



W.P.(MD)No.11294 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.11294 of 2022 &
W.M.P(MD)Nos.8067 & 8068 of 2022

T.Lakshmanan

... Petitioner

VS.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Police) Department,
Fort St.George,
Chennai - 9.

2.The Chairman cum Director General of Police,
Tamil Nadu Uniformed Service,
Recruitment Board,
Anna Salai, Chennai-2.

3.The Director General of Police,
Chennai - 4.

4.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records



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connected to the impugned order vide Na.Ka.No.A4/31580/2020 dated 31.12.2021 of the fourth respondent and quash the same and further direct the respondents 3 and 4 to appoint the petitioner as second Grade Police Constable as the petitioner's appointment was rejected by wrong assessment of the respondents 3 and 4, though the petitioner was not acquitted by getting benefit of doubt, but honourably.

For Petitioner : Mr.T.Lajapathi Roy
for Mr.V.Rajiv Rufus

For Respondents : Mr.Veerakathiravan,
Additional Advocate General
Assisted by

Mr.N.Ramesh Arumugam,
Government Advocate

ORDER

The petitioner has filed this writ petition seeking Writ of Certiorarified Mandamus to call for the records in Na.Ka.No.A4/31580/2020 dated 31.12.2021 on the file of the fourth respondent and quash the same and further direct the respondents 3 and 4 to appoint him as Police Constable Grade II since his appointment was rejected by wrong assessment that he was acquitted by benefit of doubt.



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2. The petitioner has been selected for the post of Police Constable Grade II in the selection process conducted by the third respondent. But the fourth respondent has rejected the selection of the petitioner by issuing the proceedings dated 24.03.2020. The petitioner challenged the said proceedings by filing a writ petition before this Court in W.P.(MD)No.6276 of 2020 and the said petition is pending. However, the petitioner once again wrote examination for the post of Police Constable Grade II in the year 2020 and cleared the examination and became eligible for the appointment. At that stage, the fourth respondent issued the impugned proceedings dated 31.12.2021 stating that the petitioner is not eligible as he had been acquitted due to benefit of doubt in the criminal case tried against him in C.C.No.114 of 2017 before the Judicial Magistrate No.III, Tirunelveli.

3. Mr.T.Lajapathi Roy, learned counsel appearing for Mr.V.Rajiv Rufus, learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the criminal case and he was acquitted honourably. The petitioner's candidature was rejected only in



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view of his involvement in the criminal proceedings in C.C.No.114 of 2017 before the Judicial Magistrate No.III, Tirunelveli, in which case, he was acquitted. However, the said acquittal in the opinion of the fourth respondent was not an honourable, but an acquittal on benefit of doubt. In support of his contentions, he attracted the attention of this Court to the Judgments of Hon'ble Supreme of Court of India in the cases of,

(i) Union of India and others vs. Methu Meda reported in AIR ONLINE 2021 SC 854

(ii) Avtar Singh vs. Union of India and others reported in (2016) 8 SCC 471.

4. On perusal of the Judgment dated 07.12.2017 rendered in C.C.No.114 of 2017 by the Judicial Magistrate No.III, Tirunelveli, it is seen that the petitioner was acquitted. The result of the Judgment does not say that the petitioner was given with any benefit of doubt. The relevant portion of the Judgment is extracted under.

”13. இறுதியில் 1வது எதிரி மீது இதச பிரிவுகள் 294(பி), 324-ன் படியும், 2,3 எதிரிகள் மீது இதச பிரிவுகள் 294(பி), 324-ன் படியும், கீழான குற்றச்சாட்டின் படி குற்றவாளிகள் அல்ல என



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முடிவு செய்து எதிரிகளை கு.வி.மு.ச பிரிவு 248(1)ன் படி விடுதலை செய்து இந்நீதிமன்றம் தீர்ப்பளிக்கிறது.”

5. On the whole reading of the Judgment would show that the charges against the petitioner (accused) in that case could not be proved in view of the fact that the material witnesses have turned hostile and did not choose to give any evidence in favour of the prosecution.

6. Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.N.Ramesh Arumugam, learned Government Advocate has submitted that as per Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, 1978 [hereinafter referred as 'TNSPSS Rules'] persons who are acquitted on benefit of doubt or hostility of the complainant will be treated as persons involved in the criminal case and they will not be considered for appointment. It is his submission that no person shall be eligible for appointment unless he proves that he is not involved in any criminal case before police verification. For a better understanding Rule 14(b) is extracted hereunder.



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"14(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.

Explanation (1): A person who is acquitted for 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 police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as a mistake of fact shall be treated as not involved in a criminal case and can claim right for appointment only by participating in the next recruitment."

7. In the impugned order, the fourth respondent, by placing



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reliance on the Judgment of the Supreme Court rendered in the case of the **Commissioner of Police, Delhi vs. Mehar Singh**, had stated that the persons who have criminal background are not eligible for appointment in the police force. There is no doubt that a self disciplined, confidential and upright force like Police shall not accommodate persons who are involved in criminal case or have a criminal background.

8. In the instant case, the specific reason for rejection of appointment to the petitioner is that the criminal case tried against him in C.C.No.114 of 2017 before the Judicial Magistrate No.III, Tirunelveli ended in acquittal only because the witnesses did not support the case of the prosecution. In the impugned order, reference was also made to a Memorandum of the Director General of Police, Tamil Nadu in Memorandum No.1268/208889/Rect.II(1)/2015, dated 17.12.2015, wherein certain guidelines have been enunciated in the matter of scrutinizing the criminal involvement of candidates to be appointed in the Police force. The relevant guideline in the above Memorandum is extracted under.



