



W.A.(MD) No.166 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on 22.07.2024	Judgment Pronounced on 02.08.2024
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CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.166 of 2019

A.Brabhu Alwar

... Appellant/
Petitioner

Vs.

1.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
No.807, P.D.V. Sengalvaraya Naicker Maligai,
Anna Salai, Chennai-2.

2.The Director General of Police,
Kamarajar Salai,
Kailasapuram,
Mylapore, Chennai-4.



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3. The Additional Director General of Police,
Inspector General of Prisons,
Egmore, Chennai-8.

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

... Respondents/
Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 20.12.2018 made in W.P.(MD) No.25146 of 2018 on the file of this Court.

For Appellant : Mr.R.Jeyaprakash
for Mr.D.Selvanayagam

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.A.Baskaran
Additional Government Pleader

JUDGMENT

N.Seshasayee, J.

This appeal is preferred challenging an order dated 20.12.2018 dismissing W.P.(MD) No.25146 of 2018.



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2. The backdrop facts which provide the setting for this appeal may be stated as below:

- (a) In June, 2017, the first respondent herein came out with a notification inviting application from eligible candidates for the post of Grade-II Police Constable / Grade-II Jail Warder / Fireman. The appellant herein applied for the post of Jail Warder.
- (b) Selection Process commenced with a written test on 28.07.2017, and the appellant has participated in the selection process. Indeed, his name was even included in the provisional list of selected candidates.
- (c) However, on 17.11.2017, the third respondent rejected the candidature of the appellant on the ground that during character verification, it has come to light that the appellant was involved in a case in Crime No. 186/2016 of Alwar Thirunagar Police Station for the offences punishable under Sections 294(b), 323 and 506(ii) IPC. This information however, was not disclosed by the appellant in his application.



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(d) Aggrieved by the said order rejecting his candidature, the appellant challenged the same in W.P.(MD) No.23875 of 2017. Placing reliance on the dictum of the Hon'ble Supreme Court in ***Joginder Singh vs. Union Territory of Chandigarh*** [(2015) 2 SCC 377] and ***Avtar Singh vs. Union of India and others*** [(2016) 8 SCC 471], the learned Single Judge of this Court, set aside the said order of rejection, and remanded the matter back to the third respondent herein to reconsider the case of the appellant.

(e) Thereafter, the third respondent passed yet another order, dated 17.05.2018, but rejected the appellant's candidature yet again. This became the subject matter of challenge in the present writ petition. And it came to be dismissed by the learned Single Judge *vide* his order dated 20.12.2018. The line of reasoning of the learned Single Judge is that the ratio of the Hon'ble Supreme Court in ***Avtar Singh's*** case requires the appointing authority to consider the nature of the offences and the circumstances in which a candidate came to be acquitted, and



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in the instant case, the third respondent took note of the fact that the appellant had only been given a benefit of doubt by the learned Magistrate, since the witnesses had turned hostile in C.C.No.200/2017, and that in ***Union Territory, Chandigarh Administration Vs Pradeep Kumar*** [C.A.No.67 of 2018, dated 08.01.2018], the Hon'ble Supreme Court has held that it is for the appointing authority to consider the nature of the offences and the nature of acquittal, and if the authority has exercised its discretion properly, then the Court might not sit in judgment over the same.

This is now under challenge in this appeal.

3. Heard both sides. The learned counsel for the appellant submitted that going by the ***Avtar Singh's*** case dictum, the offence is not heinous one and the fact that the witnesses have turned hostile need not necessarily mean that the accusation was genuine, but can also imply that the appellant was falsely implicated in a criminal case. He added that while the learned Single Judge had relied on certain principles that flow from ***Avtar Singh's*** case, if the entire judgment is closely read, it provides the way for appreciating the case of the



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appellant favourably. He also placed reliance on the authority of the Hon'ble Supreme Court in ***Ravindra Kumar Vs State of U.P.*** [(2024) 5 SCC 264].

4. Per contra, the learned Additional Advocate General submitted:

- a) the rejection of the writ petitioner's case has little to do with the alleged circumstances attending the appellant's involvement in criminality, but about the rule that applies to him. In terms of the Annexure provided under Rule 6(f) of the Tamil Nadu Jail Subordinate Service Rules, a person should not have been involved in any criminal case before police verification. And it is qualified by that two Explanations of which the first Explanation is contextually relevant. According to it, if a candidate is acquitted or discharged on benefit of doubt or due to the fact that the complainant had turned hostile, his candidature should be treated as a person involved in a criminal case. In the present case, inasmuch as the appellant had been acquitted only due to the fact that the witnesses had turned hostile, Explanation 1 to Rule 6(f) will come to play, which implied the third respondent's decision to reject the appellant's candidature might not be interfered with.

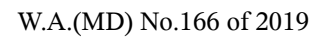


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- b) He also added that *de hors* the said contention, so far as the 2017 Notification is concerned, the vacancies have already been filled up and there may available any vacancy where the appellant could be fitted in, more so when candidate whose appointment is likely to be affected is not arrayed as a party for this court afford an opportunity of hearing to such person.
- c) So far as the dictum in ***Ravindra Kumar***'s case is concerned, there is no service rule that provides for disqualification of a candidate if he or she is acquitted owing to witness turning hostile similar to Explanation I to Rule 6(f) as stated above.

5. After weighing the rival submissions in proper perspective, this Court holds that what separates the appellant and his appointment is Explanation I to Rule 6(f) in the Appendix to Tamil Nadu Jail Subordinate Service Rules. As argued by the learned Additional Advocate General, where there is a statutory Rule in place, then that needs to be respected unless it is declared as



6. The learned counsel for the appellant's submission that where the witness turns hostile that can also imply that the criminal case might have been foisted against a candidate is concerned, it surely is a possibility, but the court cannot presume the same. At least the evidence of the witnesses should have been made available for the court to gather some facts for it to form an opinion about the possibility that the criminal case might have been foisted against the candidate. In the instant case the evidence of witness is not made available.



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7. In conclusion, this appeal is dismissed, and the order of the learned single Judge dated 20.12.2018 made in W.P.(MD) No.25146 of 2018 is confirmed.

No costs.

(N.S.S., J.)

(P.V.M., J.)

02.08.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

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and
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ABR

Pre-delivery Judgment made in
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