



W.A.No.2899 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.2899 of 2021 and

CMP No.19583 of 2021

The Commandant, Tamil Nadu Special Police,
IIIrd Battalion, Veerapuram,
Chennai-55.

... Appellant

Vs.

R.Vijayakumar

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed by this Court dated 17.10.2019 in W.P.No.6020/2013 and allow this writ appeal.

For Appellant : Mr.S.Prabhakaran, Govt. Advocate

For Respondent : Mrs.R.T.Sundari



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JUDGMENT

WEB COPY (Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra-Court Appeal has been filed to set aside the order passed by the learned Single Judge dated 17.10.2019 in W.P.No.6020/2013, in and by which, the appellant was directed to reconsider the case of the respondent in the light of the judgment of the Hon'ble Supreme Court of India, (**Avtar Sigh case**) and to pass appropriate orders within a period of eight weeks from the date of receipt of the copy of the order.

2. The brief facts leading to the filing of the writ appeal is as follows:

The respondent had applied to the post of Grade-II Police Constable and participated in the written and physical examination and finally he was selected to that post and appointment order dated 23.01.2013 was also issued to him. Further, he was informed that he will be communicated about the date of joining the Training. Subsequently, the respondent had received a letter dated 26.03.2013 from the appellant, canceling the appointment, on the ground that there was a criminal case pending against him. Challenging



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the above cancellation of appointment order, the respondent had filed the writ petition before the single judge and the same was allowed. Challenging the above order, this intra court appeal has been filed.

3. The learned Government Advocate appearing for the appellant submitted that the respondent had involved in a criminal case registered in Katpadi Police Station in Crime No.598/2010 under Sections 294(b), 324 and 506(ii) IPC. He further submitted that, as per Rule 14(b) of the Tamil Nadu Government Servants (Conditions of service) Act 2016, no person shall be eligible for appointment to any service by direct recruitment, unless he satisfy the appointing authority that his character and antecedents are such as to qualify him for such service. It is also contended by him that though the above criminal case ended in acquittal, the acquittal was recorded, only based on the complainant turned hostile and hence, it cannot be distinguished whether it is on benefit of doubt or on honorable acquittal. Therefore, he seeks to set aside the order of the Writ Court.

4. The learned counsel appearing for the respondent submitted that,



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the above criminal case was ended in acquittal on 25.11.2010 itself and on the date of filing the application, no criminal complaint was pending against him. Therefore, considering the above aspect and also taking into account the facts and circumstances of the case, the learned Judge has rightly allowed the writ petition and it does not warrant any interference by this court.

5. Heard the learned Government Advocate appearing for the appellant and the learned counsel appearing for the respondent and we have perused the material on record.

6. A Hon'ble Division Bench of this Court in the case of ***Director General of Police, Tamil Nadu Police Department, Mylapore Chennai & Others Vs. K.Indhu Kumar (W.A (MD)Nos. 938 of 2020 & etc., batch, dated 05.06.2023, reported in 2023 (3) CWC 200,*** in which one of us (DKKJ) is member, following the aforesaid decisions of the Hon'ble Supreme Court in i) Avtar Singh Vs. Union of India and others reported in 2016(8) SCC 471, ii) Satish Chandra Yadav Vs. Union of India & others,



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reported in 2022(6) LLN 13(SC): 2022 SCC Online SC 1300, has passed

detailed order observing as follows;

“18. Therefore, from the judgments of the Hon'ble Supreme Court, it is clear that once the candidate is having knowledge about his involvement in a criminal case (not being of trivial in nature) had suppressed the same at the time of filing of an application, he is not entitled to seek any appointment. But in cases where the information was not furnished in the application form relating to an offence (not being trivial in nature), the employer in his discretion is entitled to consider his candidature by considering his character and past antecedents.

(D). SUMMARY OF PREPOSITION OF LAW:

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.

(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



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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 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.”

7. The respondent herein comes under paragraph 19 (b) of the above judgment, wherein it is observed that *“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.”*

8. In view of the above decision of the Hon'ble Division Bench of this Court, the Court cannot interfere with the said decision taken by the



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employer since the respondent was acquitted from a criminal case on the ground of hostility of witnesses .

9. Now coming back to the facts of this case, a perusal of the records reveal that the respondent had applied to the post of Grade-II Police Constable and after physical and written examination, he was selected and appointment order was also issued on 23.01.2013. During police verification, he was found to have been involved in a criminal case in Crime No.598/2010 on the file of Katpadi Police Station, under Sections 294(b), 324 and 506(ii) IPC. However, he was acquitted on 25.11.2010 on the ground that the witnesses have turned hostile. The appointing authority/appellant had found that the respondent had suppressed about his involvement in the criminal case and it came to light only during the police verification and based on the said facts, his candidature was rejected by the appellant. Therefore, according to the appellant, if the order of the writ court is implemented, it will open up flood gates of litigations.

10. Admittedly, the involvement of the respondent in the criminal case, before the date of notification for recruitment was suppressed and the



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same was found only during the police verification at the time of appointment. However, considering the facts and circumstances of the case and in the light of the observations made in para 19 of the aforesaid decision of the Hon'ble Division Bench of this Court (*The Director General of Police, Tamil Nadu Police Department, Mylapore Chennai and others Vs. K.Indhu Kumar (W.A.(MD)Nos.938 of 2020 & etc., batch, dated 05.06.2023, reported in 2023(3) CWC 200*), we are inclined to dispose of the writ appeal with the following direction.

11. Accordingly, the appellant/appointing authority is directed to reconsider the candidature of the respondent, in the light of proposition of law laid down by the Honble Division Bench of this court in *paragraph No.19. of the decision in W.A.(MD)Nos.938 of 2020 & etc., batch, dated 05.06.2023, as stated supra.*

12. With the above observation, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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(D.K.K.J.)

(K.B.J.)

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