



W.P.(MD)No.23643 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23643 of 2019
and
W.M.P(MD)No. 20246 of 2019

M.Muthumanoharan

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
O/o. the Deputy Inspector General of Police,
Madurai Range,
Madurai, Madurai District.

2. The Superintendent of Police,
District Police Office,
Madurai, Madurai District.

3. The Inspector of Police,
Avaniapuram Police Station,
Avaniapuram,
Madurai District-625 012.

4. The Principal Commandant,
O/o.the Principal Commandant,
Ty. PRS, TSP III Battalion,
Veerapuram, Chennai – 55.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records pertaining to the impugned order of cancellation of appointment in C.No.02/683/Ty.PRS-TSPIII BN/2018, dated 30.05.2018 on the file of the respondent No.4 quash the same as illegal and consequently to direct the respondent No.4 to allow the petitioner to serve as Grade II Police Constable by taking note of the acquittal of the Petitioner in the Criminal case in S.C.No.271/2016, dated 24.07.2019 on the file of the III Additional Sub-Court, Madurai District.

For Petitioner : M/s.S.Louis

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

This writ petition is filed to quash the impugned order, dated 30.05.2018 with consequential direction to the 4th respondent to allow the petitioner to serve as Grade II Police Constable, by taking note of the acquittal in the criminal case in S.C.No.271 of 2016, dated 24.07.2019 on the file of the III Additional Sub Court, Madurai.

2. The petitioner was originally appointed as Youth Brigade on 08.02.2014. While serving as Youth Brigade a criminal case was registered



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against the petitioner, in which he was arrayed as A-2 in Crime No.268 of 2014 on the file of the Vadipatti Police Station. Hence, the petitioner was suspended from service on 25.07.2014. The petitioner has submitted a representation, dated 05.08.2014 to revoke the suspension, since criminal case was falsely registered against the petitioner. Moreover, the criminal case was pending for a longtime. In the meanwhile, the 2nd respondent has issued a show cause notice, dated 17.02.2015, directing the petitioner to show cause why the petitioner should not be terminated from his service.

3. The contention of the petitioner is that without conducting full-fledged enquiry by framing of charges, merely based on the preliminary enquiry report, the said show cause notice was issued. Thereafter, he has submitted his explanation on 10.03.2015, but the respondents have issued an order, dated 24.04.2016 terminating the petitioner from service. Against the said termination order, the petitioner has filed an appeal, dated 21.03.2016 before the 1st respondent. Since the same was not considered by the respondents, the petitioner had filed a writ petition in W.P.(MD)No.7700 of 2016 to disposed of the appeal. Pending the said writ petition, the respondents have passed an order,



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dated 06.10.2016, setting aside the termination order, dated 24.02.2016 and given liberty to the 2nd respondent to conduct a fresh enquiry, by following the principles of natural justice. Thereafter, the petitioner was reinstated back into service on 02.11.2016.

4. In the meanwhile, the respondents Police Department has conducted written examination for absorbing TNSYB (Male) into Tamil Nadu Special Police Battalion-2017 for all the Youth Brigades, who have completed one year of service as Youth Brigade. Initially the petitioner's name was not included. The 2nd respondent, vide proceedings dated 31.10.2017 sent a report about the criminal case in Crime No.268 of 2014, the suspension and termination and subsequent reinstatement in service. Based on the credentials, the petitioner's name was included in the list for examination and hall ticket was also issued. The petitioner was selected and appointed on 25.11.2017. Consequently, the petitioner was relieved from the post of Youth Brigade, in pursuance of the common relieving order, dated 29.11.2017. On 30.11.2017, the petitioner went to join the Basic Training of 7 months, after making ready to the list of things for training after spending for about Rs.15,000/-. But the petitioner was not allowed to join



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the training by the 4th respondent. Later on, the 4th respondent has issued an order, dated 29.12.2017, cancelling the appointment of the petitioner. Challenging the cancellation of appointment order, the petitioner has preferred a writ petition in W.P(MD)No.1071 of 2018 and this Court, vide order, dated 13.03.2018 has allowed the petitioner to continue to be a member of the Youth Brigade and directed the 4th respondent to conduct enquiry and passed orders. The 2nd respondent has passed an order, dated 09.08.2018, allowing the petitioner to continue as the Youth Brigade and the petitioner has joined the same. Thereafter, the 4th respondent, after receiving an explanation had passed the impugned order, dated 30.05.2018, rejecting the request for allowing the petitioner to serve as Grade II Police Constable, on the sole ground that the criminal case is pending against the petitioner. Subsequently in the said criminal case, the petitioner was acquitted on 24.07.2019. Since the respondents have not considered the acquittal, the petitioner is before this Court.

