

(2014) 11 MAD CK 0078

In the Madras High Court

Case No : Writ Petition (MD) No. 3168 of 2010 and M.P. (MD) Nos. 1 and 2 of 2010

V.N. Varusai Mohamad

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Citation : (2015) 3 MLJ 543

Hon'ble Judges : K.B.K. Vasuki, J.

Bench : Single Bench

Advocate : N. Murugesan, for the Appellant; S. Chandrasekar, G.A., for the Respondent

Judgement

K.B.K. Vasuki, J. Heard both sides. The challenge herein is against the communication dated 18.09.2009 issued to the petitioner regarding the denial of employment to the petitioner as Grade - II Police Constable under recruitment process for the year 2007-2008 and consequently direct the respondents to select the petitioner to the post of Grade II Police Constable.

2. The brief facts which are relevant for consideration herein are that the petitioner applied for the post of Grade-II Police Constable in response to an advertisement made in the year 2007. The petitioner came out successfully in physical measurement test, physical efficiency test and medical test and obtained total marks of 54 as against the cut off mark 37 fixed for Backward Class. However, the petitioner was not selected for the said post, which compelled him to invoke the provision of the Right to Information Act and the petitioner received a communication, which is impugned herein to the effect that the petitioner was not selected for the following two reasons:

"(i) the petitioner suppressed his involvement in the criminal case in the application.

(ii) the petitioner was acquitted on benefit of doubt and not honourably, as such

the petitioner is considered to be disqualified and not suitable for selection to the post in the police service."

Aggrieved against the same, the petitioner has come forward with the present writ petition for the relief as stated supra.

3. In this writ petition, the petitioner has contended that (i) his failure to mention about the criminal case in the verification report is neither intentional nor wilful (2) the petitioner and his family members including his sister were acquitted by the concerned Judicial Magistrate as the prosecution failed to prove the case which tantamount to the fact that the petitioner was not involved in the criminal case. The relief is seriously opposed by the Government Advocate representing the respondents by placing reliance on Rule 14(b) of Tamil Nadu Special Police Subordinate Service. Rule 14(b), relied upon by the respondents is extracted in the paragraph 4 of the counter, which reads as follows:

"a) Rule 14(b) of Special Rules for Tamil Nadu Special Police Subordinate Service as amended in G.O. Ms. No. 101 Home (Pol. IX) Department, dated 30.01.2003 is furnished below:

"No persons shall be eligible for appointment to the service by direct recruitment unless he satisfied the appointing authority.

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

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 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 any 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. Both the learned counsels have also relied on the following Judgments for and against the relief sought for herein.

5. The authorities cited on the side of the petitioner are that reported in Commr. of Police and Others Vs. Sandeep Kumar, , Ram Kumar Vs. State of U.P. and Others, , D. Mahadevan Vs. The Director General of Police, and T.S. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Others 1988 (Supp) SCC 795.

6. The authorities cited on the side of the respondent are that Commr. of Police and Others Vs. Sandeep Kumar, Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, and J. Alex Ponseelan Vs. The Director General of Police, The Director, Tamil Nadu Uniformed Services

Recruitment Board and The Superintendent of Police, .

7. Heard the rival submissions and perused the records.

8. It is true that under Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules, two pre-requisite qualifications are prescribed for considering one as eligible for appointment to the police service namely, (i) his character and antecedents are such as to qualify him for such service and (ii) he has not involved in any criminal case before police verification. The Explanations 1 and 2 are appended to Rule 14(b). As per Explanation (1), a person who is acquitted or discharged on benefit of doubt or due to the fact that complainant "turned hostile" shall be treated as person involved in a criminal case. As per Explanation (2), a person involved in a criminal case at the time of Police Verification whose case was subsequently ended in honourable acquittal or treated as "mistake of fact" shall be treated as not involved in a criminal case but, can claim right of appointment only by participating in the next recruitment.

