



W.P. No. 801 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 19.08.2024

ORDERS PRONOUNCED ON : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 801 of 2018

D. Subesh

... Petitioner

Vs.

1.State of Tamilnadu
Represented by its
Secretary to Government,
Home Department, Fort St. George,
Chennai.

2.The Director General of Police & Chairman,
Tamilnadu Uniformed Services Recruitment Board,
4, 9th Cross Street, Indira Nagar,
Adyar, Chennai.

3.The Director General of Police,
Office of the Director General of Police,
Chennai.

4.The Superintendent of Police,
District Police Office,
Cuddalore.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the fourth respondent in NA.KA.No.A4/333/TSP/2017-3 dated 09.10.2017 and quash



the same for consequential direction to the fourth respondent to give appointment to the applicant for the post of Police Constable (Grade-II) with effect from the date on which his batch mates came to be appointed with all consequential service and monetary benefits, continuity of service and thus render justice.

For Petitioner : Ms. D. Anitha

For Respondents : Mr. M. Alagu Gowtham,
Government Advocate

ORDER

This Writ Petition has been filed for the issue of writ of certiorari seeking to call for the records pertaining to the impugned order passed by the fourth respondent in NA.KA.No.A4/333/TSP/2017-3 dated 09.10.2017 and quash the same and consequently direct the fourth respondent to give appointment to the applicant for the post of Police Constable (Grade-II) with effect from the date on which his batch mates came to be appointed with all consequential service, monetary benefits and continuity of service.

2. The case of the petitioner is that, he participated in the selection process conducted by the Tamil Nadu Uniformed Services Recruitment Board for the post of Grade-II Police Constable and in the application column 25, 25(a) filled by the petitioner mentioning that there was a case registered in his name and its crime number was furnished and its stage (concluded) was also discussed on 30.01.2017.



Pursuant to the application, the petitioner was called for and he was succeeded in the selection process. Under these circumstances, the impugned order dated 09.10.2017 has been passed by the fourth respondent denying appointment of the petitioner by invoking Rule 14(b) (ii) & (iv) of the Tamil Nadu Special Police Subordinate Service Rules. Challenging the same, this Writ Petition has been filed.

3. Learned counsel for the petitioner submits that the criminal case initiated against the petitioner ended in acquittal by the Judicial Magistrate Court No.1, Panruti. Further, the learned counsel submits that the fourth respondent had not taken into account that at the commencement of selection process, no case is pending against the petitioner. Further, the learned counsel submits that the impugned order passed without issuing any statutory notice and affording any opportunity to the petitioner is violation of the principles of natural justice and sought to allow the writ petition.

4. To substantiate his arguments, the learned counsel for the petitioner has relied on the following judgments: -

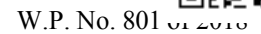
- i) ***Avtar Singh vs. Union of India and Others;***
- ii) ***Ravindra Kumar vs. State of U.P. and Other;*** and
- iii) ***V. Dineshkumar vs. The Deputy Inspector General of Police***



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5. On behalf of the respondents, a counter affidavit has been filed. Based on the averments made in the counter affidavit, the learned Government Advocate for the respondents submit that though the petitioner had passed the written test, physical endurance test and physical measurement test, he was disqualified on the basis of his involvement in criminal case and acquittal on the benefit of doubt.

6. Further it is averred that, the petitioner had given the details of the criminal case in his application form initially and then in the Verification Roll form also. As per the orders in G.O.Ms.No.101, Home (Police IX) Department, dated 30.01.2003 and Rule 14(b) (ii) & (iv) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, no person who is a candidate for selection to the post of Grade II Police Constable shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service and a person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile shall be treated as person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended as 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 the next recruitment.



9. Learned counsel for the petitioner submits that the petitioner had never suppressed the material information relating to involvement in the criminal case in the applications. Learned counsel would submit that the criminal case initiated against the petitioner was ended in acquittal. Learned counsel further submits that the acquittal of the petitioner by the criminal Court was after due consideration of the prosecution evidence and the prosecution had miserably failed to prove the charges



levelled against the petitioner. Therefore, it can possibly be said that the accused was honourably acquitted.

10. On the other hand, the learned Government Advocate appearing for the respondents would submit that though the petitioner had passed the Written Test, Physical Test and Medical Test but he was disqualified on the basis of his involvement in criminal case and acquittal on the benefit of doubt. As such, there is no illegality or irregularity in the order passed by the fourth respondent dated 09.10.2017 in issuing the impugned order dated 09.10.2017.

11. Having considered the submissions of the respective counsel and on careful perusal of the material available on record, admittedly, the petitioner did not suppress his involvement in criminal case. He mentioned the case particulars in the application at Column 25, 25(a). Admittedly, the Judicial Magistrate Court No. I, Panruti by its judgment dated 23.09.2015 in C.C. No. 85 of 2014 gave finding that the accused is found not guilty and accordingly, he is acquitted under Section 248(1) of Cr.P.C.

