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W.P.No.11797 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11797 of 2022 and
W.M.P.No.11244 of 2022

G.Thiyagarajan

... Petitioner

-Vs-

1. The State of Tamilnadu

Rep. by the Secretary to Government,
Home Department,
Secretariat, Chennai-600 009.

2. The Director General of Police,

State of Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3. The Superintendent of Police,

District Police Office,
Kanchipuram District,
Kanchipuram-631 501.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records made in Memorandum in Na.Ka.No.A3/e-1727015/457/2021 dated 11.01.2022 passed by the third respondent and quash the impugned order as illegal, incompetent, ultravires without Jurisdiction and without holding enquiry and in violation of the principles of the natural justice and unconstitutional violation



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of Articles 14, 16, 21, 309 and 311 of the Indian Constitution and consequently direct the Respondents to appoint the petitioner as Gr.II, Police Constable (TSP), for the year of 2020 in view of the several decisions passed by this Hon'ble Court on the subject matter.

For Petitioner : Mr.Kanchi GV.Mathiazhagan

For Respondents : Mr.P.Kumaresan,
Additional Advocate General
Assisted by
Mr.S.Rajesh,
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 11.01.2022 thereby rejecting the petitioner's candidature for the post of Gr.II. Police Constable for the year 2020.

2. The petitioner is qualified with B.Sc.,(Zoology) degree. The TamilNadu Uniformed Service Recruitment Board had called for common recruitment 2020 for the posts of Grade II Police constable-TSP/Grade-II Police Constable-AR/Firemen/Jail Warder. The petitioner applied for the post of Gr.II Police constable-TSP on 05.10.2020. He wrote his written examination and also selected for physical endurance test. Thereafter, he was provisionally



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selected for the post of Gr.II Police Constable-TSP by the selection list dated 26.11.2021. At the time of verification of his antecedents, the third respondent issued order dated 11.01.2022 thereby rejected his candidature on the ground that he had suppressed his involvement in a criminal case, while responding to the notification issued by the Board.

3. The learned counsel for the petitioner submitted that the FIR was registered as against the petitioner for the offences punishable under section 294(b) of IPC on 06.02.2019 on the allegation that during patrol of the Walajabad Police, the petitioner standing in front of a temple and used obscene words and despite warning to leave the place, the petitioner continued to commit the offence and he was arrested and remanded to judicial custody. After completion of investigation, concerned police authorities filed a final report and the same has been taken cognizance in S.T.C.No.50 of 2019 on the file of the Judicial Magistrate No.II, Kanchipuram. Subsequently, the petitioner was acquitted by the judgment and decree dated 06.09.2021. For trivial allegations case was foisted as against the petitioner and as such the petitioner had no intention to suppress any of the criminal case pending as against him. It was neither willful nor wanton due to mistake and oversight only he failed to communicate about the registration of FIR. The learned counsel for the



petitioner relied upon the judgment of the Hon'ble Supreme Court of India in

the case of ***State of Madhya Pradesh vs Abhij Singh Pawar*** reported in **2018**

(18) SCC 733 wherein it was held in respect of determination of suppression and false information as follows:

"12. A three Judge Bench of this Court in [Avtar Singh v. Union of India](#) (supra) was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. 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.

38.2. 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.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. 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 recourses 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.

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38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. 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.

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.

38.6. 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.

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

38.8. 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.

38.9. 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.

38.10. 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.



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38.11. *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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4. Further held that the candidate has not disclosed about the criminal case in the application. Respondents later found out his involvement in the criminal case through verification. The offence is minor in nature and it is compoundable. It cannot be seriously taken note of in the light of the judgment of the Hon'ble Supreme Court of India in the case of ***Avtar Singh vs Union of India*** reported in ***2016 (8) SCC 417*** wherein it is held that serious offence, like non-compoundable has been committed, the candidature definitely needs to be rejected. Even after appointment, a candidate can be removed for the non-disclosure of the offence that comes to light at a later point of time, as it can be construed that initial appointment itself is irregular and illegal. Therefore, non-disclosure of the criminal case in the application cannot be treated to be a suppression.

5. The 3rd respondent filed counter and the learned Additional Advocate General appearing on behalf of the respondents submitted that the legal position laid down by the Hon'ble Supreme Court of India in the case of "***Avtar Singh vs Union of India & others*** reported in ***2016 (8) SCC 471*** held that information given to the employer by a candidate as to conviction, acquittal or



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arrest or pendency of a criminal case, whether before or after ensuing into service must be true and there should be no suppression or false mention of required information. Further held that in a case when the employee has made declaration truthfully of a concluded criminal case, employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate. He further submitted that after full fledged trial of the said criminal case, the petitioner was acquitted only on the ground of benefit of doubts. Therefore, the petitioner has not only involved in the criminal case but also wantonly suppressed the same at the verification roll. He also relied upon judgement of Hon'ble Supreme Court of India in the case of ***State of Madhya Pradesh and others vs Bhupendra Yadav*** reported in ***2023 SCC online SC 1181*** wherein it is held as follows:

"In *Daya Shankar Yadav. v. Union of India and Others*¹⁴, where this Court was called upon to examine the purpose of seeking information with respect to the antecedents of a candidate, it was observed that the same were essential so as to ascertain the suitability for the post and the disclosures made in the verification form relating to the character and antecedents of the candidate can result in the following consequences:

"15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.



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(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.”

6. Thus, it is clear that where the declarant has answered the questions in the negative and on verification, it is found that the answers were false, the employer may refuse to employ the declarant, even if the declarant had been cleared of the charges or is acquitted. Further, the question about the credibility and or trustworthiness of such an employee who at the initial stage of the employment i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct



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facts would have been disclosed, the employer might not have appointed him.

Then the question is of trust. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be relied upon even in future, the employer cannot be forced to continue such an employee. Therefore, mere acquittal of the petitioner in the criminal case would not automatically entitle him to being declared fit for appointment to the post of Gr.II Police Constable (TSP). Therefore, the respondents have judicially exercised its behavior after taking note of the all relevant factors relating to the antecedents of the petitioner.

7. Therefore, this court cannot find any infirmity or illegality in the orders passed by the third respondent in Na.Ka.No.A3/e-1727015/457/2021 dated 11.01.2022. However, the petitioner is at liberty to participate in the subsequent selection process in all the posts which are applicable to the petitioner's qualification.



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Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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To

1. The State of Tamilnadu
Rep. by the Secretary to Government,
Home Department,
Secretariat, Chennai-600 009.
2. The Director General of Police,
State of Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
3. The Superintendent of Police,
District Police Office,
Kanchipuram District,
Kanchipuram-631 501.



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G.K.ILANTHIRAIYAN, J.

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