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E.Sivananth Vs. the Chairman

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Court : Chennai

Decided On : Jun-27-2012

Judge : V.Dhanapalan, J.

Acts : Indian Penal Code(IPC) 1860 - Section 147, 148, 294(b), 323, 506, 300(1), 325, 34; Code of Criminal Procedure(CrPC) - Section 248(1), 439, 417; Tamilnadu Special Police Subordinate Service Rules 1978 - Rule 14(b) ; Tamil Nadu District Police Act,1859 ; Chennai City Police Act - Section 9; Constitution of India - Articles 309

Appeal No. : W.P.(MD) No.15265 of 2011

Appellant : E.Sivananth

Respondent : The Chairman

Advocate for Def. : Mr.K.Chellapandian, Adv

Advocate for Pet/Ap. : Mr.M.Ganesan, Adv

Judgement :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the 2nd respondent in No.46896/EW1/2010 dated 22.03.2011 and to quash the same and consequently direct the respondents to issue appointment order and training to the petitioner to the post of Grade II Police

Constable/Jail Warden/Fire Servicemen for the year 2010.

ORDER

1. Seeking to call for the records relating to the impugned order passed by the 2nd respondent in Proceedings No.46896/EW1/2010 dated 22.03.2011, quash the same and for a consequential direction to the respondents to issue appointment order and training to him to the post of Grade II Police Constable/Jail Warden/Fire Serviceman for the year 2010, the petitioner has filed this writ petition.

2. Facts of the case as put forth in the affidavit accompanying this petition, would run thus :

(i) The petitioner has passed 12th Standard in the year 2004 and has subsequently completed B.A. in Sociology, but not passed in the examination. The 1st respondent has given paper publication vide No.210 calling for applications from qualified persons for General Recruitment in 10112 number of posts in the cadre of Grade II Police Constable, Jail Wardens and Fire Servicemen for the year 2010, prescribing XIX conditions. (ii) To the said advertisement, the petitioner made an application to Grade II Police Constable/Jail Warden/Fire Servicemen and after examining his application, the 1st respondent sent a Hall Ticket assigning him Registration No.3202969 for written examination scheduled to be held on 08.08.2010. The petitioner scored 55 marks out of 80 in the written examination and the 1st respondent called upon the petitioner to appear for physical test. In the physical test, the petitioner secured 70.5 marks out of 100 and then he was called upon to appear for Medical Examination conducted on 3rd and 4th of February 2011 at Tirunelveli and he was selected in the medical examination also. Thereafter, the 1st respondent published the result for the above said recruitment in the Internet, in which the petitioner's Registration Number was found in the Provisional Selection list to the post of Jail Warden.

(iii) The petitioner has been selected for appointment and training on merit, fitness, qualification and suitability. He came to know that others who have been selected have received appointment orders from the 1st respondent. But, the petitioner is awaiting orders from the 1st respondent. Having not received any orders, the

petitioner made a representation to the 1st respondent, who, in his impugned order No.46896/EW1/2010 dated 22.03.2011 has stated that the petitioner was charged for the offence under Sections 147, 148, 294(b), 323 and 506(ii) IPC in Crime No.207 of 2009 dated 25.11.2010 and in Judicial Magistrate, Boothapandi in C.C.No.73 of 2010 and finally after due trial, the petitioner was acquitted from the said charges by giving benefit of doubt by referring to G.O.Ms.No.1410/Home/C2/Department dated 17.10.2009, not qualified for appointment and hence appointment order was not issued. Again, the petitioner made a petition to the Chief Secretary and in his letter No.66678/Prison 2/2011-1 dated 15.09.2011, the above fact is pointed out in it. (iv) In the prosecution evidence of the complainant, the petitioner has stated that he does not know about the accused 1 to 5 and compromised with them and also stated that in the procession of Vinayagar idol, no accused was found in the crowd and he did not know that the above said accused were present and that only on supposition, the complainant has filed a complaint. He has further stated that he has been falsely implicated in the complaint as the 4th accused by the police with an ulterior motive. In the said circumstances, the Judicial Magistrate, Boothapandi has determined that it is not proved beyond reasonable doubt and released all the accused under Section 248(1) of Cr.P.C. (v) While so, the 1st respondent has passed the impugned order dated 22.03.2011, that too without giving an opportunity of being heard, which is against the doctrine of natural justice and the same is challenged by the petitioner in this writ petition.