5. The respondents have filed counter stating that, as per instructions of the Director General of Police, the petitioner was issued an appointment order. Subsequently, on verification of records, the respondents came to know that a



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criminal case is pending against the petitioner. Hence, the appointment issued to the petitioner was canceled. Any appointment to the police service, which is a disciplined force is based on merits and availability of vacancies. And honesty and integrity are in-built requirements of the police force. While deciding, whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of offence, the extent of his involvement, whether the acquittal was clean acquittal or an acquittal by giving benefit of doubt, because the witness having turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. A person having criminal antecedents and likely to erode its credibility is not liable to enter the police force, hence the petitioner was not considered. Moreover, as per Section 20(4)(i) of Tamil Nadu Government Servants (Conditions of Service) Act 2016, no person shall be eligible for appointment to any service by direct recruitment unless he satisfied the appointing authority that his character and antecedents are such as to qualify him for such service. Therefore, the petitioner is not entitled to be considered and the respondents prayed to dismiss the writ petition.



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6. Heard M/s.S.Louis, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents. Perused the material documents available on record.

7. After hearing rival submissions, this Court has given its anxious consideration. There was a temple festival in the petitioner's village, during festival there was a fight between the rival groups, which ended in filing the criminal case and FIR was registered against the petitioner and others. As far as the charge against the petitioner is for the offences under Sections 148, 326 of IPC and the petitioner was shown 2nd accused. Even though the offences are grievous in nature, the criminal Court after considering elaborately has held that the case against the petitioner was not proved beyond the reasonable doubt. Since there is no evidence and the prosecution witnesses have also turned hostile, the criminal Court has acquitted the petitioner from the offences under Sections 148 and 326 of IPC.

8. The learned Additional Government Pleader appearing for the respondents relied on the Judgment rendered by the Hon'ble Division Bench of



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this Court in W.A(MD)No.1506 of 2022, dated 21.12.2022, wherein the Hon'ble Division Bench has held that, in ***Explanation (1) of Rule 14(b)*** clearly stated that a person, who is acquitted or discharged on benefit of doubt or due to the fact that complainant turned hostile, shall be treated as person involved in the criminal case. In, ***Explanation (2) of Rule 14(b)*** states 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 next recruitment. In the present case, since the prosecution witnesses were turned hostile, then ***Explanation 14(a) of Tamil Nadu Special Police Subordinate Service Rules***, would be applicable to him.

9. The phrase of “honourable acquittal” is elaborately discussion in ***Inspector General of Police Vs. S.Samuthiram reported in (2013) 1 SCC 598***, wherein it held as under:

Honourable Acquittal



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“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 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.

22. In R.P. Kapoor V. Union of India AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam and another v. Raghava Rajgopalachari reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 which is as follows:

“The expression “honourably acquitted” is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our



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judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial



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witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules”.

In the aforesaid referred case, it has been categorically stated that the phrase honourable acquittal has not been defined in any provisions of law and it is used in judicial pronouncements.



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10. The Learned Counsel appearing for the petitioner relied on the Avtar Singh Vs. Union of India and others reported in (2016) 8 SCC 741, wherein it has held as under:

“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.

(1) 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. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(2) 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 : -



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(3) 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.

(4) 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.

(5) 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.

(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.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling



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candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.



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11. After hearing the arguments and after referring to the above judgments this Court is of the considered opinion that the Hon'ble Supreme Court has held that if the case is trivial in nature, then even if there is suppression the same may be condoned. In the present case the petitioner had no suppressed. Whether the case can be considered as trivial in nature? would be the question. In the S.Samuthiram's case the charge against the accused is eve teasing. In the present case the charges against the petitioner are under Sections 148, 326 of IPC. His co-accused was charged under section 307 IPC apart from other charges. All the accused were acquitted.

12. Moreover, the incident occurred during a temple festival. The petitioner being youth (serving in Youth Brigade) had indulged due to mob psychology. In such circumstances, the petitioner ought to be granted one opportunity. If in future if the petitioner had again committed any such crime the respondents have power to remove him from service. The respondents are well aware of the petitioner's criminal charges and had allowed him to participate in the selection process and had selected the petitioner. In such circumstances also the petitioner ought to be granted one more opportunity. It is pertinent to state that



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the petitioner is still continuing in the service as Youth Brigade based on the order of the authorities. When the petitioner is continuing in the Youth Brigade, there is no impediment to join the police force. Therefore, the petitioner is entitled to be considered by the respondents. Therefore, there is no impediment in directing the respondents to appoint the petitioner as Grade II Constable in the respondents Police Department.

13. Accordingly, the impugned order, dated 30.05.2018, is hereby quashed. The respondents are directed to appoint the petitioner as Grade II Police Constable, within a period of six weeks, from the date of receipt of a copy of the order.

14. With these observations and directions, this writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

1. The District Collector,
Madurai District,
Madurai.
2. The Assistant Director, (Village Panchayat),
Madurai District,
Madurai.
3. The Special Officer/Executive Officer,
Poolampatti Village Panchayat,
Madurai East Panchayat Union,
Madurai District.



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.23643 of 2019**

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