12. In the considered opinion of this Court, it will not have any serious impact as the offences alleged one trivial in nature and the same, infact, did not involve any moral turpitude. Therefore, it cannot be said that the petitioner was involved in moral



turpitude. Hence, the involvement of the petitioner in the criminal case would no way affect his fitness for employment. The appointing authority / the Selection Committee has to consider the nature and extent of such persons involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining when he is seeking appointment in the police force.

13. In the present case, the appointing authority did not consider the fact whether the involvement of the petitioner in the offences alleged against him will have any impact on the disciplinary services. As such, it appears, the impugned order has been passed mechanically without adhering to the settled law and denied appointment to the petitioner who has been provisionally selected.

14. In **V.Dineshkumar's** case as stated supra, the learned Single Judge of this Court while considering the identical cases, held as extracted herein under: -

“17.6. In this matter, FIR was registered on 16.11.2021 u/s 174(1) of Cr.P.C. for unnatural death and dead body, during investigation, turned to be that of one Mohanraj who loved one Chitra, the sister of the petitioner herein and had married her. The allegation against the petitioner is that the marriage of Mohanraj with Chitra was objected to by the family of Chitra. Mohanraj was ill-treated and humiliated on the basis of his caste (SC). Therefore, he had committed suicide. On the basis of the suicidal note left by the deceased, the case was subsequently altered from Section 174(1) of Cr.P.C. to Section 306 of IPC r/w 3(2)(v)



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of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The petitioner was arrayed as A1 in the said case. The petitioner is the sister of Chitra. This court was informed that the said case was, closed on 23.04.2023 as mistake of fact. The petitioner along with others implicated for offence of abetment to commit suicide merely because she was the sister of the husband of the deceased Mohanraj. The police finding no material closed the case as mistake of fact. It is to be noted that the very FIR <https://www.mhc.tn.gov.in/judis> 41 of 56 W.P.No.5376 of 2022, etc., batch itself was registered after the selection process was over. Therefore, the question of suppression of material information does not arise. When the materials collected during investigation were not sufficient enough to continue with the investigation, mere registration of the case cannot be put against the petitioner. In these circumstances, the case which was pending against the petitioner no way affect his fitness for employment. Therefore, this court is of the view that the impugned order which has been passed mechanically requires interference at the hands of this court. This writ petition succeeds.

17.7. In this case, FIR came to be registered in 2018 for the offences u/s 294(b), 323, 324 & 506(ii) of IPC. The allegation is that the petitioner and the other 2 accused made a comment about walking of one Vinayagamurthy who was found to be drunken. The petitioner faced the trial before the learned Judicial Magistrate,-II, Tindivanam. The case was ended in acquittal by judgement 13.12.2018. The notification was of 2019. Though the petitioner was acquitted by giving benefit of doubt as the witnesses turned hostile, aggrieved by the acquittal by giving benefit of doubt instead of recording acquittal on merits, the petitioner approached this court by way of revision in <https://www.mhc.tn.gov.in/judis> 42 of 56 W.P.No.5376 of 2022, etc., batch Crl.R.C.No.115 of 2021. This court by order dated 05.03.2021,



declared the accused as simple order of acquittal. But, the particular of the pendency of the case was not disclosed in the application by the petitioner.

17.8. Mere non-disclosure of the particular of the case which was pending against the petitioner and subsequently ended in acquittal, in the considered opinion of this court will not have any serious impact as the offences alleged were trivial in nature and the same, in fact, did not involve any moral turpitude. Therefore, it cannot be said that the petitioner was involved in a criminal case involving moral turpitude. The involvement of the petitioner in the criminal case would no way affect his fitness for employment. Therefore, this court is of the view that the impugned order which has been passed mechanically requires interference at the hands of this court. This writ petition succeeds.”

15. In **Ravindra Kumar's** case as stated supra, the Apex Court has considered the issue of non-disclosure of the criminal case, as such, it is not useful to the petitioner. in this case as the petitioner herein had already disclosed about the criminal case.

16. A Division Bench of this Court has considered the similar issue in W.A. No. 2746 of 2018 discussed about the honourable acquittal, discharge mistake of fact, quashing of FIR / charge sheet and summarised the preposition of law, as extracted herein under: -



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“7. At the outset, it is required to be noted that the post on which the writ petitioner is seeking the appointment is the post of Police Constable Grade II. It cannot be disputed that the duty of the constable is to maintain law and order. Therefore, it is expected that he should be honest, trustworthy and that his integrity is above board and that he is reliable. An employee in the uniformed service presupposes a higher level of integrity, as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated.

8. In the present case, though the trial Court had acquitted the respondent on benefit of doubt, the learned Single Judge by relying upon the decision of the Hon'ble Supreme Court in **Inspector General of Police Vs.S.Samuthiram [(2013) 1 SCC 598]** held that when the accused is acquitted after full consideration of the 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 honorably acquitted. We do not find any error in the order passed by the learned Single Judge.

