

(2008) 03 MAD CK 0060
In the Madras High Court
Case No : Writ Petition No. 976 of 2008

D. Mahadevan

APPELLANT

Vs

The Director General of Police

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 300, 300(1), 323, 325
Tamil Nadu District Police Act, 1859 — Section 10, 8
Tamil Nadu Police Subordinate Services Rules, 1953 — Rule 13, 14, 3

Citation : (2008) 4 MLJ 88

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Ravi Shanmugam, for the Appellant; Dhandapani, Spl. G.P., for the Respondent

Judgement

Prabha Sridevan, J.—Petitioner was appointed as Grade-II Police Constable on 1.12.2003. He applied for appointment as Sub Inspector

of Police when the Tamil Nadu Uniformed Services Recruitment Board notified the vacancies. The petitioner had come out successfully in the

physical efficiency test, written test and viva voce test. He had secured 75% marks and therefore, according to him, he was fully qualified to be

appointed as Sub Inspector of Police. However, he was involved in Crime No. 118 of 1999 and the question in this writ petition is, whether this

will affect his appointment.

2. The relevant facts to be noted are as follows:

On 14.4.1999, the Sub Inspector of Police, Wallajahbad registered Crime No. 118 of 1999 against the petitioner and two others under Sections

341, 323 and 325 of the Indian Penal Code. The charge sheet was filed and the case was taken up for trial in C.C. No. 263 of 1999. After a

detailed trial, on 27.10.2003, the learned Judicial Magistrate, Kancheepuram acquitted the petitioner on the ground that the case has not been

proved beyond reasonable doubt. The said acquittal has become final. The petitioner had not mentioned in his application form that he had been

involved as an accused in a criminal case when he got appointed as Grade-II Police Constable. Therefore, he was issued with a charge memo in

P.R. 24 of 2005 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules. The charge was that the petitioner has suppressed the fact

of his involvement as an accused in the criminal case and had furnished a false declaration in the verification roll and had secured the appointment.

An oral enquiry was conducted and the petitioner gave his explanation that the criminal case had ended in an acquittal on 27.10.2003 and his

appointment was subsequent on 1.12.2003 and therefore, there was no suppression. On 8.3.2006, the Commandant, Tamil Nadu Special Police

II Battalion passed final orders imposing the punishment of reduction in time scale of pay by two stages for two years without cumulative effect and

the petitioner is well nearing completion of suffering the punishment.

3. On 19.12.2007, the respondent passed an order in Na.Ka. No. 134857/Appt. 2(1)/2007 that since the petitioner had suppressed the fact of

his involvement in a criminal case, he is ineligible to be appointed as Sub Inspector of Police. On 31.12.2007, the respondent again passed another

order in the same proceedings stating that the earlier order dated 19.12.2007 was incorrect and that the petitioner had not suppressed the fact that

he was involved in the criminal case. But however, the respondent, by his impugned order, held that the petitioner cannot be appointed as Sub

Inspector of Police as per Rule 13(b) of the Special Rules of the Tamil Nadu Police Subordinate Service Rules which provides that no person shall

be eligible for appointment "unless he satisfies the appointing authority that his character and antecedents are such to qualify him for such service".

Against this order, the present writ petition has been filed.

4. Learned counsel for the petitioner submitted that the petitioner admittedly did not mention his involvement in the criminal case when he had

applied for the post of Constable, but that was because he was under the bona fide impression that since he had got acquitted by then, it was not

necessary to mention it and after appointment, he had faced disciplinary

proceedings and he had been punished and now when he has mentioned in his verification the fact of his involvement in the criminal case when seeking appointment as Sub Inspector, it is unjust and arbitrary on the part of the respondent to reject his application on the ground that he had been involved in a criminal case. The learned counsel submitted that for all these years, there has been no complaints and no charge of misconduct against the petitioner during his period of service as Head Constable and therefore, to deny him the appointment on the ground that his antecedents are not satisfactory cannot be correct. Learned counsel also submitted that the judgment in the criminal case was a honourable acquittal and therefore, the involvement of the petitioner in the said criminal case cannot be a ground for denying him the appointment.

5. On 10.1.2008 when the matter came up for admission, the learned Special Government Pleader submitted that a detailed counter would be filed and the respondent was well within his rights to insist upon an applicant's character being satisfactory. Time was granted for filing counter, but the petitioner was permitted to undergo the training for selection to the post of Sub Inspector of Police, but subject to the result of the writ petition. An application to vacate the interim direction was filed in M.P. No. 3 of 2008 and the matter was argued by the learned Special Government Pleader.

It was submitted that the petitioner's character was considered unsatisfactory according to Rule 13(b) of the Special Rules for Tamil Nadu Police

Subordinate Service. Reliance was placed on 2005 W.L.R. 267 *Saraswathi v. State of Tamil Nadu* K. Vinod Kumar Vs. S. Palanisamy and

Others, and 2004 W.L.R. 885, where it was stated that in such cases, the Court should not sit in appeal over the decision of the authorities.

