

(2013) 06 MAD CK 0244

In the Madras High Court

Case No : Writ Petition No. 15390 of 2013 and M.P. No. 1 of 2013

M. Mahendiran

APPELLANT

Vs

Superintendent of Police and Another

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2013) 6 MLJ 109 : (2013) WritLR 1027

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : A. Thiyagarajan, for the Appellant; V. Subbiah, Special Government Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—Pursuant to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board, the petitioner applied for the post of Grade II Police Constable on 26.3.2012. The second respondent issued Hall Ticket to appear for the written examination, that was held on 24.6.2012. The petitioner was successful in the written exam. Thereafter, the petitioner was directed to appear for Physical Measurement and Endurance Test and also for original Certificate verification on 22.8.2012.

2. The petitioner was provisionally selected for medical examination and Police verification. The provisional selection was published in the website. While so, the impugned order, dated 5.12.2012 was passed by the first respondent stating that the petitioner was not eligible for the provisional selection order for the Recruitment of Gr.II P.C. for the year 2012 due to the criminal cases registered against him.

3. The petitioner has filed this writ petition to quash the order, dated 5.12.2012 and for a direction to provide him appointment to the post of Gr.II P.C.

4. The learned counsel for the petitioner has submitted that long before he made application for the post of Gr.II P.C., he was acquitted in the criminal cases. It is submitted that thereafter, the petitioner approached this Court by filing criminal

revision cases. Both the acquittals were modified as Honourable acquittals. Hence, the petitioner is entitled to appointment to the post of Gr.II P.C.

5. On the other hand, the learned Special Govt. Pleader submitted that as per the Rule 14(b) of Tamil Nadu Special Police Subordinate Rules, 1978, the petitioner is not entitled for selection/appointment. The learned Special Government Pleader has relied on the Full Bench judgment of this Court in Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, in this regard.

6. I have considered the submission made by both sides.

7. The petitioner made application to the Tamil Nadu Uniformed Services Recruitment Board on 26.3.2012 for the post of Grade II Police Constable. The application is in the printed form prescribed by the Tamil Nadu Uniformed Services Recruitment Board. Clause 29 of the application is relevant for the purpose of this case. Clause 29 is as follows:

Whether any criminal case is pending against you?

The answer given by the petitioner is "No".

8. Clause 29(a) requires the petitioner to produce details of the criminal case pending. Since the petitioner gave answer to the query raised in Clause 29 that there was no criminal case pending, he did not fill up Clause 29(a).

9. It is stated that the petitioner involved in two criminal cases. One ended in acquittal by the learned Judicial Magistrate, Thiruvarur, by an order, dated 3.11.2010 in C.C. No. 260 of 2010 and the other is acquittal order, dated 10.10.2011 by the learned Judicial Magistrate, Thiruvarur in S.T.C. No. 3454 of 2010. Therefore, as on date of making application, there was no criminal case pending against the petitioner. Furthermore, the petitioner filed Crl. R.C. No. 234 of 2013 and Crl.R.C. No. 186 of 2013 against those acquittals and sought to modify the same as honourable acquittal. Crl. R.C. No. 234 of 2013 was allowed by this Court on 26.2.2013 and Crl. R.C. No. 186 of 2013 was allowed by this Court on 19.3.2013 and the acquittal was modified as honourable acquittal.

10. Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules 1978 is extracted hereunder:

14(b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfies 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 not have more than one wife living; and

(iv) 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 "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.

11. As per Explanation (1) to Rule 14(b) of the said Rules, if a person is acquitted on benefit of doubt, he shall be treated as person involved in a criminal case. As per Explanation (2), if the criminal case ended in honourable acquittal, it shall be treated as not involved in a criminal case and a candidate can claim right for appointment only by participating in the next recruitment.

12. In this case, it is true that the Full Bench judgment of this Court considered Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules and held that if a person was acquitted by a criminal Court, even then he could not claim appointment in view of Explanation (1) to the aforesaid Rules. But, the Full Bench judgment of this Court was considered in the order dt. 26.3.2013 in W.P. (MD) No. 1145 of 2010 (Batch cases) C. Vijayaraja v. The Director General of Police, Mylapore, Chennai 8 and 3 Others, and a direction was issued to the respondents/authorities to provide appointment if the candidates were honourably acquitted.

13. In view of the aforesaid judgment dt. 26.3.2013 in W.P. (MD) No. 1145 of 2010 Batch cases C. Vijayaraja v. The Director General of Police, Mylapore, Chennai 8 and 3 Others (supra), I am of the view that the petitioner is entitled to succeed in this case. Accordingly, the impugned order, dated 5.12.2012 refusing to provide appointment to the petitioner on the ground that the petitioner faced criminal case is liable to be quashed and a direction is issued to the respondents to give appointment to the petitioner within a period of six weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.