



WP.(MD).No.20072 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20072 of 2023

and

W.M.P.(MD)Nos.16539 and 16540 of 2023

R.Dhesingu Raja

... Petitioner

Vs.

1.The Director General of Police,
O/o. the Director General of Police,
Chennai - 4.

2.The Superintendent of Police,
O/o. the Superintendent of Police,
Ramanathapuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in C.No.Estt.II(1)/14100/2022 dated 26.07.2023 on the file of the respondent no.2 and quash the same as illegal and consequently for a direction, directing the respondent no.2 to appoint the petitioner in the post of Grade II Police Constable.

For Petitioner	: Mr.T.Aswin Rajasimman For M/s.Lajapathi Roy and Associates
For Respondents	: Mr.P.Veera Kathiravan, Additional Advocate General



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Assisted by
Mr.C.Baskaran
Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in C.No.Estt.II(1)/14100/2022 dated 26.07.2023 on the file of the second respondent and to direct the second respondent to appoint the petitioner in the post of Grade II Police Constable.

2.The Tamil Nadu Uniformed Service Recruitment Board conducted recruitment of Grade II Police Constable for the year 2022, inviting online application for the post of Constable along with other posts such as Fireman and Jail Warden. The petitioner made an application for the said selection process. The petitioner was duly qualified in the written examination, physical measurements test, endurance test and physical efficiency test followed by certificate verification and medical fitness. After clearing all the tests, the petitioner was provisionally selected to the post of Grade II Police Constable (TSP). However, his selection was cancelled by the second respondent vide impugned order dated



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26.07.2023 citing the Rule 13(b) and 13(e) of the Tamil Nadu Special Police, in which it has been stated that the petitioner was involved in a criminal case, which is an accident case. Challenging the same, this Writ Petition came to be filed.

3.The learned Senior Counsel appearing for the petitioner submitted that the petitioner was involved in an accident case and a criminal case was registered in this regard as Crime No.287 of 2016 in Mudukulathur Police Station under Sections 279, 337 of IPC @ 279, 338 of IPC. After a full-fledged trial, the petitioner was acquitted on the grounds of benefit of doubt before the learned Judicial Magistrate, Mudukulathur on 09.10.2018. The petitioner while submitting his online application did not suppress any material fact in his application with respect to the registration of the aforesaid criminal case. However, the impugned order came to be passed by the second respondent without application of mind.

4.The learned Senior Counsel for the petitioner further submitted that admittedly the petitioner herein has been involved in an accident case in Crime No.287 of 2016 of the Mudukulathur Police Station and the same ended in acquittal. He further



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submitted that the petitioner had disclosed the registration of the said crime both in his application as well as during the time of police verification. As such, there had been no suppression of facts on his side. He further submitted that the Director General of Police has laid down instructions for the selection of candidates. In terms of the said guidelines, when there was no suppression as to the involvement of the candidate in an accident case, this case is liable to be considered as an exceptional one in view of the proceedings of the Director General of Police dated 22.02.2021. On that basis, the petitioner would be entitled for appointment and the learned Senior Counsel pressed for allowing the Writ Petition.

5.However, the learned Additional Advocate General relying upon Rules 13(b) and 13(e) of the Tamil Nadu Special Police Subordinate Service Rules and Tamil Nadu Police Subordinate Service Rules respectively submitted that, no person shall be eligible for appointment to the service by direct recruitment unless satisfying the appointing authority that his character and antecedents are such as to qualify him for such service and that he has not involved in any criminal case before police verification. Relying upon the order passed by this Court in W.P.(MD)No.8345 of



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2011 dated 27.02.2014 in the case of **J.Alex Ponseelan V.**

