



WP.(MD).No.399 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Dated : 18.03.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.399 of 2024**  
**and**  
**W.M.P.(MD)No.417 of 2024**

R.Dinesh

... Petitioner

Vs.

1.The Director General of Police,  
Director General of Prisons and Correctional Services,  
Whannels Road,  
Egmore,  
Chennai- 600 008.

2.The Chairman,  
Tamil Nadu Uniformed Service  
Recruitment Board,  
Old Commissioner of Police Office Campus,  
Pantheon Road, Egmore,  
Chennai – 600 008.

3.The Member Secretary,  
Tamil Nadu Uniformed Service  
Recruitment Board,  
Old Commissioner of Police Office Campus,  
Pantheon Road, Egmore,  
Chennai – 600 008.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for



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the record with related to the impugned order vide No.52691/EW.1/2022 dated 17.11.2023 and set aside the same as illegal, consequently direct the respondent to appoint the petitioner as Jail Warden.

|                 |                                                                                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr.K.Muthu Ganesa Pandian                                                                                              |
| For Respondents | : Mr.P.Veera Kathiravan,<br>Additional Advocate General<br>Assisted by<br>Mr.S.Shaji Bino,<br>Special Government Pleader |

### **ORDER**

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order vide No. 52691/EW.1/2022 dated 17.11.2023 and to direct the respondent to appoint the petitioner as Jail Warden.

2.The first respondent had published a Notification for the recruitment of Grade II Police Constable/Jail Warden for the recruitment year 2022. With the intent to join constabulary service, the petitioner duly applied for this post of Jail Warden. Having qualified in the written examination, physical fitness test, endurance test, efficiency test and medical fitness test, the petitioner was called for certificate verification. The petitioner duly submitted his certificates for verification and thereafter, he was declared as provisionally selected for the post of Jail Warden. While



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so, the impugned order of the first respondent dated 17.11.2023 came to be passed rejecting the petitioner's candidature for having involved in a crime in Crime No.129 of 2017 under Sections 147, 148, 188, 294(b), 332 IPC r/w. Sections 3 and 4 of TNPPDL Act of the Madurai City D2 Sellur Police Station. The said rejection order came to be passed on the basis of the Government Order in G.O.Ms.No.1410 Home (Pri-II) Department dated 17.10.2008. Challenging the same, this Writ Petition came to be filed.

3.The learned counsel for the petitioner submitted that during the year 2017, the petitioner participated in the agitation against the ban of Jallikattu regarding which an omnibus FIR was registered against 100 members, in which the petitioner was not named at the time of registration of the FIR. FIR at the first instance was registered in Crime No.129 of 2017 on 23.01.2017 by the Madurai City Sellur Police Station for the offences under Sections 147, 148, 341, 294(b), 332 and 188 of IPC and Sections 3 and 4 of TNPPDL act as against 11 persons and other 100 agitators. Thereafter, the case was transferred to the office of CBCID, South Madurai City and accordingly they have registered a case as Crime No.2 of 2017. After investigation, a final report was



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filed before the learned Judicial Magistrate No.IV, Madurai in the year 2017 in which the petitioner was implicated as accused No.12 and after a full-fledged trial, the learned IV Additional District Sessions Judge in Sessions Case No.373 of 2021 acquitted all the accused under benefit of doubt.

4.The learned counsel for the petitioner submitted that the petitioner never committed any heinous crime and the case was falsely foisted as against him for the alleged involvement in the agitation against the ban of Jallikattu. Already the petitioner suffered to conclude the trial and the first respondent's rejection of his provisional selection has caused irreparable loss and injury, which could never be compensated in his life. He further insisted that the impugned order came to be passed relying upon G.O.Ms.No.1410 Home (Prison II) Department dated 17.10.2008. He insisted that the said G.O., cannot be applied in all the cases without ascertaining the nature of the crime involved. In the present case, the petitioner had involved only in an agitation against the Jallikattu protest and hence, the mechanical implementation of the aforesaid Government Order in the facts and circumstance of the present case is non-est in law. Accordingly, he



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pressed for quashing the impugned order.

