

(2010) 10 MAD CK 0168

In the Madras High Court

Case No : Writ Petition (MD) No. 11091 of 2009 and M.P. (MD) No. 1 of 2009

N. Suresh

APPELLANT

Vs

The Director General of Police

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2)

Penal Code, 1860 (IPC) — Section 304, 324, 34, 341

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1978 — Rule 14

Citation : (2010) 10 MAD CK 0168

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : D. Rajendran, for the Appellant; S.C. Herold Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The Petitioner was an aspirant for the post of Grade-II Police Constable. He was successful in his test and interview held on 17.10.2008. He was selected under the Sports Quota by the Respondent. Before his formal appointment, he was sent for medical examination by the Medical Board at the Government Headquarters Hospital, Dindigul. At the time of filling up the attestation form, the Petitioner was asked to fill up the following questions:

Column No. 15: Have you ever been concerned in any criminal case as Defendant?

Column No. 16: Have you ever been arrested or convicted or sentenced to undergo imprisonment or pay a fine in any criminal case or other offence? If so, give details with C.C. No. and Court?

Column No. 17: Are there any civil or criminal cases pending against him?

3. The Petitioner, instead of giving the correct particulars, did not disclose the pendency of a criminal case in Crime No. 462/2004, registered on the file of the Dindigul Taluk Police Station, u/s 341 of the Indian Penal Code. Therefore, by relying upon Rule 14(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1978, the Petitioner was denied employment. The Petitioner has now come up with the present Writ Petition seeking for a direction to the Respondent to offer an employment.

4. The contention of the Petitioner was that subsequent to the filing of the criminal case, on 08.11.2005 a closure order was passed by the learned Judicial Magistrate No. I, Dindigul, in terms of Section 468(2) of the Code of Criminal Procedure and, therefore, he was under the bona fide belief that there was no case pending. He was under the bona fide impression that while filling up the column, he did not deem fit to provide the answer and it was the bona fide mistake.

5. However, the learned Counsel appearing for the Petitioner placed reliance upon a judgment of this Court in *M. Senthil Kumar v. The Director General of Police, Chennai-4* and Anr. made in W.P.(MD) No. 3130 of 2009, dated 20.09.2010. In that case, there was a reference made to a judgment of the Supreme Court in *State of Haryana and Others Vs. Dinesh Kumar*, . It is not clear as to how the said decision has any assistance to the Petitioner. In that case, the Court was dealing with a candidate who was tried under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. In that context, it was held that a juvenile who was involved in a crime is described as a "juvenile in conflict with law" and not as a criminal and, therefore, there could have been a bona fide mistake in construing that the proceedings initiated under the Juvenile Justice Act are not exactly criminal in nature.

6. However, in the present case, the Petitioner was involved in a crime and question No. 15 clearly refers to whether he was the Defendant in a criminal case. On the contrary, the contention raised by the Petitioner is squarely covered by a judgment of the Supreme Court, which arose under the very same rule and in identical circumstances, the Supreme Court in *R. Radhakrishnan v. The Director General of Police and Ors.* reported in 2008(1) SCC 660, has observed as follows:

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 difference 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 person who has 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 Administration through its Chief Secretary and Others Vs. Sushil Kumar, , wherein it was categorically held:

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. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Ors. 1998 Supp. SCC 795. 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.

7. In the light of the binding precedent of the Supreme Court, on an identical case, this Court is not inclined to entertain the case of the Petitioner and hence, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.