



W.P(MD)No.25532 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25532 of 2022

and

W.M.P.(MD)Nos.19612 & 19613 of 2022

J.Sabiya

... Petitioner

Vs.

1.The Director General of Police,
Kamarajarsalai,
Mylapore,
Chennai-600 004.

2.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Officer Campus,
Pantheon Road,
Chennai-8.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.P1/43472/2021-6, dated 16.03.2022 issued by the third respondent herein and quash the same and consequently direct the respondents to appoint the petitioner in accordance with



W.P(MD)No.25532 of 2022

Common Recruitment for the posts of Grade-II Police Constable, Grade II Jail
Warder and Fireman-2020, together with all service benefits.

For Petitioner : Mr.K.Govindarajan
for Mr.K.Nagendra Prasad

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents.

2. The petitioner applied for the post of Police Constable Grade-II in response to the notification issued by the board on 17.09.2020. She was provisionally selected. However, she was found to be disqualified for appointment in view of her involvement in a criminal case. To that effect, the impugned memorandum dated 16.03.2022 was issued. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and



W.P(MD)No.25532 of 2022

called upon this Court to set aside the impugned order and grant relief as prayed for.

4. Per contra, the respondents have filed counter-affidavit and the learned Additional Advocate General took me through its contents. He submitted that in view of Explanation I of Rule 13(e) of the Special Rules for Tamil Nadu Police Subordinate Service, the order impugned in the writ petition has to be sustained. The learned Additional Advocate General pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The petitioner had been shown the door on two grounds.

(a) Suppression of her involvement in the criminal case

(b) Acquittal in the criminal case was on account of the complainant turning hostile.

6. Let me deal with the issue of suppression first. It is true that the petitioner is figuring as A4 in Crime No.42 of 2015 registered on the file of the Kanavalakku Police Station, Theni District on 22.05.2015. A1 & A2 are the parents of the petitioner and A3 is her own brother. However, the case ended in acquittal on 30.12.2021 in C.C.No.99 of 2019 on the file of the Judicial



W.P(MD)No.25532 of 2022

Magistrat, Andipatti. A mere look at the Judgment of acquittal would indicate that only A1 to A3 were arrested and released on bail. The petitioner as well as A1 & A2 were released on their own bond on 30.12.2021 ie., the date of Judgment. There is nothing on record to show that the petitioner was arrested or that she applied for anticipatory bail. When the employer or the recruiting agency wants to disqualify a candidate on the ground of suppression, burden is on the employer to demonstrate that the candidate had knowledge of his or her involvement in the criminal case. Merely because her family members were figuring as accused and the petitioner's brother was arrested, this Court cannot come to an automatic inference that the petitioner knew that she was also figuring as an accused. If the petitioner really knew that she was an accused, then, steps would have been taken to apply for anticipatory bail. The fact is that steps were not taken for applying anticipatory bail by the petitioner. It is a prima facie indication that the petitioner did not have knowledge that she was an accused in this case. Therefore, disqualification of the petitioner on the ground of suppression is not sustainable.

7. However, it may be difficult for the petitioner to cross the disqualification barrier erected in Rule 13. Rule 13 of Special Rules for Tamil Nadu Police Subordinate Service is as follows:-

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



W.P(MD)No.25532 of 2022

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(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;

(d) that he does not have knock knees or bow legs or flat feet; and

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

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

The validity of the said Rule has been upheld not once but twice. The Full Bench of the Madras High Court in the decision reported in **2008 (2) CTC 97 (Manikandan and others Vs. The Chairman, Tamil Nadu Uniformed Services, Recruitment Board, Chennai)** sustained the validity of the said Rule. It was reiterated by a Larger Bench in the decision reported in **2014 (2) CTC 337 (J.Alex Ponseelan Vs. The Director General of Police)**. In the case on hand, the complainant turned hostile and that led to the petitioner's acquittal. The learned counsel appearing for the petitioner relies on the Judgment of the Hon'ble Division Bench reported in **2019 (6) CTC 465 (C.Surendhar Vs. The**



W.P(MD)No.25532 of 2022

Director General of Police & others). Paragraph Nos.33, 34 & 35 of the said order read as follows:-

“33. The question on merits in the present case, however, takes a different turn inasmuch as the order impugned that seeks to disqualify and make the appellant ineligible for engagement, rests on the finding that the appellant had not been honourably acquitted, and it was only a benefit of doubt on the basis whereof the acquittal judgment was delivered in favour of the appellant. The question is as to the interpretation of Rule 13(e) read with the Explanations and in our opinion, the crucial word which has to be taken into consideration to be read with the Explanation is “involvement”. The word “involvement”, therefore, is the guiding factor inasmuch as the Rule clearly provides for a declaration by the candidate as to whether “he was involved in a criminal case or not”.

34. The next question is whether such involvement would necessary lead to the conclusion for the Appointing Authority to hold as to whether he should be selected and appointed for the services or not. Involvement without knowledge is also a factor that can eclipse any disadvantage or prospective impediment in certain circumstances, as explained by the Apex Court in the case of M.Manohar Reddy and another v. Union of India and others, reported in (2013) 3 SCC 99. Whether the fact or information unknowingly withheld is at all a material fact, is a matter of assessment on the peculiarity of the material and it's impact to be judiciously and objectively assessed by the employer without any prejudice or preconceived notions to rule out any possibility of malice or pure subjectivity in the decision making process. It is here that a play in the joints has to be given to the employer and unless such a latitude is given, it will be injuncting the authority from exercising its discretion to engage a person suitable for the post. We, therefore, find that an assessment has to be made by the Appointing Authority as to whether the involvement of a candidate in a criminal case would ultimately lead to the conclusion that his engagement would be detrimental for the nature of the employment for which he is being engaged. This may involve a bit of subjectivity, but the material on record has to



W.P(MD)No.25532 of 2022

receive an objective consideration. The question as to whether a person was involved in a case of violating a mere traffic rule or was involved in a heinous offence would obviously weigh with the employer to assess as to whether his engagement would otherwise be sustainable or be detrimental for recruitment in a Uniformed Police Force or not. We, therefore, leave that open to the authority concerned for an independent assessment. But, on the facts of the present case, we find that the authority has simply rested its decision on the finding that the appellant did not deserve to be engaged on account of not having been honourably acquitted. Whether the fact of his involvement was such that this inference could be justified does not appear to have been discussed in the impugned order. To this extent, we accept the argument of the learned counsel for the appellant.

35. We, accordingly, allow the appeal and set aside the impugned judgment dated 27.4.2019 as well as the impugned order dated 8.11.2018 with liberty to the Appointing Authority to assess the candidature of the appellant in the light of the observations made herein above and pass fresh order, as expeditiously as possible, but not later than three months from today.”

8. I do feel tempted to follow the above decision. But what comes in the way is the non-reference to *Manikandan* and *Alex Ponseelan* in the decision of the Hon'ble First Bench. I am therefore not in a position to grant relief to the petitioner. The impugned order is sustained. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.04.2023

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W.P(MD)No.25532 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.25532 of 2022



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W.P(MD)No.25532 of 2022

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