Director General of Police, the learned Additional Advocate General observed that Clause (iv) of Rule 13(b) and 13(e) of Tamil Nadu Special Police Subordinate Rules together with Explanations 1 and 2 have been introduced only for the purpose of recruiting persons, who are having rectitude and not persons involved in criminal cases. He further submitted that the constitutional validity of Rule 13(e) of the Tamil Nadu Special Police Subordinate Rules has been upheld by the Hon'ble Full Bench of this Court in W.P.No. 38289 of 2005 dated 28.02.2008 in the case of **Manikandan and Others V. the Chairman, Tamil Nadu Uniformed Service in 2008 (2) CTC 1997**. He further insisted that only because the petitioner was involved in a criminal case in Mudugulathur Police Station in Crime No. 287 of 2016 under Sections 279, 337 of IPC @ 279, 338 of IPC and thereafter, acquitted under Section 255(1) of Cr.P.C., on the grounds of benefit of doubt by the learned Judicial Magistrate, Mudugulathur, the respondent has rightly considered treated the petitioner as a person involved in criminal case and hence, the impugned order has been passed in accordance with law and pressed for dismissal of the Writ Petition.



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

7. Rule 13(b) of the Tamil Nadu State Police Subordinate Service Rules was put to challenge before this Court and the validity of the same was upheld by the decision of the Hon'ble Full Bench of our Court in a judgment reported in **2008 (2) CTC 97** in the case of **Manikandan and others V. Chairman, Tamil Nadu Uniform Services**. The law laid down in the Hon'ble Full Bench was again referred to the Hon'ble Larger Bench and the Hon'ble Larger Bench by its decision reported in **2014 (2) CTC 337** in the case of **J.Alex Ponseelan V. Director General of Police**, which only confirmed the Hon'ble Full Bench decision as a good law, but also had held that Rule 13b(iv) together with Explanation 1 and 2 of Tamil Nadu Police Subordinate Service Rules to be intra-vires the Constitution. For the sake of convenience, Rules 13(b) and 13(e) of the Tamil Nadu State Police Subordinate Service Rules is extracted as follows:-

“No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority that,



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(b)that his character and antecedents are such as to qualify him for such service;

(e)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."

8.That apart, after relying upon various judgments of the Hon'ble Supreme Court, 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 Nos.6 to 11 are extracted as follows:-

"6. All the appointing authorities are requested to go



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through the relevant rules, court orders (Full Judgement available in High Court website), details of criminal case, role of the candidate in that case, present stage of case, judgement delivered etc, in a careful manner and issue necessary endorsement regarding rejection of their candidature under proper acknowledgement.

7.The following points should also be considered before issuance of the endorsement.

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

b. "Honourable acquittal" restores the right of individual. Hence, honourable acquittal before the date of police verification means that the candidate must be considered favourably.

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 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.

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



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counter singing 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.A three-Judge Bench of the Hon'ble Supreme Court in the case of **Avatar Singh V. Union of India and others**, reported in **2016 (8) SCC 471**, has dealt with a similar case and the relevant portion of which is extracted as follows:-

“In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to the decision of such case.”

10.Be that as it may, in the instant case, obviously, the petitioner has been implicated in Crime No.287 of 2016 of



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Mudugulathur Police Station, for offences under Sections 279, 337 of IPC @ 279, 338 of IPC. After a full-fledged trial, on the grounds of benefit of doubt, the learned Judicial Magistrate, Mudugulathur had acquitted the petitioner on 09.10.2018. Admittedly the petitioner did not suppress any material fact in his application. In the light of the Communication of the DGP, dated 22.02.2021, extracted supra, it is made clear that accident cases were considered, if the case was pending at the time of police verification and if there was no suppression of fact, the application cannot be rejected in that aspect. However, in the instant case, the petitioner was acquitted as early as on 09.10.2018, even before he made his application to the post of Grade II Police Constable in response to the Notification of the respondent Board in the year 2022. Instructions of the DGP vide Communication dated 22.02.2021, has also made it clear that every case has to be judged on its own merits.

11. In view of the same, considering the nature of the case in which the petitioner has been implicated and later acquitted after a full-fledged trial and considering the fact that the same was only an accident case which ended up in acquittal, this Court hereby quash



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the impugned order of the respondent Board dated 26.07.2023 and consequently, direct the second respondent to appoint the petitioner in the post of Grade II Police Constable within a period of 12 weeks from the date of receipt of copy of this order.

12. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.03.2024

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

To

1. The Director General of Police,
O/o. the Director General of Police,
Chennai-4.
2. The Superintendent of Police,
O/o. the Superintendent of Police,
Ramanathapuram District.



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L.VICTORIA GOWRI, J.

Mrn

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