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W.P.No.6197 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.6197 of 2022 and
WMP.No.6266 of 2022

P.Pradeep

... Petitioner

Vs.

- 1.The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Chennai-8
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai
- 3.The State of Tamilnadu
Rep. By its Secretary,
Home Department,
Secretariat,
Chennai-9
- 4.The Superintendent of Police,
Dharmapuri District,
Dharmapuri

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India



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praying to issue a Writ of Certiorarified Mandamus calling for records in the impugned order in Letter No.A3/27322/2021 dated 06.01.2022 on the file of the fourth respondent and to quash the same and to direct the respondents to appoint the petitioner for the post of Grade II Police Constable.

For Petitioner : Mr.Rajarajan
for Mr.M.Rajangam

For Respondents
For R1 : M/s.Sowmi Dattan,
Standing Counsel

For R2 to 4 : Mr.P.Kumaresan,
Additional Advocate General
Assisted by
Mr.S.Arumugam,
Government Advocate

ORDER

This writ petition has been filed challenging the order dated 06.01.2022 passed by the fourth respondent thereby rejected the candidature of the petitioner for the post of Grade-II Police Constable.

2. The petitioner was qualified to apply for the post of Grade-II Police Constable as per the notification issued by the first respondent. He



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was called for written test and after clearing the written test, he also attended physical test. During the physical test, he was declared as successful. However, his candidature was rejected by the impugned order dated 06.01.2022 on the ground that he involved in a criminal case in crime No.296 of 2018 and he was convicted in STC.No.869 of 2019 on the file of the Judicial Magistrate Court, Pappireddipatti.

3. According to the petitioner, a false case has been foisted as against the petitioner alleging that he burst crackers during the festival. However, in pursuance to the said allegation, FIR has been registered as against the petitioner in crime No.296 of 2018 for the offence under Section 285 of IPC. Subsequently, he was arrested and he admitted his guilt thereby paid fine of Rs.1,000/- on 28.06.2019. The said fact was suppressed by the petitioner and as such, his candidature was rejected by the fourth respondent.

4. The learned counsel for the petitioner would submit that for the petty offence, the petitioner was booked and without his knowledge,



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the crime was accepted and paid fine. Therefore, the rejection of his candidature itself is totally disproportionate to the offence alleged as against the petitioner. The above case has been registered only for statistical purpose. The petitioner is hailing from poor family and because of the said case, he lost opportunity to participate in the interview for the post of Grade-II Police Constable. He also relied upon the judgment of this Court rendered in WP.No.8284 of 2020 dated 04.09.2020.

5. The fourth respondent filed counter and Mr.P.Kumaresan, the learned Additional Advocate General submitted that the petitioner had involved in a criminal case registered in crime No.296 of 2018 for the offence under Section 285 of IPC. There are totally 2 accused and the petitioner was caught red handed and arrested. When he was produced before the Magistrate Court, he had admitted his guilt and paid fine. The said fact was suppressed by him and applied for the post of Grade-II Police Constable. Mere passing the written examination and physical fitness test shall not lend credence and a vested right for the post he



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applied for. He has to necessarily prove his invulnerability on his behaviour and untainted character and conduct. The petitioner's deliberate omission to disclose the above facts in his application form is grave and the uncompromising misconduct inviting his disqualification without rendering any choice or discretion. He was disqualified out of his own conduct and fell prey on his wrongdoing.

6. Heard, the learned counsel appearing on either side.

7. This Court, in a similar case in WP.No.8284 fo 2020 dated 14.09.2020 in the case of ***A.Balaji Vs. The Chairman, Tamilnadu Uniformed Services Recruitment Board, Chennai and others***, held as follows:

18. In the above circumstances, coming to the case on hand, the poor petitioner herein is charged for the offence of bursting of crackers during Diwali as admitted by the authority in the impugned order. No other offence has been pointed out against the petitioner. Section 285 of IPC, under which the petitioner has been charged, reads as under:



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285. *Negligent conduct with respect to fire or combustible matter.?Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.?*

19. *The broad contours of the above Section may appear to be having criminal element, nevertheless this Court cannot shut its eyes to the facts of this case which attracted the mischief of the above provision. Mere bursting of crackers by an individual that too during festival time, can be termed as a criminal offence at all, is for the competent Court to decide. However, for the purpose of the issues on hand, can the incident land the petitioner in an irretrievable situation, wherein he is debarred from seeking a recruitment to the Police Force by applying the so-called strict standards of discipline*