9. As far as this case is concerned Explanation (2) is not admittedly applicable to the facts of the present case. In the instant case, the selection process was held during 2007-2008. The petitioner was involved in the criminal case during 2002 in Crime No. 195 of 2002 and the same culminated as C.C. No. 321 of 2008 and the petitioner and Others were acquitted by Judgment dated 03.07.2008. There is admittedly no appeal or criminal revision preferred against the order of acquittal and the order of acquittal became final. The above referred to would reveal that the petitioner was acquitted during the selection process. The two grounds on which the petitioner was found to be not suitable for selection to the post is his non-disclosure of his involvement in the criminal case in his application and that his acquittal is one of benefit of doubt and not honourable acquittal. It is true that the Full Bench of our High Court in the Judgment reported in Manikandan and Others v. Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and Others (supra) and Constitutional Bench of Madurai Bench of Madras High Court reported in J. Alex Ponseelan v. Director General of Police, Tamil Nadu, Chennai and Others (supra) have laid down that the non-disclosure as well as the acquittal on benefit of doubt will render one disqualify for selection to the post in police service. Insofar as the non-disclosure aspect is concerned, there are two views by the Honourable Apex Court. The Honourable Apex Court has, while disposing of the appeal filed against the order of the Full Bench in Manikandan and Others v. Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and Others (supra), dismissed the appeal thereby the principles laid down in Manikandan and Others v. Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and Others (supra) stand confirmed further. However, the Honourable Apex Court has, on two occasions in the Judgment reported in T.S. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Others (supra) and in Commissioner of Police and Others v. Sandeepkumar (supra), expressed different views stating that the cancellation of appointment on the ground of concealment of involvement in the criminal case,

when he was aged about 20 years, is illegal. The Honourable Apex Court has, in *Commissioner of Police and Others v. Sandeepkumar (supra)*, observed that the failure to mention the involvement in the criminal case in the application is out of fear that if he did so, he would automatically be disqualified and modern approach should be to reform a person instead of branding him as a criminal to rest of his life time and the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. It is observed so by the Honourable Apex Court by considering the nature of the offence, which are not serious in nature and the Honourable Apex Court was of the view that more lenient view should be taken in the matter of such nature. The three Judges bench of the Honourable Apex Court has, in *T.S. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Others (supra)*, set aside the cancellation of appointment on similar ground and directed the respondent to issue order of appointment to the petitioner, if he is not otherwise disqualified.

10. In view of the divergent opinion expressed by the Honourable Apex Court in this regard, the issue is referred to larger bench by the Honourable Apex Court in the judgment reported in *Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others*, . Pending authority to pronouncement on the issue by the larger Bench of Supreme Court, this Court, applying the same view of the Honourable Apex Court in the Judgment above cited on the side of the petitioner, is inclined to hold that non-disclosure of the involvement in the criminal case while he was young in age, need not be the sole ground for denying employment to the petitioner.

11. Regarding the second ground, the reading of the Judgment in C.C. No. 321 of 2008 dated 03.07.2008 enclosed at pages 2 to 10 of the typed set of papers revealed that the same is after due contest and on the ground that the prosecution has failed to prove the charges against the accused. The learned Judicial Magistrate has, after analysing the evidence of the material witnesses and having found that the victim of the occurrence were attacked by a mob and the material witnesses were not able to identify the assailant and they did not see the accused in the occurrence place acquitted the accused on the ground that the prosecution has not proved the case against the accused. Though the learned Judicial Magistrate used the words that the witnesses are treated as hostile and the prosecution witness has not proved the case beyond all reasonable doubt, the case is really one that of Honourable acquittal as in the case decided by the learned Single Judge of this Court reported in *D. Mahadevan v. Director General of Police, Mylapore, Chennai 4 (supra)*. The judgment clearly says that the witnesses did not implicate the accused in the occurrence by denying their presence in the scene of occurrence. In paragraph 10 of the Judgment reported in *D. Mahadevan v. Director General of Police, Mylapore, Chennai 4 (supra)*, the learned Judge has referred to the Judgment of Bombay High Court in *H.I. Kazi Vs. J.C. Agarwal and others*, wherein the Bombay High Court dealt with the term "honourable acquittal" it is observed by the High Court

that if an accused is acquitted after full consideration of evidence because the prosecution witnesses were disbelieved and the prosecution had miserably failed to prove the charges, it would amount to honourable acquittal. It is further observed by the learned Judge that it is difficult to understand what more is required for honourable acquittal of the accused than acquittal of the accused on disbelieving the prosecution evidence in toto. As in the case reported above, the judgment of trial Court is read as a whole, there can be no little doubt that the accused was acquitted not by giving benefit of doubt, but because the prosecution failed to prove the case against him.

12. When the petitioner has been now held to be honourably acquitted, he is not covered under Explanation (1) and the criminal case shall not be a bar to the selection to the post, if he is otherwise qualified or eligible. Hence, the non-selection of the petitioner to the post on the ground that his acquittal is not honourable one, but on benefit of doubt is not in accordance with the findings rendered by the competent criminal court and hence, his acquittal is factually unsustainable and liable to be quashed.

13. In the result, the impugned order stands quashed and the second respondent is directed to consider the appointment of the petitioner to the post of Grade - II Police Constable of service of Tamil Nadu Police in the selection made during 2007 to 2008, if he is otherwise eligible and qualified with continuity of service, but without back-wages. The above exercise shall be completed within 8 weeks from the date of receipt of a copy of this order. This Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.