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W.A.(MD) No.372 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A.(MD) No.372 of 2022
and
C.M.P.(MD) No.3796 of 2022**

S.Logesh

... Appellant

-vs-

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Home Department,
Secretariat,
Chennai - 600 009.
- 2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai - 8.
- 3.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai - 8.
- 4.The Director General of Police,
O/o. The Director General of Police,
Tamil Nadu,
Chennai - 600 004.



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5. The Superintendent of Police,
O/o. The Superintendent of Police,
Karur,
Karur District.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 22.03.2022, passed in W.P.(MD) No.17746 of 2021, on the file of this Court.

For Appellant : Mr.H.Mohamed Imran
for M/s.Ajmal Associates

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.S.R.A.Ramachandran
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The appellant questions the dismissal of his Writ Petition in W.P. (MD)No.17746 of 2021.

2. The challenge in the said Writ Petition was to the order of the fifth respondent, rejecting the claim of the appellant / petitioner for appointment to the post of Grade – II Police Constable on the ground that he has suppressed the fact that he was prosecuted for certain offences under the Indian Penal



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Code, 1860, in Crime No.180 of 2016, on the file of the K.Paramathi Police Station, Karur District.

3. It was the primary contention of the learned counsel for the appellant / petitioner before the Writ Court that the suppression *ex facie* will not disqualify the appellant / petitioner and in any event, the appellant / petitioner has been acquitted of the criminal charges by the Criminal Court. The Writ Court refused to accept the contentions and it relied upon the judgment of the Hon'ble Supreme Court in **M.V.Thimmaiah and others** vs. **Union Public Service Commission and others** reported in **2008 (2) SCC 119** to reject the claim of the appellant / petitioner. Hence, this Writ Appeal.

4. We have heard Mr.H.Mohamed Imran, learned counsel appearing for the appellant and Mr.Veera.Karthiravan, learned Additional Advocate General, assisted by Mr.S.R.A.Ramachandran, learned Additional Government Pleader, appearing for the respondents.

5. Mr.H.Mohamed Imran, learned counsel appearing for the appellant, inviting our attention to the judgment of the Hon'ble Supreme Court in **Umesh Chandra Yadav** vs. **The Inspector General and Chief Security Commissioner, R.P.F., Northern Railway, New Delhi and others** reported in



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2022 (14) SCC 244 : 2022 LiveLaw (SC) 300, would contend that mere suppression by itself will not disqualify the appellant / petitioner from seeking employment as a Police Constable. In the said case, the appellant was a Juvenile at the time of the incident and he applied for the post of Constable in the Railway Protection Force nearly 10 years after the occurrence. He was also selected and was appointed in the year 2014. On 19.02.2015 the appointment was cancelled. It is, in those circumstances, the Hon'ble Supreme Court held that suppression *per se* would not disqualify and an opportunity should be given to the employee.

6. In the case on hand, we find that the appellant has been acquitted of the criminal charges on the ground that the witnesses for the prosecution turned hostile.

7. In **Satish Chandra Yadav vs. Union of India and others** reported in **2023 (7) SCC 536 : 2022 SCC OnLine SC 1300**, dealing with suppression, the Hon'ble Supreme Court has observed as follows:-

"93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not



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automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc. has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service."

8. In a subsequent judgment in **State of Madhya Pradesh and others** vs. **Bhupendra Yadav** reported in **2023 SCC OnLine SC 1181**, the Hon'ble Supreme Court had held that if an acquittal is based on a compromise or the eyewitnesses turning hostile, the employer would be justified in refusing to include the delinquent employee into its pool. While doing so, the Hon'ble Supreme Court observed as follows:-

"25. We are, therefore, of the opinion that mere acquittal of the respondent in the criminal case [Vide Crime No. 64/2015, registered at PS Isagarh, District Ashoknagar, under Sections 341, 354 (D), 323, 34 IPC and under Sections 7, 8 and 11(d)/ 12 of the Protection of Children from



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Sexual Offences Act, 2012, for short 'the POCSO Act'] would not automatically entitle him to being declared fit for appointment to the subject post. The appellant-State Government has judiciously exercised its discretion after taking note of all the relevant factors relating to the antecedents of the respondent. In such a case, even one criminal case faced by the respondent in which he was ultimately acquitted, apparently on the basis of being extended benefit of doubt, can make him unsuitable for appointment to the post of a Constable. The said decision taken by the appellant-State Government is not tainted by any malafides or arbitrariness for the High Court to have interfered therewith. As a result, the judgment dated 17th November, 2017, passed by the learned Single Judge is upheld while quashing and setting aside the impugned judgment dated 24th January, 2018, passed by the Division Bench of the High Court. The appeal is allowed. Parties are left to bear their own costs."

9. In the case on hand, we find that the employer exercised its discretion and concluded that the appellant / petitioner, having made a false declaration, cannot be considered for service. Even assuming that such a false declaration might not disqualify him, the fact that the appellant was acquitted because the prosecution witnesses turned hostile would still militate against him, especially in light of the recent pronouncement by the Hon'ble



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Supreme Court in **State of Madhya Pradesh and others** vs. **Bhupendra Yadav** [cited supra].

10. We, therefore, see no reason to interfere with the order of the learned Single Judge. Hence, this Writ Appeal fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[R.S.M., J.] [L.V.G., J.]
09.08.2024

To

1.The Principal Secretary,
State of Tamil Nadu,
Home Department,
Secretariat,
Chennai - 600 009.

2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai - 8.

3.The Member Secretary,
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- 4.The Director General of Police,
O/o. The Director General of Police,
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