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W.P.No.8702 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.8702 of 2020

and W.M.P.No.10182 of 2020

Murugan

... Petitioner

Vs.

State of Tamil Nadu,
Rep. by the Superintendent of police,
Cuddalore District.
District Police Office, Cuddalore.

... Respondent

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records from the respondent relating to the order dated 09.03.2020 bearing reference No.C.No.A4/14450/2019 holding that the petitioner is not eligible for appointment as Grade II Police Constable as illegal, arbitrary, without jurisdiction, and to consequently direct the respondent to issue appointment order to the petitioner as Grade II Police constable in the Tamil Nadu Special Police based on the selection list published by the Tamil Nadu Uniformed Services Recruitment Board, Chennai – 8 for the year 2019 protecting his



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seniority based on the rank he obtained in the selection, pay salary from the date the candidates selected along with him were given posting order, treat him as being in service from that date and subsequent promotions given to others.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mr.P.Kumaresan,
Additional Advocate General,
Assisted by,
Mr.M.Rajendiran,
Additional Government Pleader

ORDER

The present writ petition has been filed by the petitioner to call for the records from the respondent relating to the order dated 09.03.2020 bearing reference No.C.No.A4/14450/2019 holding that the petitioner is not eligible for appointment as Grade II Police Constable as illegal, arbitrary, without jurisdiction, and to consequently direct the respondent to issue appointment order to the petitioner as Grade II Police constable in the Tamil Nadu Special Police based on the selection list published by the Tamil Nadu Uniformed Services Recruitment Board, Chennai – 8 for the year 2019 protecting his

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seniority based on the rank he obtained in the selection, pay salary from the date the candidates selected along with him were given posting order, treat him as being in service from that date and subsequent promotions given to others.

2. The case of the petitioner is that he has applied for Grade-II Police Constable, called for by the Tamil Nadu Uniform Services Recruitment Board. He has also allotted enrollment number viz., 0507836. Subsequently, the petitioner has cleared the written test followed by physical measurement, endurance, physical efficiency test. After verifying the original certificates on 30.11.2019, the petitioner got selected for the post of Grade-II Police Constable. This being the case, the respondent vide reference No.C.No.A4/14450/2019 dated 09.03.2020 denied the employment to the petitioner holding that he was involved in a criminal case viz., C.C.No.39 of 2016 on the file of the Judicial Magistrate No.II, Panruti. Aggrieved over the said order dated 09.03.2020, the petitioner has come forward with the present

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writ petition.

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3. Learned counsel for the petitioner submitted that even though the criminal case in C.C.No.39 of 2016 has ended in acquittal, the respondent have not taken the same into consideration since the witnesses have turned hostile and the impugned action of the respondent is untenable and the same is contrary to the dictum of the Hon'ble Supreme Court of India.

4. Learned counsel for the petitioner would submit that due to family disputes between the relatives, the de-facto complainant lodged an FIR before Pudupettai Police Station by making false allegation as if he was assaulted and the petitioner was also mentioned as A9 in the FIR. The said criminal case was on the file of Judicial Magistrate-II, Panruti as C.C.No.39 of 2016. Since the complainant was aware that he has given false complaint, his evidence did not support the prosecution case and as a result, the complainant was treated as hostile. Moreover, the other witnesses viz., P.W.2 to P.W.6 also

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did not support the case of the prosecution and they have also turned hostile.

Since the prosecution failed to get reliable evidence from the witnesses, the learned Judicial Magistrate concluded the case that there is no cogent and acceptable evidence let in by the prosecution to prove the case and passed an order of acquittal by extending benefit of doubt in favour of the accused persons including the petitioner.

5. Learned counsel for the petitioner would further submit that it is a settled principle that even if the witnesses turned hostile, still the Court can convict the accused based on the evidence of the Investigation Officer, if the charges are proved. Since there was no evidence to prove the charges, the Judicial Magistrate acquitted all the accused.

6. Learned Additional Advocate General appearing for the respondent would submit that the petitioner has cleared all the test. As he had come out successful in all the tests, further step of Police Verification was taken up. He

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was given a form called Verification Roll form and asked to fill up all the column and he has answered all the columns. At the time of Police Verification, about his previous character and antecedents i.e., before the date of recruitment, it was found that he was involved in a criminal case in Pudupet Police Station in Cr.No.19 of 2016 under Section 147, 148, 294(b, 323, 324, 506(ii) IPC and he was arrayed as A9 accused. The case was chargesheeted on 29.02.2016 and the nature of offences and the details of charge sheet filed against the petitioner are as follows:

a. On 18.1.2016 at 19.00 hrs. due to previous enmity in respect of kidding of a woman, who is relative of defacto complainant, the accused persons with weapons in their hands came and scolded the defacto complainant in obscene words, that the 3rd accused caused injury to left cheek of the defacto complainant by use of knife, that the 1st accused hit the left hip of defacto complainant, that the 5th accused caused injury to the right leg of witness no.2 by use of log, that the 8th accused cut the right forehead of witness no.4 by use of knife, that the 6th accused hit the back with use of

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stone, that the 9th accused hit the right leg of witness no.5 by use of log, that the 2nd accused hit the back by use of stone, that 1st accused hit the back of witness no.6 and that the accused persons gave life threat by use weapons. Hence, the accused persons have committed offences punishable under sections 148, 294(b), 323, 324, 506(ii) of IPC.

b. The trial Court had acquitted the accused u/s 248(i) Cr.P.C on benefit of doubt as the complainant and other witnesses turned hostile. The case ended in acquittal u/s 248(i) Cr.P.C on 5.10.2016 in CC.No.39 of 2016 by Judicial Magistrate-II Panruti.