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and high degree of integrity. In this regard, the submissions made by the learned Additional Advocate General may look attractive, apparently though. But the said submission pales into insignificance, when the facts of this case are juxtaposed to the application of the Rule with the fossilized mind set of the jaded authority. It looks like, the Recruitment Board is only looking for candidates conforming to the Victorian standards of conduct and discipline. Such utopian expectation is a matter of pretentious and wishful idealism, divorced from mundane pragmatism. Bursting of crackers is an integral part of the Diwali festival, having its roots to a hoary and hallowed civilization unique to this land, and is celebrated by all age groups across the nation with great fervour and ardour. If display of festive mood and exhilaration during the celebration would amount to attracting disqualification in the understanding of the authority, it only exposes his hollowness and in that view of the matter, the rejection, is nothing but a caricaturing of fair play in administrative action.

20. In fact, as averred by the petitioner in his affidavit, along with him, one another person was involved in bursting of crackers, who happened to be a



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son of a Sub Inspector of Police and no case was registered against him. This was not specifically disputed by the respondents. In the counter affidavit, it is stated that they did not find any material against that person and therefore, his name was deleted in the FIR. Even otherwise, this Court is unable to comprehend as to how the authority can come to such appalling conclusion against the petitioner, which, in the opinion of this Court, runs contrary to the principles of objectivity to be followed as laid down in Avatar Singh's case (cited supra). The Hon-ble Supreme Court has given ample latitude to the authorities in the judgment, delineating the factors to be considered by the authorities in dealing with varied nature of cases, particularly in paragraph Nos.31, 35 and 38.4.1.

21. The Hon-ble Supreme Court has succinctly observed in paragraph 37 in the above referred decision, that McCarthyism ought not to be adopted by the authority in the exercise of the power. Therefore, the suppression per se is not to be treated as a criminal intent to withhold information and authorities are expected to draw a significant line as to when the suppression is material and when the same is immaterial



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in the larger perspective of things, as outlined by the Hon'ble Supreme Court of India. The authority is not expected to be very officious and wooden in his approach when fundamental right of the petitioner is involved in seeking an opportunity of employment in public service. Adopting unwanted sanctimonious approach in the present consideration, in the opinion of this Court, is nothing but a display of poor sagacity by the officialdom. Therefore, as reasoned by the Hon'ble Supreme Court of India, there has to be a proper reconciliation of various factors without being pigeonholed into a stereo-typed and cliched discharge of the discretion. On the other hand, exercise of power, in the given circumstances, reflecting larger understanding of the contemporary contextual social-mores would enhance the prestige of the good governance, in securing the ends of its objectivity.

8. Further, the Hon'ble Supreme Court of India in the case of ***Avatar Singh Vs. Union of India and others*** reported in (2016) 8 SCC 471, held as follows:

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded



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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 :

38.4.1 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.

9. In the case on hand, the petitioner had involved in the offence under Section 285 of IPC. Admittedly, the petitioner burst crackers during a festival. No witness was examined since according to the prosecution, the accused admitted their guilt and paid fine. Therefore, it is nothing but the case has been registered for statistical purpose during the festival. It is not the case of the prosecution that due to bursting the crackers, some undue incidents happened. Also it is not the case that the way in which the petitioner burst the crackers endangered the life of human. In fact, according to the petitioner, even without his knowledge, someone represented along with other accused person and paid fine.



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Therefore, the petitioner had no knowledge about the payment of fine and even registering the FIR.

10. In view of the above discussion and the above judgments rendered by the Hon'ble Supreme Court of India and this Court, the impugned order is liable to be quashed. Accordingly, the impugned order dated 06.01.2022 passed by the fourth respondent is quashed and this writ petition is allowed. The fourth respondent is directed to consider the petitioner's candidature for appointment to the post of Grade-II Police Constable by calling the petitioner for interview and to proceed in accordance with law forthwith, if the petitioner is otherwise qualified. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Chennai-8
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
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- 3.Secretary,
The State of Tamilnadu
Home Department,
Secretariat,
Chennai-9
- 4.The Superintendent of Police,
Dharmapuri District,
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