

(2009) 12 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 10892 of 2009 and M.P. No. 1 of 2009

S. Jeeva

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 41(1), 468(2)
Tamil Nadu Special Police Subordinate Service Rules, 1978 — Rule 14

Citation : (2009) 12 MAD CK 0049

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Jeyanthi Venkatesh, for the Appellant; R. Neelakandan, G.A., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner has filed the present writ petition seeking to challenge the order of the second respondent dated

29.04.2009.

2. In the writ petition, notice was directed to be taken by the learned Government Advocate on 02.11.2009. The learned Government Advocate

did not file any counter. But he had produced the original files relating to the termination of the petitioner.

3. By the impugned order, the petitioner was informed that he was selected for the post of Grade II Police Constable held during the year 2007-

08 after undergoing the preliminary test including physical fitness and written test. Thereafter, his character and antecedent were enquired by the

Department. In the report received by the Department, it was found that the petitioner was involved in Crime No. 744/07 and 24/07 filed u/s

41(1) Cr.P.C. by the Nellikuppam Police, Cuddalore District. But it was found from the Attestation Form filled up by the petitioner as against

Questions Nos. 15, 16 and 18, he had suppressed the information relating to his involvement in the criminal case. Therefore, in the light of Rule

14(b) of the Tamil Nadu Special Police Subordinate Service Rules, for getting appointed to the post of Constable, a person should not have

involved in any criminal case and his conduct and character must be satisfactory. Since the petitioner's conduct was not satisfactory, he was not

given appointment. It is against this order, the petitioner has come forward to file the present writ petition.

4. The case of the petitioner was that he was not involved in any criminal case. When he approached the Inspector of Police, Nellikuppam Police

Station and enquired about Cr. Nos. 744/07 and 24/07 dated 23.12.2008, he was informed that normally petty cases will be booked to show

statistics of the total number of cases and against the petitioner also they slapped with two such cases. The same was closed after the number of

cases was reached and hence, he need not worry about the same. The case against the petitioner was closed by the Judicial Magistrate, Cuddalore

on 23.12.2008 as it was barred by limitation u/s 468(2) of Cr.P.C. for the month of December 2008 as "Case Dropped". Since he did not have

any case in any police station, the conduct of the petitioner cannot be held to be unsatisfactory. As he had already come out successful in the

written examination and medical test, he should be given an appointment.

5. Mrs. Jayanthi Venkatesh, learned Counsel for the petitioner also brought to the notice of this Court a copy of the First Information Report and

also a letter from the Inspector of Police, Nellikuppam. In the enquiry report, the Inspector had stated that the petitioner was working as "Friends

of Police" attached to Nellikuppam police station for three months and only a case on suspicion was registered against the petitioner. On enquiry, it

was found that the petitioner was having good conduct. The action was dropped on the complaint and the concerned Judicial Magistrate had also

rejected the case.

6. It is no doubt true that in the application in Annexure 3 of the verification column, relating to question No. 15 regarding the involvement in a

criminal case, the petitioner wrote as Nil. Against the question whether he was

punished for a criminal case he also said "No" and whether any civil or criminal cases pending he has also stated in the negative. But in the facts and circumstances, it will have to be seen that the petitioner was neither arrested in any case nor he was tried by any criminal court. As rightly contended by the learned Counsel for the petitioner that the conduct of the petitioner cannot be said to be suppression of a material fact nor there is any material to show that he was involved in any criminal case. When he was not even aware of filing of such cases, it is not expected of him to state anything about such cases in the attestation form.

7. In this context, it is necessary to refer to the judgment of the Supreme Court in State of Haryana and Others Vs. Dinesh Kumar, . That was also

a similar case where a person who was not selected for appointment on the ground that he was arrested in a criminal case. In paragraphs 29 to 33, it was held as follows:

29. The sequitur of the above is that when a person, who is not in custody, approaches the police officer and provides information, which leads to the discovery of a fact, which could be used against him, it would be deemed that he had surrendered to the authority of the investigating agency.

30. It must, therefore, be held that the views expressed by the High Court in Dinesh Kumar's writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by Lalit Kumar and Bhupinder correctly interpreted the meaning of the expressions "arrest" and "custody". However, how far the same would apply in the ultimate analysis relating to the filling up of Column 13(A) is another matter altogether.

31. In our view, the reasoning given in Dinesh Kumar's case in that context is a possible view and does not call for interference under Article 136

of the Constitution. Conversely, the decision rendered in the writ petitions filed by Lalit Kumar and Bhupinder has to be reversed to be in line with

the decision in Dinesh Kumar's case. When the question as to what constitutes "arrest" has for long engaged the attention of different High Courts

as also this Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before

the court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. We

would, in the facts of these cases, give the benefit of a mistaken impression,

rather than that of deliberate and wilful misrepresentation and concealment of facts, to the appellants in the second of the two appeals as well, while affirming the view taken by the High Court in Dinesh Kumar's case.

32. Accordingly, although, we are of the view that the legal position as to what constitutes arrest was correctly stated in the writ petitions filed by

Lalit Kumar and Bhupinder, we confirm the order passed in Dinesh Kumar's case and extend the same benefit to Lalit Kumar and Bhupinder also.

33. In the result, the civil appeal arising out of SLP (C) No. 1840 of 2007 is dismissed, while the civil appeal arising out of SLP (C) No. 14939 of

2007 is allowed. The judgment of the High Court dated 22-9-2005, impugned in the said appeal, is set aside and the respondents concerned are

directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfilment of other conditions by them. It is also

made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date persons lower in merit to

them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment, they will be entitled to salary

only from the date of this judgment on the basis of such notional benefits.

8. Section 41(1) of Cr.P.C. under which a case was allegedly registered against the petitioner can arise for very many reasons and the police

officers are having sweeping powers under the said section. Unless the party concerned is aware of such a proceeding and the respective

Inspector of Police himself had stated that the petitioner's conduct was good, in such circumstances, it cannot be said that the petitioner had

deliberately gave negative answers in the application form against Question No. 15 regarding his involvement in any criminal case. As found by the

Supreme Court, the benefit of doubt regarding mistaken impression which is not deliberate or wilful can be given to the petitioner.

9. In the light of the above, the writ petition stands allowed. No costs. The respondents are directed to provide appointment to the petitioner as

Grade-II Police Constable forthwith. This will not enable the petitioner to claim any seniority or any retrospective effect on his appointment and

whatever appointment that may be given to the petitioner will be only prospective and will take effect from the date on which the petitioner joins

duty. Consequently, connected miscellaneous petition is closed.