

(2010) 03 MAD CK 0083

In the Madras High Court

Case No : Writ Petition (MD) . No. 3389 of 2010 and M.P. No. 1 of 2010

Ganesan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Tamil Nadu State Police Subordinate Service Rules — Rule 14

Citation : (2010) 03 MAD CK 0083

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Venkatesan, for the Appellant; V. Rajasekaran, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Mr. V. Rajasekaran, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both

sides, the Writ Petition is taken up for final disposal at the stage of admission.

2. The petitioner was selected for the post of Sub Inspector of Police for the recruitment year 2006-2007 and subsequently he was denied

appointment on 31.12.2007 on the ground that he was involved in a criminal case and the conduct of the petitioner was not satisfactory to the

department. It is stated that the petitioner was involved in a criminal case in S.C. No. 100 of 2003 on the file of the III Additional Sessions cum

PCR court, Madurai, and the petitioner along with others were acquitted by an order dated 01.04.2004 by giving the benefit of doubt.

3. It is seen that as against the order, the petitioner along with others preferred a criminal revision case in CrI.R.C. No. 369 of 2008, in which by

an order dated 01.04.2004, this Court has modified the judgment of acquittal on

benefit of doubt to that of acquittal honourably. The petitioner, in the mean time, filed a Writ Petition challenging the earlier order in W.P. Nos. 199 etc of 2008 batch and there was an interim direction permitting the petitioner to go for training for the post and subsequently when the Writ Petition came up for final disposal, the Writ Petition was dismissed on 28.11.2008 holding that as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules (hereinafter referred to as "the Rules") along with explanation contained therein, namely,

14(b)-No person shall be eligible for appointment to the service by direct recruitment unless he satisfied the appointing authority.

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

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

(iii) that such a person does not have more than one wife living. 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 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.

4. If the conduct and character and antecedents was not acceptable, it is for the employer to decide whether to accept him as a candidate or not.

This Court while dismissing the Writ Petition holding the said Clause 14 (b) of the Rules stated above as valid. In explanation 2 of the said rules

makes it clear that any cases where a person who was involved in a criminal case which ended in honourable acquittal, it should be treated that he

was not involved in any criminal case. It is seen that as against the order of the learned Single Judge, the petitioner has ultimately moved the

Hon"ble Supreme Court and the Apex Court while allowing the petitioner to withdraw the SLP, has permitted the petitioner, by an order dated

03.08.2009, to make representation to the Director General of Police in terms of Rule 14(b) of the rules as a candidate by referring G.O.Ms. No.

101 and without going into the merits of the matter. Ultimately, the petitioner has made a representation dated 22.10.2009 and based on the said

representation, the impugned order came to be passed by the Director General of Police.

5. A reference to the impugned order of the second respondent shows that the claim of the petitioner was rejected on the pretext that this Court

has neither acquitted the petitioner with honorable acquittal or nor treated as "mistake of fact" and therefore the appointment of the petitioner as

Sub Inspector of Police was rejected as per Rule 14(b) of the Rules.

6. The operative portion of the impugned order reads as follows:

(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.

7. Inasmuch as the second respondent has rejected the claim of the petitioner only on the ground that this Court has not acquitted the petitioner

with honourable acquittal, which is contrary to the fact as stated above, namely, in the criminal revision case in CrI.R.C. No. 369 of 2008, this

Court while allowing the Revision Petition has ultimately has held as follows:

For all the reasons stated above, this Criminal Revision case is allowed and the finding of the lower Court that the petitioners are acquitted on

giving benefit of doubt is modified and the petitioners shall stand acquitted honourably.

8. In such view of the matter, it is brought to the notice of this Court that the second respondent has failed to appreciate the final order of this

Court in the Revision Petition acquitting the petitioner with honourable acquittal and accordingly the petitioner is eligible for consideration as per

explanation 2 of the Rules, which has not been considered by the second respondent.

9. Considering the facts and circumstances of the case, the Writ Petition stands allowed and the impugned order of the second respondent is set

aside and the matter is remitted back to the second respondent to reconsider the case of the petitioner in the light of the orders passed by this

Court and pass appropriate orders within a period of four weeks from the date of

receipt of a copy of this order. No costs. Consequently
connected Miscellaneous Petitions are closed.