



W.P.(MD)No.11534 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.08.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.11534 of 2018

and

W.M.P.(MD)No.10504 & 10505 of 2018

S.Sathiyaraj

... Petitioner

/Vs./

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Home (Police) Department,
Secretariat, Chennai.

2.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
No.807, 2nd Floor, Anna Salai, Chennai.

3.The Additional Director General of Police,
O/o.The Additional Director General of Police,
Inspector General of Prisons,
Egmore, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in No.3583./EW.1/2017-2 in dated 17.05.2018 on the file of respondent No.3 and quash the same as illegal and consequently direct the respondent No.3 to appoint the petitioner for



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the post of Tamil Nadu Police Constable Grade II/Jail Warden/Firemen for the year 2017 within the time period stipulated by this Court.

For Petitioner : Mr.G.Karthik
for M/s.S.Rajasekar &
Mr.T.Aswin Rajasimman
For Respondents : Mr.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 17.05.2018 passed by the third respondent rejecting the plea of the petitioner for appointment to the post of Grade II Jail Warden.

2. The third respondent, in the impugned order had reconsidered the petitioner's plea, pursuant to the order dated 09.01.2018 passed by this Court in WP(MD)No.22632 of 2017. This Court, by the aforesaid order, passed in the aforesaid writ petition, had directed the third respondent to consider the case of the petitioner with regard to his plea for appointment to the post of Grade II Jail Warden for the year 2017



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within a period of twelve weeks from the date of receipt of a copy of the said order.

3. According to the learned counsel appearing for the petitioner, the circumstance under which the petitioner's plea has been rejected will not fall within the circumstance as laid down by the Hon'ble Supreme Court in *Avtar Singh vs. Union of India and Others* reported in **2016 (8) SCC 471** for the purpose of rejecting the plea of the petitioner for appointment to the post of Grade II Jail Warden.

4. The learned counsel appearing for the petitioner would further submit that the FIR registered against the petitioner based on a complaint lodged by the family members of his wife is a trivial case and subsequently, the criminal case registered against the petitioner had also ended in acquittal by giving benefit of doubt to the petitioner and therefore, the plea of the petitioner seeking for appointment to the post of Grade II Jail Warden ought to have been granted by the third respondent. He also drew the attention of this Court to the impugned order passed by the third respondent and would submit that without considering the fact



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that the criminal case lodged against the petitioner had ended in acquittal by giving benefit of doubt to him and the case involved is a trivial case, the third respondent has once again reiterated the earlier order passed by them, which was the subject matter of the earlier writ petition namely, WP(MD)No.22632 of 2017.

5. The learned counsel appearing for the petitioner also relied upon the judgment of the Division Bench of this Court dated 05.06.2023 rendered in a batch of writ appeals in WA(MD)Nos.938 of 2020 batch and he would submit that while rejecting the petitioner's plea for appointment, the respondents ought to have taken into consideration the gravity of the offence. According to him, the same was not taken into consideration by the third respondent, while rejecting the petitioner's plea seeking for appointment to the post of Grade II Jail Warden.

6. However, the learned Special Government Pleader appearing for the respondents reiterated the contents of the counter affidavit filed by the respondents before this Court. She also drew the attention of this Court to the Rule, which has been extracted in the counter affidavit filed



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by the third respondent in paragraph number 6 and would submit that only in accordance with the said Rule and its Explanations, the petitioner's plea for appointment to the post of Grade II Jail Warden has been rejected. She would submit that as per the Explanation I of the aforesaid rule, it is clear that even if a person is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile, he shall be treated as a person involved in a criminal case. According to her, since the petitioner has been registered with a case in Crime No.145 of 2013 under Sections 147, 341, 294 (b), 323 and 506(ii) of IPC r/w Section 3(1) of SC/ST(POA) Act and those being heinous offences, the petitioner's plea has been rightly rejected under the impugned order.

7. Rule 6 (f) of the Special Rules for the Tamil Nadu Jail Subordinate Service reads as follows:-

“6.Other qualifications.—No person shall be eligible for appointment to the posts and by the method specified in column (1) and (2) of the Annexure unless he possess the qualifications specified in the corresponding entries in column (3) thereof:-

.....

ANNEXURE



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(referred to in rule 6)

<i>Post</i>	<i>Method of Recruitment</i>	<i>Qualification</i>
..... <i>Warders in Central, District and Special Jails, Special Sub-Jails and Petty Officers in Borstal School -</i>	 <i>Direct recruitment</i>	 <i>(f) A person has not involved in any criminal case before police verification.</i> <i>Explanation(1).—A person who is acquitted or 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.</i> <i>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.</i>

8. Explanation I to the aforesaid Rule makes it clear that even if a person is acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile, he shall be treated as a person involved in a criminal case.



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9. In the instant case, admittedly the petitioner was acquitted only by giving benefit of doubt to him. The complainant had also turned hostile and had withdrawn the complaint. Only under those circumstances, the Criminal Court had acquitted the petitioner. The offences registered against the petitioner are serious in nature. The petitioner was admittedly charged with the offences under Sections 147, 341, 294 (b), 323 and 506(ii) of IPC r/w Section 3(i) of SC/ST(POA) Act.

10. In the impugned order, the third respondent has taken into consideration the various decisions of the Hon'ble Supreme Court including the decision rendered by the Hon'ble Supreme Court in *Avtar Singh's* case cited supra, which had laid down the guidelines with regard to the circumstances, under which stringent action could be taken by the employer against the employee by exercising its discretion. In the impugned order, the third respondent has also extracted the relevant portion in *Avtar Singh's* case cited supra, which is reproduced hereunder:-



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“38. 5. In a case where the employee has made declaration turtfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.”

11. In paragraph No.6 of the impugned order, the third respondent has also taken into consideration the fact that the petitioner was involved in a criminal case and due to the same, the petitioner would not fit into the disciplined force, where every member is expected to honestly and sincerely report the information coming to their knowledge in the public interest.

12. The third respondent has also observed in the impugned order that the members of the Department are entrusted with an important responsibility of upholding the rule of law, maintenance of prison security, prevention of crime etc., The bad antecedents of the petitioner were considered by the third respondent and only thereafter, the third respondent has rejected the plea of the petitioner to be appointed to the post of Grade II Jail Warden.



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13. The decision relied upon by the learned counsel appearing for the petitioner rendered recently by this Court in a batch of writ appeals in WA(MD)Nos.938 of 2020 batch, is not applicable to the present case, since the decision was rendered only recently subsequent to passing of the impugned order and further, the criminal case registered against the petitioner cannot be treated to be a trivial case. This Court does not find any infirmity in the findings rendered by the third respondent in the impugned order.

14. In the result, there is no merit in this writ petition and this writ petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

05.08.2024

Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:

- 1.The Principal Secretary to Government,
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- 2.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
No.807, 2nd Floor,
Anna Salai, Chennai.
- 3.The Additional Director General of Police,
O/o.The Additional Director General of Police,
Inspector General of Prisons,
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Order made in
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