
(2012) 01 MAD CK 0293
In the Madras High Court
Case No : Writ Appeal No. 636 of 2010

C. Somasundaram

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) LabIC 130

Hon'ble Judges : R. Karupiah, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Lajapathi Roy, for the Appellant; M. Govindan, Spl. Govt. Pleader for Respondents, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The present writ appeal is against the order dated 03-09-2009 made in the Writ Petition in W.P. (MD) No. 6034 of 2008, rejecting the appellant's prayer for a declaration that Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules in Explanation (2) is null and void and ultra vires the Constitution to the extent to which it states that a person involved in a criminal case at the time of police verification subsequently ended in "honourable acquittal" or treated as "mistake of fact", shall be treated as not involved in a criminal case and the petitioner can claim right for appointment only by participating in the next recruitment. The petitioner seeks thereby the consequential relief to direct the first respondent to appoint the petitioner as a Sub-Inspector of Police. A perusal of the order of the learned single Judge shows that applying the decision of this Court in W.P. No. 199 of 2008 etc., dated 28-11-2008, wherein a similar prayer was rejected, this Court, by an order dated 03-09-2009, dismissed the Writ Petition in W.P. (MD) No. 6034 of 2008. As against the dismissal order, the present writ appeal has been filed before this Court.

2. The appellant herein applied for the selection to the post of Sub-Inspector of

Police in the Tamil Nadu Police Department in the year 2006. The appellant was stated to have disclosed the pendency of the criminal case in Crime No. 128 of 2003, wherein he was implicated as the fourth accused. Ultimately, the said case resulted in a judgment, dated 10-09-2003, acquitting the appellant herein giving him the "benefit of doubt". As against the judgment in C.C. No. 212 of 2003, the appellant herein preferred a criminal revision in Cri.R.C. No. 289 of 2008, wherein this Court, by an order dated 28-02-2008, modified the judgment of the court below from the "benefit of doubt" to the one of "honourable acquittal".

3. A perusal of the judgment of this Court dated 28.02.2008 shows that on consideration of evidence that the eye-witnesses did not support the prosecution case about the presence of the petitioner in the scene of occurrence therein, this Court modified the judgment in the context of the factual finding in paragraph 8, making it one of Hon"ble acquittal. This Court pointed out that the perusal of the judgment of the learned Magistrate at paragraph 7 showed that all the eye-witnesses had categorically stated that the accused had not attacked the victims.

4. It is seen from the narration of facts in the affidavit that admittedly, the appellant herein was found eligible in the physical and medical examination conducted for selection to the post of Grade-II Police Constable for the year 2003-2004. Thus, even though the petitioner was successful on the physical test, by proceedings dated 23.01.2006, the first respondent stated that on account of a criminal case in Crime No. 128 of 2003, the prior antecedent and character was not satisfactory. Thus, the petitioner was not selected. The petitioner challenged the same in W.P. (MD) No. 2983 of 2006 before this Court and the same was dismissed. For the recruitment conducted for post of Sub-Inspector of Police in the year 2006, the petitioner passed the physical eligibility examination and was called to appear before the Medical Board of the Rajaji Hospital for medical examination. The appellant was found qualified in the medical test. By proceedings dated 19.12.2007, the first respondent, Director General of Police, Chennai, stated that the petitioner was not eligible to be appointed for the post of Sub-Inspector of Police, since the petitioner had suppressed the information regarding the involvement of a criminal case. Subsequently, by proceedings, dated 31.12.2007, the respondents pointed out that in the verification column of the application, the applicant had disclosed the criminal case. However, the first respondent viewed that the antecedent and character of the applicant was not satisfactory. Hence, he was not entitled for the selection as per Rule 13(b) of the Tamil Nadu Police Subordinate Service Rules. This resulted in filing of the Writ Petition in W.P. (MD) No. 661 of 2008 and the same was withdrawn on 13.06.2008.

5. As already pointed out, this appellant has approached this Court by way of a revision in criminal revision case in Cri.R.C. No. 289 of 2008. On considering the evidence, this Court pointed out that the judgment of the criminal court had to be read as the judgment of "honourable acquittal". The appellant now states that in the light of this findings, he is entitled to be considered for appointment to the

post of Sub-Inspector of Police. The last recruitment for appointment to the post of Sub-Inspector of Police was made in the year 2006 and that as on the date of recruitment, the appellant was 28 years old. Since the order of this Court dated 28.02.2008, resulting in honourable acquittal dates back to the order of the criminal Court dated 10.09.2003, the petitioner is entitled to be considered for appointment to the post of Sub-Inspector of Police with reference to the selection for the year 2006. The petitioner filed the Writ Petition that Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules in Explanation (2) is arbitrary, illegal and violative of Article 14 of the Constitution of India. As against the order of dismissal of the Writ Petition in W.P. (MD). No. 6034 of 2008, the writ petitioner has preferred the present writ appeal.

