

(2010) 11 MAD CK 0408

In the Madras High Court

Case No : Writ Petition (MD) No. 7243 of 2010 and M.P. (MD) No. 1 of 2010

Ganesan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3
Tamil Nadu Police Subordinate Services Rules, 1953 — Rule 13, 14
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section
3(1)

Citation : (2010) 11 MAD CK 0408

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Venkatesan, for the Appellant; S.C. Herold Singh, G.A., for the
Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This writ petition is a clear abuse of process of the Court. The Petitioner has come before this Court for the nth time in seeking for the relief in respect of the very same issue.

2. The Petitioner and one Prabhu (his brother) were the residents of Chokkathevanpatti of Madurai District. The Petitioner went for selection to the post of Sub Inspector of Police for which post selections were held for the year 2006. Though the Petitioner and his brother were successful and provisionally selected, on verifying their character and antecedents it was found that they were involved in a criminal case in Crime No. 80 of 2002 at Valandur Police station. They were charged under Sections 147, 148, 341, 323, 324, 506(ii) and 307 IPC read with Section 3(1) of the Tamil Nadu Prevention of Damage and Loss to Public Properties Act and Section 3(i)(x) of the SC and ST Prevention of

Atrocities Act, 1989. Therefore, they were informed by the Respondents by an order dated 19.12.2007 that they will not be given any appointment order. In the criminal case, the Petitioner was arraigned as 14th accused and his brother as 15th accused. They were tried by the III Additional Sessions-cum PCR Court, Madurai in S.C. No. 100 of 2003. After trial, they were acquitted by the learned Sessions Judge vide judgment, dated 1.4.2004. Despite acquittal, they were informed that invoking Rule 13(b) of the Tamil Nadu Special Police Subordinate Services Rule, they were not eligible for consideration as they were involved in a criminal case. By a revised order, dated 31.12.2007, they were told that though there was no suppression of these information in the attestation form, but their cases were considered only on the basis of Rule 13(b).

3. The Petitioner filed W.P. No. 199 of 2008 and his brother G. Prabhu filed W.P. No. 200 of 2008 challenging the order, dated 31.12.2007. When these two writ petitions came up for admission on 04.1.2008, those two writ petitions were not admitted. But, however, the Petitioner even during the pendency of that writ petition filed W.P. No. 15755 of 2008 and his brother filed W.P. No. 15756 of 2008 challenging the vires of Explanation (2) to Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules. When these subsequent writ petitions came up for admission, they were tagged along with the other earlier two writ petitions. They were admitted on 3.7.2008. On the same day, a learned Judge of this Court directed two posts of the Sub Inspector of Police to be kept vacant. A further direction was also given to send them up for a training for the post in the ensuing batch.

4. The Respondent State filed a vacate interim order application. However, their vacate interim order application was dismissed on 06.11.2008. Aggrieved by the interim order granted by this Court, the Respondent State filed two writ appeals being W.A. Nos. 1284 and 1285 of 2008 as well as W.A. No. 1305 of 2008. A division bench presided by A.K. Ganguly, C.J. (as he then was), by his judgment, dated 10.11.2008 allowed the writ appeals. In the other W.A. No. 1305 of 2008 also, a similar order came to be passed vide judgment, dated 13.11.2008.

5. After filing of those four writ petitions, (two by the Petitioner herein and the other two by his brother Prabhu), they moved this Court with CrI.R.C. (MD) No. 369 of 2008 filed u/s 397 read with Sections 401 and 482 Code of Criminal Procedure to expunge the order of the criminal court describing their acquittal as one of granting benefit of doubt into one of honorably acquittal. Though in the criminal case in S.C. No. 100 of 2003, the judgment was pronounced as early as 1.4.2004 and after four years the revision application was filed by them, the learned Judge of this Court on 1.4.2008 allowed the revision and declared that the Petitioners were honorably acquitted. With the strength of the modified order passed by this Court, the Petitioners' counsel argued the four writ petitions. However, the four writ petitions were dismissed by a common order of this Court dated 28.11.2008. This Court held that the ratio found in a case in V. Veeramani and G. Balasubramanian Vs. State of Tamil Nadu and The Tamil Nadu Uniformed

