



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.20286 of 2024
and W.M.P.No.22210 of 2024

Manirathinam

... Petitioner

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

2.The Superintendent of Police,
Cuddalore District,
Cuddalore.

3.The Tamil Nadu Uniform Services Recruitment Board,
Rep. by its Member Secretary,
No.807, P.T.Lee, Chengalvaraya Naicker Maligai,
Anna Salai,
Chennai - 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent dated 11.01.2022 vide in C.No.A4/777/2020 and quash the same and consequently direct the 2nd respondent



to appoint me as Grade II Police Constable forthwith based on the selection of 3rd respondent.

For Petitioner : Mr.M.R.Jothimanian for
Mr.K.Balu

For Respondent : Mr.P.Kumaresan
Additional Advocate General
assisted by

Mr.M.Bindran
Additional Government Pleader
for R1 and R2

Mr.Sowmi Dattan
Standing Counsel for R3

ORDER

This writ petition has been filed challenging the impugned order passed by the 2nd respondent in C.No.A4/777/2020 dated 11.01.2022 and for a consequential direction to the 2nd respondent to appoint the petitioner as Grade-II Police Constable.

2.When the matter came up for hearing on 06.08.2024, this Court passed the following order:



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This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 11.01.2022, rejecting the candidature of the petitioner to the post of Grade II Police constable and for a consequential direction to the 2nd respondent to appoint the petitioner in that post.

2.The case of the petitioner is that the 3rd respondent issued a notification on 17.09.2020 calling for applications from eligible candidates for common recruitment to the post of Grade II police constable. The petitioner applied for the said post on 22.10.2020. On receipt of the same, hall ticket was issued to the petitioner and the petitioner appeared for the examination on 13.12.2020. The petitioner passed the examination and a call letter dated 29.07.2021 was issued and the petitioner was informed that he has been provisionally selected as Grade II police constable.

3.The petitioner received the impugned proceedings of the 2nd respondent dated 11.01.2022 informing the petitioner that a criminal case is pending against him in Crime No.727 of 2021 and therefore, the petitioner is not found eligible for recruitment to the post of Grade II Police Constable.

4.The learned counsel for the petitioner submitted that the petitioner did not suppress any material facts and this FIR itself



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came to be registered for an occurrence that is alleged to have taken place on 10.08.2021. The learned counsel for the petitioner further brought to the notice of this Court the order passed in Crl OP No.18135 of 2022 dated 05.01.2024 wherein the quash petition filed by the petitioner to quash the FIR was disposed of by recording the fact that the name of the petitioner has been removed from the FIR. In the light of this development, the petitioner also gave a representation dated 21.05.2024 to the respondents to consider his appointment to the post of Grade II Police Constable.

5.Mr.M.Bindran, learned Additional Government Pleader appearing on behalf of respondents 1 and 2 and Mrs.Sowmi Dattan, learned counsel appearing on behalf of 3rd respondent seeks for some time to take instructions.

6.Post this case under the caption “for orders” on 23.08.2024. The Registry is directed to print the name learned counsel appearing for respondents 1 and 2 and for 3rd respondent in the cause-list.

3.When the matter was taken up for hearing today, Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the respondents 1 and 2 submitted that the impugned order dated 11.01.2022 makes reference to three



documents. The first is a Memo dated 02.12.2021, which stipulates that once the list of eligible candidate is prepared, the police verification has to be made.

Accordingly, the petitioner who was also provisionally selected and whose name was found in the provisional selection list, was also subjected to police verification. The second document that has been referred is the report of the Inspector of Police, dated 20.12.2021, which informed that the petitioner is also an accused in Crime No.727 of 2021. The third document which is the report of the Inspector of Police, Special Branch, dated 22.12.2021, confirmed the report of the Inspector of Police, Virudhachalam Circle. Thus, it was found that the criminal case was pending and the petitioner was arrayed as A2 in Crime No.727 of 2021.

4.After pointing out to the documents under reference in the impugned order, the learned Additional Advocate General brought to the notice of this Court the judgment of the Division Bench in W.A.(MD)Nos.938 of 2020 etc., dated 05.06.2023. The learned Additional Advocate General specifically placed reliance upon the following paragraphs in the judgment:

4.Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules is extracted as follows:



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“(b). No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that.

(i).that he is sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and

(ii).that his character and antecedents are such as to qualify him for such service and

(iii).that such a person does not have more than one wife living and

(iv). That he has not involved in any criminal case before police verification.”