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"The persons who are acquitted under benefit of doubt (or) hostility of complaint 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."

9. So, it is argued by the respondents that the possibility for the prosecution witnesses to turn hostile would be only because the accused would win over them or intimidate them and hence, it should be presumed that the person has criminal involvement.

10. It is unreasonable to imagine that in all cases, the witnesses turn hostile only because they were just won over or intimidated by the accused. That cannot be presumed without any background check. If the above idea is adopted mechanically, that would defeat the very object of the screening process.

11. There are many reasons for which a complainant would turn hostile. It cannot be presumed that the hostility is only due to the



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influence exerted on them by the accused.

12. Even a complainant who had given a false case and left a person to be charge sheeted could turn hostile at the time of the trial by realising the unnecessary consequences that would arise in the life of an innocent person. The complainant who had exaggerated a minor misunderstanding between himself and the accused and got it registered as a criminal case, can also have a second thought and decide not to proceed further by giving any incriminating evidence. So, without any basis, it is unfair to conclude that the complainant and his witnesses turn hostile in all such cases only because of the influence made by the accused. Even at some stretch of imagination, if the prosecution witnesses have been turned hostile due to the influence of the accused, it cannot be concluded that the accused has a criminality unless the offence for which he was charged was heinous in nature.

13. At this juncture, it worthwhile to refer the recent Judgment of the Hon'ble Supreme Court held in *Union of India and others vs. Methu Meda reported in AIRONLINE 2021 SC 854*. In the above



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Judgment it is held that the employer cannot be compelled to give an appointment to a candidate in a disciplined force, if the acquittal results due to benefit of doubt or due to witnesses turned hostile. But, the said Judgment was rendered in relation to a person charged with an offence involving a moral turpitude. So, the dictum laid in the above Judgment cannot have an automatic application to all cases.

14. In the instant case, the petitioner has been charged for the offences punishable under Sections 294(b) and 324 of IPC, which cannot be categorized as offences involving moral turpitude or heinous in nature. It is obviously only for these reasons, in *Avtar Singh vs. Union of India and others reported in (2016) 8 SCC 471.*, it is held that if a person is acquitted due to a technical reason, an employer shall consider all relevant facts and take appropriate decision. However, it is made specific that this instance would arise when the person has been charged for offences involving moral turpitude or heinous in nature. In the words of the above Judgment, it is held as follows.



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"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."

15. In cases involving trivial or less serious offences, it is always within the discretion of the employer to consider the candidature of that person for appointment, even though he was acquitted on the ground of benefit of doubt or due to any other technical reasons.

16. A Division Bench of this Court by Order dated 05.06.2023 in ***W.A.(MD)No.938 of 2020 and batch (The Director General of Police, Tamil Nadu Police Department, Mylapore, Chennai - 600 004 and another vs. Indhu Kumar)***, has summarized the preposition of law for considering criminality of the candidate selected for Police force as under.

"(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date



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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 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



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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."

17. In the above preposition laid on, point (b) is most relevant to the case on hand.

18. For the sake of further clarity, the definition of serious offence and heinous offence as defined in the Juvenile Justice (Care and



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Protection of Children) Act, 2015 are extracted below.

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"2(33) 'heinous offences' includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

(54) 'serious offences' includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years."

19. In the instant case, the petitioner has been charged for the offences punishable under Sections 294(b) and 324 of IPC, which carries a punishment of more than three years. The said offences, therefore, did not fall under 'serious offence' or 'heinous offence' category. So in all probabilities, I feel that the petitioner's case can be considered favourably without extending the scope of Explanations (1) and (2) of Rule 14(b) of TNSPSS Rules and Guidelines issued by the Director General of Police, Tamil Nadu in Memorandum No.1268/208889/Rect.II(1)/2015, dated 17.12.2015, since the petitioner was charged and tried for offences that are trivial / less serious in nature.



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20. It is to be noted that the criminal case tried against the petitioner is of the year 2017 and the recruitment fell in the years 2019 and 2020 respectively. There is no other case, for which, the petitioner has been tried or charged with. The impugned order does not speak about any other materials through which, the presumption is drawn that the petitioner had influenced the complainant to turn hostile. In such facts and circumstances, the case of the petitioner can be considered favourably by giving credit to the fact that he was not charged for serious offence / heinous offence or for any offence involving moral turpitude. Furthermore, the petitioner's involvement in the above criminal case seems to be an isolated incident. Hence, the petitioner need not be tainted with criminality even after he got acquittal, by denying appointment.

21. In the result, the Writ Petition is **allowed** and the impugned order of the 4th respondent vide Na.Ka.No.A4/31580/2020 dated 31.12.2021 is set-aside and the respondents are directed to appoint the petitioner as Grade-II Police Constable in the Tamil Nadu Special Police



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Service Recruitment for the year 2020 with notional seniority without back wages, within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.04.2024

NCC: Yes
Index : Yes
Speaking order

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To

- 1.The Secretary to Government,
Home (Police) Department,
Fort St.George,
Chennai - 9.
- 2.The Chairman cum Director General of Police,
Tamil Nadu Uniformed Service,
Recruitment Board,
Anna Salai, Chennai-2.
- 3.The Director General of Police,
Chennai - 4.
- 4.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.



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R.N.MANJULA, J.

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