c. As per Rule 14(2) in sub rule (b) (iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules 1978 and as per G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.1.2003 it has been clearly stated that no person who is a candidate for selection to the post of Grade II Police Constables shall be eligible for appointment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service and persons who



is acquitted or discharged on Benefit of doubt or due to the fact that the complainant turned hostile shall be treated as a petitioner 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 Mistaken of Fact shall be treated as not involved in a criminal case and he can claim right for appoint only by participating in the next recruitment. As per the Rules and orders passed in Writ Petition No.38289 of 2005 and batch cases dated 28.2.2008 the above Rule 14(b)(e) of Tamil Nadu Special Police Sub-ordinate Service Rules was upheld and it was also ordered that the failure of a person to disclose in the application form either his involvement in a criminal case or pending of a criminal case against him would entitle the appointing authority to reject his application on the ground of concealment of a material fact irrespective of the ultimate outcome of the criminal case.

d. Further, as per the law declared by Supreme Court of India in a case of Avtar Singh Vs Union of India vide SLP (C) No.20525/2011 dated 21.7.2016 and order passed in C.A.No.67/2018 to 70/2018 dated 8.1.2018 by

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the Supreme Court of India the petitioner is not found eligible for the recruitment of Grade II Police Constables for the year 2019 in Tamil Nadu Special Police as his previous character and antecedents were not found satisfactory. Hence, his case was not considered for appointment. Therefore he was issued with an endorsement in C.No.A4/14450/2019, dated 9.3.2020 indicating the Rule position and that his previous character and antecedents were not satisfactory and hence he was not appointment.

7. Learned Additional Advocate General appearing for the respondent would further submit that the petitioner was acquitted only on benefit of doubt and it is not an honourable acquittal. It is true that there is no suppression of fact and he has disclosed all the information required by the respondent.

8. Heard the learned counsel on either side and perused the materials available on record.

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9. In the case on hand, the petitioner was involved in the criminal case in Cr.No.19 of 2016 under Section 147, 148, 294(b, 323, 324, 506(ii) IPC and he was arrayed as A9 accused. The case was chargesheeted on 29.02.2016. Since all the witnesses have turned hostile, the petitioner was acquitted on the ground of benefit of doubt by learned Judicial Magistrate-II, Panruti in C.C.No.39 of 2016 by order dated 05.10.2016, which is prior to the date of notification in the year 2019 issued by the Tamil Nadu Uniform Service Recruitment Board for appointment of Police Constable.

10. It is an admitted fact by the petitioner as well as the respondent that the petitioner has disclosed the criminal case pending (lodged) against him and there is no suppression involved in the said case.

11. The main contention of the respondent is that as per Rule 14(2) in sub rule (b) (iv) and Explanation (1) & (2) of the Special Rules for Tamil Nadu Special Police Subordinate Service Rules 1978 and as per



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G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.1.2003, no person who

is a candidate for selection to the post of Grade II Police Constables shall be eligible for appointment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service and persons who is acquitted or discharged on Benefit of doubt or due to the fact that the complainant turned hostile shall be treated as 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 Mistaken of Fact shall be treated as not involved in a criminal case and he can claim right for appoint only by participating in the next recruitment. But in the case on hand, the petitioner was acquitted only on the benefit of doubt. Hence, he is not eligible to the post of police constable.

12. This Court places reliance on judgment of the Hon'ble Supreme Court of India in the case of ***Union Territory of Chandigarh Adiministration and others Vs. Pradeep Kumar and another, report in (2018) 1 SCC case,***
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797, wherein it was held that the person who are not honourably acquitted of offences under Section 323 and 506 of IPC r/w Section 34 IPC and they were acquitted only based on benefit of doubt are not entitled/eligible for appointment in the Police force. For better appreciation and understanding, the relevant portion of the order is extracted hereunder:

“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, **it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24)**

“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has



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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.”**

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commr. of Police v. Mehar Singh* [*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasising upon the importance of character and integrity required for joining police force/discipline force, in



Mehar Singh case [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , this Court held as under: (SCC pp. 698-700 & 702-03, paras 23-25, 33 & 35)

“23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. **It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter**



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the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. **Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial,** where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [*R.P. Kapur v. Union of India*, AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression “honourable acquittal” was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 :*



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(2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] . In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. **This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution**



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miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in



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this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand.”

(emphasis in original)

The same principle was reiterated in *State of M.P. v. Parvez Khan* [*State of M.P. v. Parvez Khan*, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] .



12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in *Avtar Singh v. Union of India* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , the three-Judge Bench of this Court summarised the conclusion in para 38. As per the said decision in para 38.5: (SCC p. 508)

“38.5. 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.”

(emphasis supplied)

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and *Parvez Khan* [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he



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is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.”

13. This Court has also places reliance on the another judgment of the Hon'ble Supreme Court of India in the case of *Avtar Singh Vs. Union of India and others, reported in (2016) 8 Supreme Court cases 471*. For better appreciation, the relevant portion of the order is extracted hereunder:

“38.5. 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.

14. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India in the case of *Union Territory of Chandigarh Adiministration and others Vs. Pradeep Kumar*



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and another, report in (2018) 1 SCC case, 797 and Avtar Singh Vs. Union

of India and others, reported in (2016) 8 Supreme Court cases 471, it is a

case of previous enmity between the defacto complainant and the petitioner, the criminal case was lodged against him and the same has also ended in acquittal on the grounds of benefit of doubt since the complainant and other witnesses turned hostile. It is open for the respondent to consider the candidature of the petitioner for the future recruitment by the Tamil Nadu Uniform Service Recruitment Board, since the petitioner has not suppressed any material fact that he was involved in a criminal case and the same has been admitted by the respondent.

15. This writ petition is disposed of with the above said observations. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

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

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