion to decide whether the pendency of a criminal case or past criminal proceedings as against that candidate may be condoned, and the application considered on merits or whether the criminal antecedents would be fatal to the application.

6. The relevant portion of the judgment in *Avtar Singh* (Supra), is extracted below:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:



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38.1.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.

38.2.While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3.The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.”

7. A full and true disclosure is thus non-negotiable to the maintainability of an application by a candidate, that too, one filed by an aspirant to a post in the uniformed services. This position is well settled. At this juncture, we refer to the judgment of the Hon'ble Supreme Court in *Commissioner of Police and others vs. Sandeep Kumar* [(2011) 4 SCC 644], relied upon by the respondent in one of the writ appeals. That judgement has been rendered prior to the judgment in *Avtar Singh*.

8. In that matter, the Apex Court considered the case of a candidate who had been implicated in criminal proceedings involving Sections 325 and 34 of Indian Penal Code. The dispute related to that candidate and his family members, and ultimately come to be



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compromised after filing of an FIR. The candidate had been acquitted thereafter. While applying for the post of Head Constable (Ministerial), the candidate chose not to disclose his involvement in the above crime and his candidature had been rejected for want of full disclosure.

9. His case has been accepted by the Delhi High Court and the State filed an appeal before the Supreme Court. While rejecting the appeal, the Bench opined that the lapse on the part of the candidate could be condoned, since it was minor in nature and not very grave such as offences of murder, rape etc. The judgement draws an analogy from the situation in *Les Miserables* where Jean Valjean was arrested for stealing a loaf of bread out of sheer hunger.

10. The decision in re. *Sandeep Kumar* was relied upon by the respondent in the case of *Commissioner of Police vs. Rajkumar* [Civil Appeal No.4960 of 2021] and a note of caution was sounded by the Bench in considering the cases of candidates who have suppressed information in regard to criminal antecedents in their applications.

Paragraph 13 reads thus:

“30. *The High Court's approach, evident from its*



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observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, 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."

11. This decision is dated 25.08.2021 and applies the ratio put in place in *Avtar Singh*. The Bench inter alia, refers to Standing Order No.398 of 2010, issued by the Delhi Police. The Standing Order may be usefully referred in this matter as well, as indicative of the approach to be followed by all States/Union territories in such matters:

"STANDING ORDER NO. 398/2010 POLICY FOR DECIDING CASES OF CANDIDATES PROVISIONALLY SELECTED IN DELHI POLICE INVOLVED IN CRIMINAL CASES (FACING TRIAL OR ACQUITTED).



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During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the application Form/Attestation Form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the appointment if he/she has been acquitted but not honourably. In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police:-

- 1). xxx xxxxxx*
- 2). xxx xxxxxx*
- 3). If a candidate had disclosed his/her involvement and/or arrest in criminal cases, complaint case, preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the court's judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special Commissioner of Police/Administration, Joint Commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.*
- 4) If a candidate had disclosed his/her involvement in criminal case, complaint case, preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.*
- 5) xxx xxxxxx*
- 6). Such candidates against whom charge-sheet in any criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the*



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accused person, he/she will generally not be considered suitable for government service. However, all such cases will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'.

7) Such cases in which a candidate had faced trial in any criminal case which does not fall in the category of moral turpitude and is subsequently acquitted by the court and he/she discloses about the same in both application form as well as attestation form will be judged by the Screening Committee to decide about his/her suitability for the government job.

8) xxx xxxxxx

9). If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service."

12. No material is placed before us in regard to the existence of a similar order by the Tamil Nadu Police and the Bench would urge that such clarification be issued forthwith in Tamil Nadu as well, to provide clarity to aspirants in this State.

13. The ratio of the judgment in *Avtar Singh* is being followed consistently, most recently in *Satish Chandra Yadav vs. Union of India and others* [2022 SCC online SC 1300], wherein certain principles have been adumbrated as applicable to such litigation:

"90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made



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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 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.

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?"



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14. Hence it is clear that non-disclosure/suppression of criminal antecedents on the part of an aspirant to uniformed service will, generally be fatal to the consideration of his candidature. The governing Rule in the State of Tamil Nadu is Rule 13 of the Special Rules for Tamil Nadu Police Subordinate Service Rules, 1955, that reads thus:

“Rule 13 of Special Rules for TNPSS (For Taluk and AR Candidates) 13. Qualifications:

No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority (a) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service

(b) that his character and antecedents are such as to qualify him for such service (C) that such person does not have more than one wife living or if such person is a Woman, that she is not married to any person who has a wife living, and (d) that he does not have knock knees or bow legs or flat feet.

(e) that he has not involved in any criminal case before Police Verification clear She

Explanation (1): A person who is acquitted or discharged on the 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 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



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case and he can claim right for appointment only by participating in the next recruitment.””

15.A perusal of Rule 13 would show that it is absolute. Thus, it is incumbent upon a candidate applying for a post in the Police force to be a clean-sheeter. However, over time, the position that has gained ground since followed, is that even if a candidate might have criminal antecedents, his candidature might be considered if he makes a full and true disclosure about the same in his application and verification forms, subject to the discretion of the employer. Such discretion is reserved for the employer alone and the Court cannot step into that position. The conduct of a candidate, to come clear with criminal antecedents, if any is thus paramount to the consideration of his / her application.

16. In the present cases, it is an admitted position that the respondents have suppressed their involvement in criminal cases at the stage of application/verification. There is a distinction between the relevant fields in the application and verification forms. Field No.29 in the application form reads thus:

*“29.உம் மீது குற்றவாழ்க்கு நிலுவையில் இருக்கிறதா?
Whether any criminal case is pending against you?”*



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29(a) ஆம் எனில், வழக்கு எண், நாள், காவல்
நிலையத்தின் பெயர், வழக்கின் தற்போதைய நிலையைக்
குறிப்பிடவும்”

Field No.15 in the Verification form reads thus:

*“15.Have you ever been concerned in any
criminal case as defendant?”*

நீ கிரிமினல் கேசில் எப்பொழுதாவது
பிரதிவாதியாக சம்பந்தப்பட்டதுண்டா?”

17.The verification is thus broader in approach and makes it mandatory for the applicant to disclose ‘involvement’ in a criminal matter, whereas, the requirement under the application form is specific to the pendency of a criminal case at that relevant point in time. Thus, while a candidate might get past scrutiny at the stage of application stating that no criminal case was ‘pending’ at that time, he would have to disclose any criminal antecedents in the Verification form. In all these cases the disclosure in the verification forms is in the negative, though admittedly, all the respondents had been involved in criminal cases in the past.



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18. The orders passed by the Writ Court are set aside and these Writ Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**[A.S.M.J.,] & [R.V.J.,]
24.07.2023**

NCC :Yes/No
Index :Yes/No
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Common Judgment made in
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Dated:
24.07.2023