

(2009) 10 MAD CK 0106

In the Madras High Court

Case No : Writ Petition No. 16813 of 2008

M. Ravikumar

APPELLANT

Vs

The Chairman, Tamilnadu Uniformed Services, Recruitment
Board and The Director General of Police

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(5)

Penal Code, 1860 (IPC) — Section 304, 324, 34

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 14

Citation : (2009) 10 MAD CK 0106

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner filed the present writ petition, seeking to set aside the order, dated 2.5.2008 passed by the first respondent

followed by the order dated 23.5.2008 passed by the second respondent and for a consequential direction to consider his name for selection and

appointment to the post of Grade II Police Constable in the Tamil Nadu Police service.

2. By an order, dated 2.5.2008, the petitioner was informed that the cut off mark for open quota for SC category is 63, but he had scored only 51

marks. Therefore, his representation, dated 27.2.2008 cannot be favourably considered. This order itself came to be passed on a direction issued

by the Madurai Bench of this High Court in W.P.(MD) No. 3227 of 2008, dated 4.4.2008. By the said order, this Court directed the respondent

to consider his representation in accordance with law.

3. Subsequently, the petitioner was informed, by a further order, dated 23.5.2008 that after his getting through the written examinations, his

antecedents and character were enquired by them. The enquiry report revealed that he was involved in a criminal case in Crime No. 281 of 2002.

He was arrayed as accused No. 3. The said case was concluded by invoking Section 167(5) Cr.P.C. by the Judicial Magistrate, Keeranur, vide

his order, dated 21.9.2007. The petitioner's attention was drawn to Rule 14(b) of the Tamil Nadu Police Subordinate Service (Discipline and

Appeal) Rules, wherein it was stated that in order to get an appointment in the service, a person should not have got involved in any criminal case

and his conduct and character must be satisfactory. In view of these defects, the petitioner was not appointed as a Police Constable. Subsequent

to the writ petition, the petitioner had filed M.P. No. 4 of 2009 to amend the prayer and M.P. No. 3 of 2009 to implead the second respondent.

Those applications were ordered.

4. On notice from this Court, the respondents have filed a counter affidavit, dated 19.11.2008 and an additional counter affidavit, dated Nil

(November, 2008). While in the first counter affidavit, the representation of the petitioner, dated 27.2.2008 was considered and reason for his

non-selection was that he had not reached the cut off mark. In the same counter affidavit, it was also stated that on verification, his antecedents

were came to the knowledge of the respondents. Therefore, he cannot be given any appointment and that he was not finally selected.

5. In the additional counter affidavit, though it was stated that he had secured 63 marks and was eligible to be appointed, but in view of the fact

that he was involved in a criminal case, he was disqualified from being appointed.

6. The petitioner had filed a reply affidavit, dated 18.4.2009. In the reply affidavit, it was stated that though his name was implicated in Crime No.

281 of 2002, the Magistrate, by an order dated 30.4.2004 had discharged the petitioner. The final report itself was not filed on or before

10.1.2003. However, in the application submitted for verification, in column Nos. 15 and 16, as against the questions, the petitioner gave the

following answers in Tamil:

On translation

15. Have you ever been concerned in any criminal case as defendant? ,y;iy (No)

16. Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give

details with C.C. No. and Court. ,y;iy (No)

7. This was sought to be explained. In the reply affidavit, it was stated as follows:

21. As already submitted by me the non-reference to the above alleged offence in the application, in view of my wrong understanding as a layman

to construe that question No. 15 deals with only a pending the case if any but not a case which was already closed and if I had correctly

understood Clause 15, I would have definitely disclosed the same in my application.

8. However, the fact of the matter is that the petitioner in his verification roll had given a negative answer, thereby tried to mislead the respondents

from finding out his antecedents. This one ground is enough for denying the petitioner any employment.

9. The Supreme Court vide its judgment in R. Radhakrishnan v. Director General of Police reported in 2007 AIR SCW 7595 : (2008) 1 SCC

660 dealt with an identical case. After referring to the same questions 15 and 16 given by a police constable, wherein that candidate had given

negative answers, the Supreme Court in paragraphs 9 to 13 held as follows:

9. The learned Counsel furthermore submitted that in view of the fact that the appellant knew that he would be liable to be dismissed from service if

the statement made in the verification roll was found to be false cannot now be heard to say that he omitted to mention the pendency of the criminal

case under a bona fide belief or otherwise.

10. Indisputably, the 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 in 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.

11. The question came up for consideration before this Court in Delhi Admn. v. Sushil Kumar wherein it was categorically held: (SCC p. 606, para 3)

3. - The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable u/s 304 IPC, u/s 324 read with Section 34 IPC and u/s 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? 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 found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it 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.

12. Mr Prabhakar has relied upon a decision of this Court in T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre. The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise.

10. In the light of the above, no relief can be given to the petitioner. Hence the writ petition stands dismissed. However, there will be no order as to costs.