Services Recruitment Board, as well as the ratio of the Full Bench in Manikandan and Ors. v. The Chairman, T.N. Uniformed Services, Recruitment Board and Ors. reported in 2008 (2) CTC 97 will squarely apply to the case of the Petitioners. This Court also took exception to the Petitioners moving the Madurai Bench after four years to remove the observation made by the trial court by filing the criminal revision application. In paragraphs 22 to 24, this Court observed as follows:

22. Explanation (2) only makes a further classification in relation to honourable acquittal alone. Such a case will come only when a person is selected and on verification, it is found that he was involved in a criminal case but the case was yet to be disposed of and subsequently if it ends in an honourable acquittal or treated as a mistake of fact, then only, he will be treated as not involved in criminal case. Further he can claim the right for appointment only by participating in the next recruitment. The case of the Petitioners does not come within the Explanation (2) to Rule 14(b), because their acquittal by the Criminal Court at the time of verification was not honourable. Further, their cases were rejected by treating them as falling under Explanation (2) to Rule 14(b). The Petitioners' case do not come under Explanation (2). Therefore, the question of their challenging the vires of Explanation (2), does not arise.

23. Assuming that they can have the benefit of Explanation (2), then certainly, they will have to stand or fall by the very same rule. The question of challenging the said rule, that too, by outsiders, like the Petitioners, is impermissible. The intention behind framing of the said Rule is very clear. Even in cases of subsequent honourable acquittals, the State wanted the concerned candidates to go through another selection process as the earlier stigma attached to the non-selection has been removed only in cases of honourable acquittal. The Petitioners cannot state that their cases should be considered in the selection held for the year 2006 itself. In such a case, Explanation (1) will come into operation and they will be certainly disqualified. Further, the Rule itself has been upheld by the Full Bench. The fact that they may be averaged or that there may not be any selection in the near future, cannot be a ground to invalidate an otherwise valid rule. Hence, the challenge to the vires of Explanation (2) or an attempt to re-interpret the said rule to suit the convenience of the Petitioners must necessarily fail.

24. Apart from the above facts, this Court had the benefit of going through the Trial Court's judgment and the findings rendered therein. It is seen that specific charges were framed against the two Petitioners by the Special Court that they were part of the unlawful assembly. The case also involved an offence under the SC/ST Prevention of Atrocities Act, 1989. It was an alleged assault launched by the members belonging to Other Backward Class Communities on the Adidraavidars of the Village. The conduct of the Petitioners in getting involved in such a criminal case and thereafter to get entry into the police force by ingenious arguments cannot be countenanced by this Court.

6. Curiously, the Petitioner did not file any intra-court appeal against the said order. On the other hand, he moved the Supreme Court directly as against the judgment in W.P. Nos. 199 and 15755 of 2008, dated 28.11.2008 in Special Leave to Appeal (Civil) Case Nos. 4832 and 4833 of 2009. Since the appeals came to be filed with considerable delay, the delay excuse application was also filed. Instead of arguing the appeal before the Supreme Court, the Petitioner withdrew the appeal before the Supreme Court on 3.8.2009. The Supreme Court passed the following order:

Learned Counsel for the Petitioner seeks leave to withdraw the petition with liberty to make a representation to the Director General of Police in terms of Rule 14(b) of the Tamilnadu Police Subordinate Service Rules, 1953 as amended by the G.O. Ms. No. 101 dated 30th January, 2007. Without commenting on the merits of the representation, which is proposed to be filed by the Petitioner, we dismiss the present SLP as not pressed.

7. Thereafter, the Petitioner sent a representation, dated 22.10.2009 to the second Respondent Director General of Police. The second Respondent by an order dated 28.1.2010, in paragraphs 2 and 3 stated as follows:

2. You were not considered for appointment to the post of SI in view of your involvement in the criminal case at the time of police verification. The criminal case was acquitted on 01.04.2004.

(ii) As per explanation (2) under Rule 14(b) of TNPSS, "a person involved in a criminal case at the time of police verification and the case is 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 in a criminal case only by participating in the next recruitment.