(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.

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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



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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 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.

5.The learned Additional Advocate General relying upon the above judgment submitted that in the instant case, the petitioner was discharged from the criminal case only after the process of police verification started. Therefore, the petitioner will be eligible to be considered only during the next recruitment process as per the relevant rules.

6.The learned counsel for the petitioner in reply to the above submission, placed reliance upon the judgment of the Apex Court in ***Ravindra Kumar vs. State of U.P. and Others*** reported in ***2020 SCC Online SC 180***. The learned counsel placed specific reliance upon Paragraph No.19 and Paragraph No.33, which are extracted hereunder:

19. As the facts reveal, admittedly on 12.02.2004, when the



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appellant applied for the post of Constable, there was no criminal case registered or pending. Five days after submitting the application, no doubt, he was embroiled in a criminal case which has since resulted in an acquittal by the trial court, vide order dated 13.09.2004, and no appeal was filed against the same. There is no dispute that under Clause 9 of the recruitment notification dated 20.01.2004, he was required to furnish an Affidavit in the format given by the Selection Committee. It is also specifically mentioned in Clause 9 that if it is found that facts have been concealed in the Affidavit the selection of the candidate is liable for cancellation. As will be seen from paras 4, 5, 6 and 7 of the affidavit, information (though somewhat repetitive) was sought. It did obligate the candidate to disclose any criminal case which was registered against him; any arrest made in the past, the details of the cases which were pending and, most importantly, the details of acquittals were also called for. It is also an undisputed fact that the appellant said 'No' to each of these queries. The appellant's explanation is that since he was acquitted, he bona fide believed that he was only obliged to give details of any pending proceedings.

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33. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in



the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.

7. In the case in hand, the petitioner applied for the post of Grade-II Police Constable on 22.10.2020. As on that date, there was no criminal case pending against the petitioner. The FIR in Crime No.727 of 2021 was registered on 10.08.2021. In this FIR, the name of the petitioner was added as A2. The name of the petitioner also found place in the provisional selection list. The petitioner also received the Call letter dated 29.07.2021 from the 3rd respondent. After this, the police verification started in line with the Memorandum of the Director General of Police, dated 02.12.2021. At that point, the FIR that was registered in Crime No.727 of 2021, dated 10.08.2021, came to light. In view of the same, the candidature of the petitioner was rejected, since the antecedents of the petitioner was not satisfactory.



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8.The judgment of the Division Bench makes a distinction between the discharge that takes place before the date of police verification and the discharge that takes place after the police verification pending the recruitment process. In the former, the Division Bench has held that the candidate who is discharged should be considered in the current selection list. However, in the later, the candidate will be considered only for the next recruitment process.

9.The Division Bench has also taken note of cases where the offences are trivial/petty in nature like family disputes, traffic offences etc., In all such cases, the Division Bench has observed that the candidature can be considered in the current selection itself.

10.The learned Additional Advocate General submitted that even though the name of the petitioner was dropped during the course of investigation, the involvement of the petitioner was not in a trivial/petty case and it is a case involving serious offence under Section 306 of IPC. Therefore, it was contended that the discharge of the petitioner cannot be considered to be from a trivial case.



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11. There are broadly two scenarios that can be contemplated. The first scenario is where there is an element of involvement in an offence. The second category of cases is where a person is not involved in the offence and his name has been added as an accused.

12. In the first category of cases, it can be further divided into offences which are trivial/petty in nature and cases involving serious offences.

13. In a case where there is some element of involvement of a person in a case, if it is trivial in nature, then the candidature of the concerned person cannot be rejected and the Division Bench has directed the candidature to be considered in the current selection. However, in serious offences, the Division Bench has held that it will have an impact on the selection of the concerned candidate.

14. Even in a case name involving serious offence where the name of the candidate has been added as an accused and the same becomes a subject matter of challenge, the discharge or the quashing of the proceedings in favour of that candidate on the ground that no offence has been made out, will enable that



candidate to participate in the selection process. At this juncture, the directions of the Division Bench becomes relevant. If such discharge or quashing of proceedings takes place before the police verification, then the candidature has to be considered in the current selection itself. However, if it takes place after the police verification during the recruitment process, the concerned person will be considered to be eligible only during the next recruitment process.