6. Rule 13 of the Special Rules of the Tamil Nadu Police Subordinate Service Rules reads as follows:

Qualifications:

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

(a) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service;

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

(c) that such person does not have more than one wife living; or if such person is

a woman, that she is not married to any person who has a wife living and

(d) that he does not have knock knees or bow legs or flat feet.

Rule 13(b) is the stumbling block for the petitioner. In G.O. Ms. No. 101 dated 30.1.2003, the following amendments have been made to the

above Rules under Sections 8 and 10 of the Tamil Nadu District Police Act, 1859:

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.

Explanation-2: A person involved in a criminal case at the time 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 for appointment only by

participating in the next recruitment.

7. The following judgments were relied on by the learned counsel for the petitioner:

T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre , wherein it was held as follows:

Service Law - Appointment - Disqualification - Conviction under Defence of India Rules for shouting slogans on one occasion during Emergency -

Denial of appointment on sole ground of non-disclosure of such conviction not justified.

In order to secure a conviction the provision of Section 294 IPC requires to particulars to be proved by the prosecution, i.e. (i) the offender has

done any obscene act in any place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused

annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is

not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.

The courts should be sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's

society and its standards and its changing views of obscenity.

1996 (8) Supreme 47 Delhi Administration v. Sushil Kumar wherein it was held

as follows:

It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post

under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his

antecedant record, the appointing authority found it is not desirable to appoint a person of such record as a Constable to the disciplined force. The

view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly

unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has

nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the

actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant

to the case is of the antecedants of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to

appoint him to the service.

Commissioner of Police, Delhi and Another Vs. Dhaval Singh, where it was held on facts that the authority did not apply its mind to the intimation

given by the appellant before cancelling the appointment. That was on the ground of concealment of mentioning the pending criminal case. 2007(7)

Sup 331 R. Radhakrishnan v. The Director General of Police. This case related to a person who applied for the post of Uniformed Services and

the Supreme Court held as follows:

Indisputably, Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a

service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in

Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact

that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in

dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

8. A Full Bench of this Court in W.P. No. 38298 of 2005 etc. batch of cases Manikandan and Ors. v. The Chairman, Tamil Nadu Uniformed

Services Recruitment Board and Ors. by order dated 28.2.2008, held as follows:

But the concept of double jeopardy, to some extent, is allergic to service law. In as many cases as one can think of, the Supreme Court has made

it clear (i) that the imposition of a punishment and the denial of promotion did not amount to double jeopardy and (ii) that the conviction by a

criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of

misconduct, did not amount to double jeopardy.

Since the concept of "acquittal is an acquittal", is an off shoot of the principle of double jeopardy underlying Section 300(1) of the Code, it cannot

be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the

impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles

applicable to Service jurisprudence. A person discharged does not even have protection u/s 300 of the Code and hence such a person cannot

assail the Explanation 1 to the impugned Rule 14(b).

Therefore, we hold, in answer to the first issue referred to the Full Bench, that by virtue of Explanation 1 to Clause (iv) of Rule 14(b) of the

Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be

considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified.

In the present case, the petitioner seeks direct recruitment as Sub Inspector of Police. The Full Bench decision will apply if he was acquitted on the

benefit of doubt.

9. The judgment in the criminal case shows that there was a free-for- all in a cricket ground with regard to some dispute. The petitioner is Accused

No. 2. The charge was that at the cricket ground, A-1 caused grievous hurt to one Chandrakant and A-1 to A-3 caused simple hurt to others. The

judgment shows that none of the prosecution witnesses have given evidence about the charge. They have not been treated as hostile. The relevant

portion of the judgment is as follows:

So, the evidence is, that there was some scuffle at the cricket ground and even the public joined the fray by hitting with hands and sticks. The

complainant, P.W.1 in his cross-examination has said that there is no connection between the injured witnesses and the accused persons and that

the accused did not attack anyone, and that there was a crowd and he did not know who hit whom. The evidence of P.Ws.2 to 6 is also to the

effect that the public also hit them. The evidence of P.Ws.7 to 9 shows that there were 100 or 200 persons at the scene of occurrence and that the

accused did not attack them. The judgment reads further, as follows:

So, there is no evidence as to who inflicted the hurt and to whom. The doctor who treated the injured witnesses has not been examined. The

weapons allegedly used have not been recovered. The learned trial Judge holds that there is no evidence and that the case has not been proved

beyond reasonable doubt. The judgment also reads that the accused are acquitted, ""giving them the benefit of doubt"". Though the words "benefit of

doubt" are used, the case is really one of honourable acquittal. Even the complainant, P.W.1 did not implicate the petitioner. This is not a case

where the acquittal was because of witnesses turned hostile or on the basis of technicalities like belated registration of F.I.R. This is a case of no

evidence.

