



W.A.No.281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

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J.Velusamy

.. Appellant

VS

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

2.The Commissioner of Police,
Salem City,
Salem.

3.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,
Chennai-600 008.

.. Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order dated 29.04.2019 passed in WP.No.30823 of 2018 by this Court.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.P.Ananda Kumar
Government Advocate



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JUDGMENT
(Delivered by Dr.ANITA SUMANTH..J)

The challenge is to an order dated 29.04.2019 wherein the writ Court confirms the rejection of the application of the appellant, an aspirant for appointment as Grade-II Police Constable. The order impugned before the writ Court is dated 01.11.2018.

2. The learned Judge notes that the nature of the criminal charges framed as against the writ petitioner were serious and his acquittal was only on the ground of benefit of doubt. Hence the decision arrived at by the Commissioner of Police who had passed the impugned order did not suffer from any infirmity.

3. We have heard Mr.C.Prabakaran, learned counsel for the appellant and Mr.P.Ananda Kumar, learned Government Advocate for the respondents.

4. The appellant had been involved in an altercation on 28.05.2015 at 2.30 p.m. at Thekkampatti near the Mariyamman temple. The temple fell within the jurisdiction of the Sooramangalam Police Station. The appellant along with nine others were alleged to have assembled with deadly weapons and abused one Udhayam, son of Govindan, using filthy



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language and assaulting him with their hands as well as wooden logs.

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5. A case came to be registered in Cr.No.553 of 2015 on the file of the Sooramangalam Police Station under Sections 147, 148, 294(b), 323, 324 and 506(ii) of the IPC. A charge sheet was filed and the same was taken cognizance of in C.C.No.217 of 2015. Ultimately the case resulted in acquittal on the ground that the charges have not been proved beyond all doubt by the Prosecution.

6.The Commissioner of Police in the order impugned in the writ petition notes the involvement of the petitioner/appellant in a criminal case. Thus, that incident, and the pendency of the criminal case, had not been suppressed by the petitioner/appellant in the application, as oftentimes the applicants do. The rejection of the application is on the ground that the appellant has not proved his case beyond all reasonable doubt, and hence the appellant was not fit for appointment as Grade-II Police Constable.

7.We are not inclined or persuade to intervene, as the decision to employ a candidate rests ultimately within the discretion of the employer and it is that opinion that must prevail in matters of appointment. There really is no perversity or error in the order of the authority rejecting the



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candidature of the appellant.

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8. We draw support in this regard, from the judgment in *Union of India and others v. Methu Meda* [(2022) 1 SCC 1], particularly paragraph 21 thereof to the effect that the mere disclosure of the offence alleged and the result of the trial would not be sufficient and an employer cannot be compelled to appoint a candidate.

9. However, there is one mitigating factor that we wish to make note of. The appellant, at the time of the incident, was 20 years old and at the time when the impugned order was passed, on 01.11.2018, 22 years old.

10. Today, six years have elapsed pending the writ petition and writ appeal and in our considered view, the conduct of the Appellant in the interim would assume some importance. If the conduct of the appellant between then and now has not been adverse in any way, then certainly the appellant is entitled to another chance.

11. In *State of West Bengal and Others v. Mitul Kumar Jana* [2023 SCC OnLine SC 1070], the Supreme Court had had occasion to consider the case of an aspirant who had not made a full disclosure in respect to the pendency of a criminal case. While looking into the impact of



suppression of information, or furnishing of false information on the question of arrest, pendency of criminal cases and the effect of conviction/acquittal in criminal case, the Bench makes reference to the judgment of the Supreme Court of India in *Avtar Singh v. Union of India* [(2016) 8 SCC 471] reiterating the parametres set out therein at paragraph 38 as follows:

'38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourse 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,*



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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.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.'

12.In that case, the candidate had been charged of offences under Sections 147/149/447/326/526 of the IPC very similar to the charges in the present case. The Bench concludes, despite the findings of the lower authorities and the High Court on the finding of suppression of material information, that the respondent was not involved in any serious offence.

13.Considering the position that he had been honourably acquitted, the respondents were directed to consider the case of the candidate and issue an order of appointment to the post of Constable in the West Bengal Police Force. In the present case, the distinction is that the acquittal of the Appellant in on a benefit of doubt.

14.However, the Supreme Court, in the case of *Ram Lal v. State of Rajasthan & Others* [2023 INSC 1047] has observed that '*Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology*'. We take a cue



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from the ratio of that judgment, that would enure in favour of the appellant before us.

15.That apart, there has admittedly not been any suppression or non-disclosure of the appellant's involvement in the criminal case. He has been upfront about the incident of criminal charges and surely, this must count for something as well. Hence, we make the following observations.

16.The appellant may, if he so desires, respond to any upcoming calls for recruitment. While considering his candidature, and if he satisfies all other required criteria, let his conduct for the intervening period be specifically looked into. If it is found that the incident that had taken place on 28.05.2015 was a solitary instance of involvement in a crime, let the same be disavowed by the authority.

17.With these observations, this writ appeal is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
21.11.2024

Index:Yes
Speaking order
Neutral Citation:Yes
vs



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