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5.Per contra the learned Additional Advocate General for the respondents submitted that as per G.O.Ms.No.1410 Home (Prison II) Department dated 17.10.2008 in leave of which a notification has been issued incorporating certain amendments to the Special Rules for the Tamil Nadu Jail Subordinate Services, wherein it has been stated in item number (f) as follows:-

*“(f)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 had 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 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.”*

6.Relying upon the judgment of the Hon'ble Apex Court in the case of **Avadhar Singh V. Union of India and others** reported in

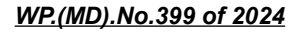


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**2016 (8) SCC 471**, the learned Additional Advocate General submitted that even in a case where the employee has made a declaration truthfully of a concluded criminal case, the employer still has the right to consider the criminal antecedents and cannot be compelled to appoint the candidate. Insisting on that point, he pressed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner, the learned Additional Advocate General appearing for the respondents and carefully perused the entire materials available on record.

8. It is needless to state that each case has to be judged on its own merits. The first respondent has rejected the petitioner's candidature relying upon G.O.Ms.No.1410, Home (Prison II) Department dated 17.10.2008. After the issuance of the said G.O., a Director General of Police has issued a Communication on 22.02.2021 under which instructions have been issued to the Commissioner of Police and Superintendent of Police of the respective districts for verification of the provisionally selected candidates. The said communication is the office memo in C.No. 1268/20889/Rect.II (1/2015) dated 17.12.2015 in which paragraph



*"6. All the appointing authorities are requested to the relevant rules, court orders (Full Judgement High Court website), details of criminal case, role date in that case, present stage of case, judgement tc, in a careful manner and issue necessary t regarding rejection of their candidature under owledge ment.*

*a. Every case has to be judged on its merits.*

*c. A case referred on "Mistake of Fact" has to be favourably viewed for the candidate.*

*d. Discharge on technical grounds ( hostile witnesses) does not entitle the candidate for automatic clearance and the appointing authorities may still reject the candidature on ground of unsuitability to do the nature of the duty.*

*e. Suppression of involvement in a case still under investigation or trial or not ending in honourable acquittal is a ground sufficient for rejection of the candidate.*

*f. Petty cases should not lead to over penalization.*

8.It is also informed that the following types of candidates were considered for appointment to the post of SI of Police/Gr.II PCs on earlier occasions.

i) *The candidates acquitted honourably prior to Police Verification.*

ii). *The personal released under probation of offenders*



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*act were treated as not involved in a criminal case, in view of Section 12 of the PO Act 1958 which stipulates that convicts released on Probation of Conduct Act or after admonition by the Court shall not suffer any disqualification attached to the conviction.*

*iii).The persons released under Juvenile Act were treated as not involved in a criminal case. Section 19 of the Juvenile Justice ( Care and Protection of Children) Act 2000 which stipulates that a Juvenile has committed an offence and has been dealt with under provision of this act shall not suffer disqualification, if any attached to conviction of an offence under such law.*

*iv).If any political affiliation on the candidate comes to notice during the Police verification, it will not be held against him, unless he is having other bad antecedents. However, he shall be instructed not to involved in such activities as per conduct rules.*

*v).The candidates whose names are deleted from the charge sheet.*

*vi).The cases treated as Mistake of fact prior to police verification.*

*vii).Some of the candidates involved in petty cases were considered.*

*viii).Accident cases were considered if the case was pending at the time of police verification and if there was no suppression of fact.*

*ix).The case in which the I.O registered the case against a minor candidates under IPC and not under Juvenile Justice Act, his case were considered for appointment.*

*x). The cases where fine was imposed up to Rs.2000/- were considered.*



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*9.The date of Police Verification is the date on which the verifying Officer ( ie. Not below the rank of SI of Police) is counter signing the verification Roll)*

*10.The persons who are acquitted under benefit of doubt (or) hostility of complainant will be treated as involved in criminal case and he will not be considered for appointment as per Rule 14(b) of TNSPSS Rules (or) Rule 13 of TNPSS Rules.*

*11.Regarding “ Honourable Acquittal”, the Hon'ble Supreme Court of India in SLP(Civil Appeal No.4842/2013 in their orders, dated 02.07.2013 ( arising out of SLP (Civil) No. 38886/2012) filed by the Commissioner of Police, New Delhi and another (Appellants) -versus-Mehar Singh have made observations in Para 21 of the said order and the same may be referred)”.*

9.In the aforesaid instructions, it has been mandated that petty cases should not lead to over penalization and some of the candidates involved in petty cases were also considered for appointment to the post of Sub Inspector of Police/Grade II Police Constables in the earlier occasions. In the instant case, the alleged offense as against the petitioner is that he participated in a protest against ban of Jallikattu during the year 2017, for which, he was implicated as 12<sup>th</sup> accused in Crime No.2 of 2017 on the file of CBCID, South Madurai City. Participating in a protest/agitation against the ban of Jallikattu with others to openly express their