10. In this context, it is relevant to refer to the judgment of the Bombay High Court in H.I. Kazi Vs. J.C. Agarwal and others, , where dealing with

the term "honourable acquittal", it has been observed as follows:

It is very difficult to define what is the meaning of the word, "honourable acquittal". In my view, it will depend on the fact and circumstances of

each case as to whether a person can be said to have been discharged or acquitted honourably or not. The judgment of Supreme Court in State of

Assam v. Raghvan 1972 S.L.R. 344, is relied on by both the sides on the meaning of honourable acquittal as well as to show whether in the facts

and circumstances of the present case petitioner can be said to have been honourably acquitted. At page 347 Paragraph 8, a reference is made to

a note and administrative instructions appearing under the rule similar to one applicable in this case, which seem to show that the words

"honourably" meant, acquitted of or that the Government servant has been fully exonerated. According to the Supreme Court, this meaning was

supported by a judgment of Calcutta High Court in Robert Stuart Wauchope v. Emperor I.L.R1934 Cal. 168.

In my view, therefore, though it is very difficult to define precisely what is meant by the words "honourably acquitted", it is safe to say that if an

accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some

evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, if an accused is

acquitted after full consideration of evidence because the prosecution witnesses were disbelieved and the prosecution had miserably failed to prove

the charges, it would amount to honourable acquittal. It is difficult to understand what more is required for honourable acquittal of the accused than

acquittal of the accused on disbelieving the prosecution evidence in toto. In the present case, though there are some observations made at the end

of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be

little doubt that the accused was acquitted not by giving benefit of doubt, in spite of there being some evidence against him, but because the

prosecution failed to prove the case against him.

...

Mr. Cama has emphasized that accused No. 3 was acquitted because the prosecution failed to lead evidence of two witnesses. That his, defence

was not believed but was only found to be probably true and that he was acquitted on the ground of the prosecution not having proved the case

beyond reasonable doubt. He contends that when two views are possible on whether the judgment amounted to honourable acquittal or it did not,

and the officer concerned had decided that this judgment did not amount to honourable acquittal, this Court should not interfere with the decision.

Assuming the correctness of the contention of Mr. Cama on the Court's power to interfere with such decision, I am of the view that the judgment

clearly acquits the accused not on some technical ground or not because there was evidence both ways but the evidence of prosecution being

found slightly wanting, the benefit of doubt was given to the petitioner. The judgment clearly establishes that the prosecution had miserably failed to

establish the case against accused No. 3 and if this is not honourable acquittal, it

is difficult to say what can be said to be the honourable acquittal.

The decision, if any, arrived in the face of such a judgment cannot be said to be reasonable and therefore cannot be said to be bona fide and it discloses non-application of mind.

This decision squarely applies to the present case. Even Sushil Kumar's case cited above cannot help the respondent. There is absolutely no evidence in the criminal case to link the petitioner to the occurrence. The mere fact that his name finds a place in the F.I.R. cannot prove bad antecedents, since the evidence of even the author of the F.I.R. is in favour of the petitioner.

11. I have read the judgment in C.C. No. 263 of 1999, because, the future of a young man depends on it. In the Supreme Court cases referred to above too, the facts of the criminal case have been considered, e.g., 1996 S.C.C. (Cri) 583 (supra), the offence was u/s 294, I.P.C. So, unless the facts are considered and the reasoning in the judgment is looked into, it is not possible to see if the petitioner is entitled to the benefit of Explanation

- 2. In this case, there is no evidence at all. The learned trial Judge held that the accused cannot be convicted on the basis of the investigating officer's evidence. Even the complainant says that there is no connection between the prosecution witnesses and the accused. There was a big crowd in the cricket ground and no one could say who caused the injury. So, this is an honourable acquittal. The respondent's dissatisfaction with the petitioner's antecedents is only on the ground of this case; not on any other ground. The order dated 31.12.2007 shows that the petitioner has not suppressed anything, so his "involvement in the criminal case" is the only bar. Since on the materials available on record I find that the petitioner has been honourably acquitted, the criminal case shall not be a bar to his selection to the post of Sub Inspector, if he is otherwise qualified and eligible.

12. For all these reasons, the writ petition stands disposed of as hereunder:

The impugned order is quashed. The petitioner's claim to be appointed as Sub Inspector of Police shall be considered eschewing from consideration the criminal case where he was honourably acquitted and appropriate orders shall be passed within a period of 6 weeks from the date of receipt of a copy of this order. It is earnestly hoped that the writ

petitioner, who has fought for his right to be selected, will, if selected, conduct himself as an exemplary police officer beyond reproach.
No costs. Consequently, M.P. Nos. 1, 2 and 3 of 2008 are closed.