9. This Court in a similar circumstances, in a batch of cases filed before the Madurai Bench of Madras High Court in **W.A.(MD) No.938 of 2020 etc., batch dated 05.06.2023**, in which one of us is a party [**D.Krishnakumar, J.**], has elaborately discussed on various factors to be considered in respect of police recruitment and observed with regard to Honourable acquittal as follows:

“(C). DISCUSSION

8.The Writ Appeals and the Writ Petitions that are listed before us challenging the rejection of the candidature or accepting the candidature can be classified on the following grounds:



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W.P. No. 801 of 2016

“(1). Honourable acquittal, discharged mistake of fact, quashing of F.I.R/ charge sheet.

(2). Acquitted on benefit of doubt or due to hostility of the witnesses.

(3). Proceedings quashed on compromise between the parties.”

(1). Honourable acquittal, discharge mistake of fact, quashing of F.I.R/ charge sheet.

(a). Rule 14(b)(iv) of Tamil Nadu State and Subordinate Service Rules lays down that a candidate should not be involved in any criminal case before police verification. Explanation (2) to the above said Rule lays down that in case if a candidate has been honourably acquitted or the criminal case has been closed as a mistake of fact, the same shall be treated as not an involvement of the criminal case. The Rules further lay down that the said candidate can make a claim for appointment only by participating in the next recruitment. However, the communication of Director General of Police dated 17.12.2015. If the candidate has been honourably acquitted before the date of police verification or referred as mistake of fact may be favourably viewed for candidate.

(b). The communication further points out that the candidate whose name was deleted from the charge sheet can also be considered for appointment in the said selection itself.

(c). Therefore, it is clear that if a candidate has been discharged or the case has been closed as mistake of fact or if the F.I.R or charge sheet have been quashed on merits, this will lead to only one conclusion that the candidate was not at all involved in the said criminal case. His candidature should be considered in the said selection itself without relegating him to the next selection process.

(D). SUMMARY OF PREPOSITION OF LAW:



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W.P. No. 801 of 2018

19. *In the light of the above said deliberations, the preposition of law could be summarized as follows:*

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself.

(emphasis supplied)

(b).Where the candidate has been acquitted on the ground of benefit of doubt or hostility of witnesses (before the date of police verification), that would not confer any right upon the candidate to claim appointment as a matter of right. It is for the employer to consider the suitability of the candidate based upon his conduct and antecedents only if the offences are trivial in nature.

(c).Where the criminal case has been quashed (before police verification) on the basis of a compromise and the offence is of trivial in nature, the same can be considered in favour of the candidate in the current selection itself. However, if the offence involved is not of a trivial in nature, the same cannot be considered for appointment.

(d).Where a candidate having knowledge about his involvement in a criminal case had suppressed the same in his application and the said offence is not trivial in nature, he is not entitled to seek any appointment. On the other hand, in cases of trivial offences, without knowledge about his involvement or after having knowledge had suppressed his involvement, the employer in his discretion is entitled to consider the candidature by considering his character and past antecedents.

(e).Where the candidate is involved in petty/trivial cases like family dispute or dispute with neighbors or shouting of slogans or traffic offence where fine was imposed, the same can be considered to be offence of trivial/petty in nature. However, the offence against



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W.P. No. 801 of 2018

women, children or under NDPS Act should never be considered to be an offence of trivial in nature.

(f). Where the candidate is involved in criminal offences under Juvenile Justice Act, he/she is to be considered in the light of the Division Bench Judgment of this Court dated 01.03.2023 in Rev.Apln.No.17 of 2023 in W.A.No.2759 of 2018 (The Superintendent of Police, Villupuram District Vs.S.Rajeshkumar)

(g). Pending the recruitment process, if a candidate is discharged from the criminal case or acquitted in the criminal case, he/she shall be eligible to be considered for the next recruitment process as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules.”

17. With respect to the facts of the present case and from a reading of judgment of the Judicial Magistrate Court No. I, Panruti in C.C. No. 85 of 2014, it is seen that the acquittal of the petitioner was after due consideration of the prosecution evidence and after it was found the prosecution had failed to prove the charges against the petitioner. As such, it can possibly be said that the accused was honourably acquitted from the criminal case. By following the preposition of law laid down in the judgments stated supra, in the considered opinion of this Court, the proceedings issued by the fourth respondent dated 09.10.2017 impugned in this writ petition is liable to be quashed.

18. Accordingly, this Writ Petition is allowed. The impugned order is hereby

quashed.

<https://www.mhc.tn.gov.in/judis>



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W.P. No. 801 of 2018



W.P. No. 801 of 2018

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19. The respondents are directed to appoint the petitioner as Grade II Police Constable pursuant to the selection process held in the year 2017 and issue necessary appointment orders to the petitioner, within a period of eight weeks from the date of receipt of copy of this order.

20. There shall be no order as to costs.

29.10.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

1.The Secretary to Government,
State of Tamilnadu
Home Department, Fort St. George,
Chennai.

2.The Director General of Police & Chairman,
Tamilnadu Uniformed Services Recruitment Board,
4, 9th Cross Street, Indira Nagar,
Adyar, Chennai.

3.The Director General of Police,
Office of the Director General of Police,
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4.The Superintendent of Police,
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W.P. No. 801 of 2018

BATTU DEVANAND, J.

AT

Order made in
W.P. No. 801 of 2018

29.10.2024