6. Learned counsel appearing for the appellant/writ petitioner drawing our attention to the judgment of this Court reported in D. Mahadevan Vs. The Director General of Police, , submitted that considering the fact that the judgment of the criminal court is to be read as the one of "honourable acquittal", suitable direction has to be issued to the respondents for his appointment to the post of Sub-Inspector of Police.

7. Per contra, the learned Special Government Pleader appearing for the respondents referred to a decision of the Full Bench of this Court in Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, , wherein, the Full Bench of this Court upheld the provisions of the Act, holding that the employer can prescribe qualifications for any appointment and it includes prescription of disqualifications also. Thus, this Court held that when the Rule passes the twin tests of being founded on an intelligible differentia and the same having nexus with the objects sought to be achieved, it cannot be said to be violative of Articles 14 and 16 of the Constitution of India. This Court pointed out that the Rule merely provides a check post or a filter point to ensure that only those who had a clean record of personal life are admitted into the system. Thus, by virtue of Explanation 1 to Clause IV of Rule 14(6) of the Tamil Nadu Special Police Subordinate Service Rules, a person acquitted giving him the benefit of doubt or discharged in a criminal case would still be considered as disqualified for selection at the pleasure of the State and that the same cannot be termed as illegal or unjustified. Thus, upholding the provision, this Court rejected the case of the applicant therein for not disclosing the criminal case at the earliest point of time when the application was filled up. This Court further held that the subsequent disclosure would not cure the defect.

8. A perusal of Explanation 2 to Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules, shows that a person involved in a criminal case at the time of police verification, subsequently, ending up in an "honourable acquittal" or treated as a "mistake of fact" shall be considered, as not involved in a criminal case and the said candidate can claim right for appointment only by participating in the next recruitment. As far as the reliance on the decision, reported in Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services

Recruitment Board, concerned, the same is with reference to Rule 14(b) Explanation 1 and the facts on the disclosure of involvement in the criminal case, in the application.

9. As far as the present case of the appellant/writ petitioner is concerned, admittedly, as on the date of police verification on 06.08.2007, the judgment of the trial Court was there in C.C. No. 212 of 2003 dated 10.09.2003 which merely read as a case of giving him the "benefit of doubt". However, on a revision made, by judgment dated 28.02.2008 in CrI.R.C. No. 289 of 2008, this Court held that when the eye-witnesses had clearly pointed out that the accused had not at all attacked the complainant therein, the question of treating the case as one of giving "benefit of doubt" would not arise; on the other hand, the same should be treated as an "honourable acquittal".

10. As rightly pointed out by the learned counsel for the appellant/writ petitioner, in the decision reported in D. Mahadevan Vs. The Director General of Police, , this Court held that where, after fully considering the evidence, it is found that the prosecution had failed to prove the charges, the same would amount to "honourable acquittal". Thus, with the judgment on hand in the petitioner's own case, treating the acquittal as "honourable acquittal", rightly, the petitioner contends that the candidature of the petitioner needs to be considered for selection. However, given the fact that the Explanation 2 to Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service Rules clearly pointed out that the candidature could be considered for appointment only by participating in the next recruitment, this Court directs the first respondent herein to consider the candidature of the appellant/writ petitioner who had passed the examination as well as the physical fitness test in the examinations conducted in the year 2006, in the immediate next selection announcement.

11. Thus, on the face of the above position, the Director General of Police is directed to consider the candidature of the appellant/writ petitioner in the next announcement for the selection of candidates to the post of the Sub-Inspector of Police, subject to the appellant passing the physical fitness test. It is seen that the petitioner is stated to have come under the category of Backward Class. As on the date of filing of the Writ Petition, he was 28 years old. Considering the passage of time thereafter wards in passing the orders in the Writ Petition and thereafter, in the writ appeal, in fitness of things, this Court feels that the petitioner be considered for selection, if otherwise found fit in the immediate next selection announcement process. Thus, taking note of the orders passed in the criminal case in CrI.R.C. No. 289 of 2008, the respondents shall consider the candidature of the appellant/writ petitioner, subject to his satisfying the other qualifications other than the age, for the purpose of appointment to the post of Sub-Inspector of Police in the coming recruitment only.

In the result, this Writ Appeal stands allowed. No costs.