15. In the instant case, the facts do not fall under any of the two contingencies that has been explained *supra*. This is a case where the name of the petitioner was added in the FIR and during the course of investigation, it was found that the petitioner is not involved in the case. The petitioner had also filed a petition to quash the FIR in CrI.O.P.No.18135 of 2022. When the matter came up for hearing on 05.01.2024 it was informed to this Court that the name of the petitioner has been removed from the FIR. For proper appreciation, Paragraph No.5 of the order is extracted hereunder:

5. Records perused. During investigation, it reveals that the dispute arose between husband and wife with regard to adjacent land, thereby out of frustration, he committed suicide. A3, A4 and A5



including the petitioner are no way connected with the alleged occurrence. Therefore, according to investigation, A1 and A6 Murugesan and Rajeswari alone were involved in the alleged occurrence and A3, A5 and A6 have not involved in the occurrence. Therefore, they were already removed from the criminal case. Now, in so far as this petitioner is concerned, the learned Government Advocate submitted that this petitioner name was removed from the F.I.R. to that effect, he filed a copy of final report and the same is recorded. Hence, the relief sought by this petitioner became infructuous. Accordingly, this Criminal Original Petition is dismissed as infructuous. Consequently, the connected Criminal Miscellaneous Petition is closed.

16.It is clear from the above that this is a case where the petitioner was no way connected with the alleged occurrence and his name was removed from the FIR. Therefore, there is not even an element of participation of the petitioner in the commission of crime. These types of cases must be considered under a different category altogether. The judgment cited by the learned counsel for the petitioner will have some relevance while dealing with this issue. Even in the case before the Apex Court, there was no criminal case pending against the candidate at



the time of submission of the application. The criminal case came to be registered only subsequently and ultimately, it resulted in acquittal by the Trial Court. The Apex Court while dealing with this issue gave a finding that the facts of each case must be dealt with in the backdrop of the special circumstances. The Apex Court found that was a not case where the candidate had concealed the pendency of the criminal case. That was a case where the criminal case was registered after the candidate had submitted his application. In view of the same, it was held that on the peculiar facts of that case, the criminal case was not found to be fatal for the appellant. The Apex Court has warned that there can never be a one size fits all scenario in all cases.

17. The above judgment of the Apex Court has a lot of relevance to the facts of the present case. If the Court has to mechanically deal with the candidature by merely taking into account the discharge before police verification and the discharge after police verification, it will give rise to a situation where some false case can be foisted against a person after knowing that he has submitted an application for selection in police department. It is common knowledge that many such instances happen in the State of Tamil Nadu where the names of persons



who are participating in police selection, is falsely roped in criminal cases and they are arrayed as accused. By doing this, the candidate is effectively prevented from getting selected. Ultimately, if the very case foisted against the candidate is found to be false, the candidate should not be left high and dry. Therefore, this Court has to necessarily consider the facts of each case while deciding an issue of this nature. As held by the Apex Court, it can never be a one size fits all scenario.

18. There was no criminal case against the petitioner at the time of submission of the application. The criminal case comes into existence only subsequently after nearly eleven months on 10.08.2021. Ultimately, it was found that the petitioner is not even involved in the case. In such scenario, if the petitioner is prevented from being considered as a candidate during the current recruitment process, that will result in a double jeopardy for the petitioner. The first is where he was facing a false criminal case and the second is that he is prevented from the selection process by virtue of such a false criminal case. Therefore, in the case in hand, since the petitioner is not even involved in the criminal case and his name was dropped even in the course of investigation, it must be taken that the petitioner was roped in a false case and hence, his



candidature must be considered in the current selection process itself.

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19.The submission of the learned Additional Advocate General that the petitioner was involved in a serious crime also pales into significance, since the Investigation Officer has found that the petitioner was not involved in the offence. Therefore, just because the FIR has been registered for a serious offence, that does not mean that a person who is not even involved in the offence should be denied the relief for the simple reason that his name was added in the FIR. Hence, the triviality or otherwise of the offence does not have any bearing in the facts of the present case.

20.In the light of the above discussion, the impugned proceedings of the 2nd respondent in C.No.A4/777/2020 dated 11.01.2022, is hereby quashed. There shall be a direction to the 2nd respondent to consider the appointment of the petitioner as Grade II Police Constable forthwith, if he is otherwise qualified. This process shall be completed, within a period of four weeks from the date of receipt of copy of this order.



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21. In the result, this writ petition stands allowed with the above directions.

No Costs. Consequently, connected miscellaneous petition is closed.

27.08.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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To

1. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
2. The Superintendent of Police,
Cuddalore District,
Cuddalore.
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