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W.P.Nos.23300 & 23499 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2024

PRONOUNCED ON : 14.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.23300 & 23499 of 2023
and W.M.P.Nos.22839 & 23012 of 2023

S.Murugan

...Petitioner in W.P.
No.23300 of 2023

S.Vinayaka Murthy

...Petitioner in W.P.
No.23499 of 2023

-Vs-

1. The Director General of Police,
Tamil Nadu, Santhome High Road,
Mylapore, Chennai.

2. Tamil Nadu Uniformed Service
Recruitment Board,
Panthiam Road,
Egmore, Chennai – 600 008.

3. The Superintendent of Police,
District Police Officer,
Cuddalore.

... Respondents in
both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified Mandamus,



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calling for the records and quashing the impugned order dated 09.10.2017 vide Na.Ka.No.A4/333/AR/2017-16 and Na.Ka.No.A4/333/AR/2017-13 of the third respondent and consequently direct the respondents to appoint the petitioners as Grade II Police Constable without back wages but with proper seniority on a par with his batchmates.

In both W.Ps.

For Petitioner : Mr.Ravi Ananthapadmanabhan
Senior Counsel
For Mr.B.Thirumalai
For Respondents
For R1 : Mr.K.Tamilvendan
Government Advocate
For R2 : Mrs.D.Sowmi Dattan
Standing Counsel

COMMON ORDER

Both the writ petitions have been filed challenging the order dated 09.10.2017, thereby rejected the candidature of the petitioners to the post of Grade II Police Constable.

2. Both the petitioners are brothers. They had applied for the post of Grade II Police Constable for the year 2017. They had qualified in the written examination and they were selected for physical and medical fitness. Thereafter they were provisionally selected. However, on verification of certificate and conduct verification, it was found that the



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petitioners were involved in criminal case in Crime No.184 of 2014 registered for the offences under Sections 294(b), 452, 323, 506(i) of IPC r/w Section 4 of Tamil Nadu Prevention of Women Harassment Act. They were acquitted by the learned Judicial Magistrate No.II, Panruti, in C.C.No.24 of 2016 by an order dated 24.05.2016, on the ground that the defacto complainant turned hostile. Therefore, as per the circular issued by the first respondent their candidature were rejected.

3. The learned Senior Counsel appearing for the petitioners submitted that the petitioners categorically mentioned about the criminal case in their applications. The complaint was lodged by his own cousin of the petitioners due to the dispute between two ladies, in which the petitioners being brothers of the same family, they were falsely implicated as accused. Subsequently, though the Investigating Officer completed investigation and filed final report, the defacto complainant himself categorically deposed that no occurrence was taken place and false case has been foisted as against the petitioners. Therefore, they were acquitted by an order dated 24.05.2016. In fact, their acquittal was also declared as honourable acquittal in CrI.O.P.No.70 of 2019 by an order dated 03.01.2019, by this Court. Even then, without considering the same the



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candidature of the petitioners were mechanically rejected by the third respondent. In support of his contention he relied upon the following judgments:-

(i) W.P.(MD) No.11930 of 2020 dated 09.04.2021 in the case of M.Sivan Sakthi Vs. the Director General of Police & ors.

(ii) W.P.(MD).No.1145 of 2010 dated 26.03.2013 in the case of C.Vijayaraja Vs. The Director General of Police.

4. The learned Government Advocate appearing for the first respondent submitted that the petitioners were acquitted by the criminal Court only on the ground that the defacto complainant turned hostile and it would not amount to honourable acquittal by the criminal Court. The petitioners were acquitted only on the ground of benefits of doubt. When the petitioners involved in a criminal case, they are not fit to be appointed as Police Constable. He also produced the government order in G.O.Ms.No.882 Home (Pol.VI) Department dated 12.06.2007, in which sub Rule (d) of Rule 13 of the Special Rules for Tamil Nadu Police Subordinate Services was amended and as per explanation No.1, a person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile, shall be treated as a person involved



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in a criminal case. As per explanation No.2, 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 mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. It is not the case of the respondents that the petitioners suppressed the fact that they were involved in the criminal case. The petitioners were categorically mentioned in their applications about the criminal case and the order of acquittal in C.C.No.24 of 2016 on the file of the learned Judicial Magistrate No.2, Panruti, dated 24.05.2016. That apart, one of the petitioners filed direction petition before this Court in CrI.O.P.No.70 of 2019 and this Court by an order dated 03.01.2019, declared that the acquittal of the petitioner is honourable one. They also mentioned about their acquittal in both application form as well as the police verification form at the time of medical fitness test. Therefore, there



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is no suppression of fact of materials by the petitioners. Further the offence committed by the petitioner could not be categorised as offence involved moral turpitude.

7. On perusal of the judgment of the criminal case passed in C.C.No.24 of 2016, the defacto complainant is none other than his own uncle and the P.W.1 & P.W.2 are their close relatives. They deposed that being close relatives, they compromised the issue. However the said compromise petition was rejected by the criminal Court and thereafter they deposed that no such occurrence was occurred. Even assuming that the allegations are true, the allegations are that the accused persons scolded P.W.1 in obscene words and trespassed into her house, caused simple injury to her and also they threatened her with dire consequences.

8. In the case of *Avtar Singh Vs. Union of India and ors.*, reported in **(2016) 8 SCC 471**, the Larger Bench of the Hon'ble Supreme Court of India held that the employer is given discretion to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted or acquitted, in such a case, it



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becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc., have to be considered.

9. Further held that even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case, employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects. Further 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.



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It would be still open to the employer as to the person is suitable and fit for appointment to the post. Therefore, the judgments relied by the learned Senior Counsel appearing for the petitioners are not helpful to the case on hand. Further the character of the candidate for direct appointment must be such as to render him suitable in all aspects for employment in the service of post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.

10. As per the government order in G.O.Ms.No.882 Home (Pol.VI) Department dated 12.06.2007, an amendment was made in the Special Rules for Tamil Nadu Police Subordinate Services as follows:-

“In the said Special Rule, in Rule 13, after sub-rule (d), the following sub-rule shall be added, namely:-

(e) that he has not involved in any criminal case before police verification:

Explanation (1):

A person 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

Explanation (2):-

A person involved in a criminal case at the time of



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police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment”

Accordingly, when the person acquitted and subsequently the acquittal declared as honourable acquittal, he can claim right for appointment only by participating in the next recruitment. The petitioners participated in the selection to the post of Grade II Police Constable in the year 2017 and therefore their candidature were rightly rejected by the impugned order dated 09.10.2017.

11. Further the petitioners challenged the order of rejection of their candidature passed by the third respondent only in the year 2023. Though the petitioners challenged the order of rejection dated 09.10.2017, in W.P.Nos.28487 & 28488 of 2017, both the writ petitions were withdrawn by the petitioners on 29.06.2018. Thereafter, the petitioners approached this Court by way of miscellaneous applications in W.M.P.Nos.17655 & 17657 of 2022, seeking liberty to challenge the order of rejection of their candidature by way of fresh writ petitions. This Court considered the request made by the petitioners and has given



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liberty to the petitioners to file writ petition challenging their rejection of candidature to the post of Grade II Police Constable, by an order dated 09.06.2023. Though this Court granted liberty to challenge the order of rejection of their candidates by way of writ petitions, after the period of seven years, their candidature cannot be considered for the post of Grade II Police Constable. As per the government order in G.O.Ms.No.882 dated 12.06.2007, the petitioners can very well participate in the next recruitment.

12. In view of the above discussions, both the writ petitions are devoid of merits and liable to be dismissed. Accordingly, both the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.03.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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