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feelings, thereby publicly challenging and trying to persuade the Government to respond is a fundamental political right of the Citizens of India that stems directly from a democratic interpretation of the various provisions of Article 19. Although the right to protest is not an explicit right under the Fundamental Rights, it can be derived from the right to freedom of speech and expression under Article 19. When the right to freedom of speech, freedom of association and freedom of assembly guaranteed under Articles 19 (1)(a), Article 19 (1)(b) and Article 19(1)(c) are combined, they allow any person to peacefully gather and demonstrate against the State's Policy/decision/action/inaction. The right which flows from these Articles would nurture the roots of democracy and the object of the protest is to ensure the people play the role of watchdogs continuously ensuring their justice. Protest against ban of Jallikattu during 2017 in Tamil Nadu have historically spurred the unity of Tamilians across the State of Tamil Nadu cutting across caste, creed and religion with Tamil pride to secure the cultural sport of Tamilians namely Jallikattu, which could be dated back to the Tamil classical period of 400 - 100 BCE, a cultural ritual among the Aayar Tribal people who lived in the Mullai geographical region of ancient Tamil Nadu. The said 2000



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years old competitive Bull Taming sport in Tamil Nadu namely Jallikattu being a part of cultural heritage of Tamil Nadu, the petitioner as an enthusiastic young Tamil man had participated in the agitation against the ban of Jallikattu. The Government of Tamil Nadu vide G.O.Ms.No.99 dated 20.02.2021 Home (Courts -IV) Department as a policy decision decided to withdraw the cases registered during 2017 Jallikattu protest and the relevant portion of the said G.O., is extracted as follows:-

*"The Hon'ble Chief Minister of Tamil Nadu on the motion of Thanks to the Hon'ble Governor's Address in the Tamil Nadu Legislative Assembly on 05.02.2021 has replied that "this Government will withdraw the cases registered during 2017 Jallikattu Protest".*

*2. The Director General of Police, Head of Police Force, Tamil Nadu in this regard has furnished the details of the cases registered during 2017 Jallikattu Protest (308 cases) to be considered for withdrawal in his letter first read above.*

*3. The Public Prosecutor, High Court, Chennai in his letter second read above, has offered his considered opinion that further proceedings / prosecution, as the case may be, be dropped / withdrawn respectively, in the following manner:-*

*A. In cases where the investigation is still pending, further action may be dropped by the concerned police;*

*B. In cases where the case is pending trial, the Assistant Public Prosecutor in charge of the respective cases may be directed to move an application under Section 321 of the Code of Criminal Procedure for withdrawal of prosecution and follow*



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*the procedure prescribed therein;*

*C. In S.Nos.129 and 132 in the annexure, the cases are pending trial and Indian Railways Act is involved. Hence, a further permission from the Central Government may be obtained and produced before the Trial Court and the Assistant Public Prosecutor in charge of the respective cases may be directed to move an application under Section 321 of the Code of Criminal Procedure for withdrawal of prosecution and follow the procedure prescribed therein;*

*D. In cases where Prevention of Cruelty to Animals Act (Entry 17 of the Concurrent list of the Seventh Schedule to the Constitution of India) and Criminal Law Amendment Act [Entry 1 of the Concurrent list of the Seventh Schedule to the Constitution of India) is involved, no such permission from the Central Government may be required.*

4. The Government, after careful examination, hereby order for the withdrawal of cases registered during 2017 Jallikattu Protest (308 Cases) as per the annexure to this order, by following the procedures as opined by the Public Prosecutor, High Court, Chennai in para 3 above.”

10.The benefit of the said G.O., ought to have been extended even in the case of Crime No.2 of 2017, on the file of CBCID, South Madurai, City registered as against the petitioner and 100 other persons. I record that, the Government by issuance of the said G.O., had passed an order for the withdrawal of cases registered during 2017 Jallikattu protest as far as 308 cases, across the State of Tamil Nadu and duly all the 308 cases were withdrawn accordingly.



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11. In view of the same, this Court is of the considered view that the petitioner should not be and need not be penalized for having participated in an agitation against the ban of Jallikattu during 2017. In view of the same, I am inclined to quash the impugned order and consequently, direct the respondents to appoint the petitioner as Jail Warden within a period of 12 weeks from the date of receipt of copy of this order.

12. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
Mrn



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To

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Director General of Prisons and Correctional Services,  
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**L.VICTORIA GOWRI, J.**

Mrn

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