3. Since the acquittal order passed by the Madurai Bench of Madras High Court in respect of the Criminal Case pending against you is neither Honourable Acquittal nor treated as Mistake of Fact, your candidature for appointment to the post of S.I. was rejected, according to Rule 14(b) of TNPSS.

8. The Petitioner once again moved this Court with W.P.(MD) No. 3389 of 2010 challenging the said order. This Court instead of dismissing the writ petition as already covered by the order passed on 28.11.2008 gave a fresh lease of life to the Petitioner by setting aside the order passed by the second Respondent, dated 28.1.2010. A vague reference was made to the order passed by this Court, wherein all the contentions were considered by this Court. But, however, this Court after finding that the Supreme court permitted him to withdraw the special leave petitions with liberty to move the Director General of Police and the Supreme Court itself indicated that they are not commenting on the merits of the representation which was proposed to be filed by the Petitioner, made a reference to the observations made in the order passed in the criminal revision case and had directed the Respondents to consider the case of the Petitioner afresh. After such a direction, the second Respondent once again by an order,

dated 4.5.2010 rejected the representation made by the Petitioner. In paragraphs 4 and 5 of the impugned order, it was stated as follows:

4. Based on the orders dated: 01.04.2008 passed by the Court in a criminal revision case modifying the judgment of acquittal on benefit of doubt into that of acquitted honourably contended that as he has been honourably acquitted, the Rule 14(b) is bar against him. Assuming that Explanation (1) stands in the way of granting a posting order under Explanation (2) to Rule 14(b) makes it clear that in case of honourable acquittal, it would be treated as not involved in a criminal case and the candidate can claim a right for appointment only by participating in the next recruitment.

5. In view of the position explained in paras 3 & 4 above, it is crystal clear that though the Court modified the judgment of acquittal on benefit of doubt into that of acquitted honourably, you can claim a right for appointment only by participating in the next recruitment according to explanation (2) referred under Rule 14(b) of TNPSS. As such, your claim for appointment to the post of SI of Police is not feasible for compliance.

The Petitioner is once again before this Court challenging the said order.

9. The attempt by the Petitioner to keep on filing writ petition after writ petition even after the matter reached finality is clearly nothing but a raid on the court. This Court by a common order, dated 28.11.2008 considered all aspects of the case and rejected the claim of the Petitioner and his brother. No writ appeal was filed against the said order. The Supreme Court also did not disturb the findings rendered by this Court. Merely because the Petitioner sought permission to send a representation to the Respondents once again will not make the earlier order non est in law. On the other hand, the Petitioner by withdrawing the SLP has made the judgment, dated 28.11.2008 as final and binding on all parties. There is absolutely no case to challenge the order made by the second Respondent for nth time before this Court.

10. The rule under which the Petitioner was disqualified has already been upheld by Manikandan case (cited supra). Merely because, the Petitioner after his selection process were over and reached finality as early as 31.12.2007 cannot get the observation deleted in the criminal revision application which was filed after four years before this Court and try to make bargain out of such observation before the appointing authority. On the other hand, the Petitioner's name was rejected when the order of the Sessions Court clearly showed that it was a case of acquittal by granting benefit of doubt which is squarely covered by explanation to Rule 14(b) of the TNPSS Rules. Further, the subsequent deletion of those observations cannot invalidate the findings rendered by the selection authority. Even otherwise, these facts have already been gone into by a common judgment, dated 28.11.2008 and the same cannot be reopened by sending a representation and the same getting rejected start the arguments all over again.

11. To what extent, the criminal court can deal with the accused in respect of his

criminal trial and can make an observation which will have a bearing on the service issues itself came to be considered by the Supreme Court in The State rep. by CBI, Hyderabad Vs. G. Prem Raj, . The Supreme Court held that the criminal court cannot make any observation so as to bind the appointing authority and such observation will have no bearing on the service matter.

12. In view of the above, the impugned order passed by the second Respondent do not suffer from any infirmity or illegality. Hence the writ petition will stand dismissed with costs. Since the Petitioner had been filing case after case and wasting the time of this Court, the cost is quantified at Rs. 5000/- (Rupees five thousand only) which shall be paid within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition stands closed.