3. Respondents have filed counter affidavit and stated as follows: (i) The petitioner has not passed B.A. (Sociology) Degree examination. He has applied for the combined Recruitment of Grade II Police Constables/Grade II Jail Warden/Fireman 2010. He appeared for the Written Test, Physical measurement and Physical efficiency Test. His Registration Number was 3202969. After passing the Written Test, the candidate was allowed to attend the other tests. Result was published by taking together the marks of written and physical efficiency test. The petitioner has passed the written test and subsequently allowed to attend the physical efficiency test. The combined recruitment consists of four posts on rank basis namely Armed Reserve (AR), Tamil Nadu Special Police (TSP), Jail Warden and Fireman. He had scored 70.50 marks. Hence, his name was included in the

provisional select test for the post of Grade II Warden in Prison Department. He was subjected to police verification and medical examination was conducted. He appeared for the medical examination at Tirunelveli Medical College Hospital, Tirunelveli and certified that he is medically fit.

(ii) The Superintendent of Police, Kanyakumari District has forwarded the Police verification report in respect of the petitioner, in which it has been pointed out that he was involved in criminal case in Aralvoimozhi Police Station Cr.No.307 of 2009 u/s 147, 148, 294(b), 323, 324, 506(ii) IPC. The case was acquitted on 25.11.2010 at Judicial Magistrate Court, Boothapandy in C.C.No.73 of 2010 and the petitioner was discharged as per Cr.P.C. Section 248(1). Opinion was called for from the Assistant Public Prosecutor, Grade II Judicial Magistrate Court, Bhoothapandy. Additional Public Prosecutor, in her letter dated 12.02.2011 has stated that in the case of the petitioner, the Sub- Inspector of Police, Aralvoimozhi Police Station conducted the investigation, collected all the material facts and filed a final report. The prosecution witness 1 and 2 did not support the prosecution case and they were treated as hostile. She has opined that the individual was not honourably acquitted in this case, but acquitted due to the fact that the complainant turned hostile.

(iii) As per G.O.Ms.No.1410, Home Department, dated 17.10.2008, a person who is acquitted on benefit of doubt shall be treated as a person involved in a criminal case. Hence, the petitioner is not eligible for appointment to the post of Grade II Warden, since he was involved in criminal case and acquitted by giving benefit of doubt. Government has issued following instructions with regard to involvement in criminal case.

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 a person involved in a criminal case.

Explanation (2) : A person involved in a criminal case at the time of Police verification and the case is 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.

(iv) The petitioner has been included as A4 in the criminal case and the case was acquitted on 25.11.2010 at Judicial Magistrate Court, Boothapandy in C.C.No.73 of 2010 and it is not proved beyond reasonable doubt and all the accused were released u/s 248(1) of Cr.P.C. The petitioner was not acquitted honourably. As per the Government Order, dated 17.10.2008 mentioned in para 5 above, he was not appointed to the post of Grade II Warden.

(v) The selection to the post of Grade II Warden is an initial appointment in the Department and therefore, the verification of the character and antecedents are of paramount importance in the selection and therefore, if the candidates' character and antecedents are not satisfactory, it is proper not to appoint him in the service. The fact was informed to the petitioner vide Memo No.46896/EW1/2010, dated 22.03.2011 of the 2nd respondent. Orders were passed with due application of mind and it is not liable to be set aside.

(vi) The 1st respondent has sent the provisional select list to the post of Grade II Warden. Provisionally selected candidates were subjected to police verification and medical examination. Based on their eligibility, candidates were appointed to the post of Grade II Wardens in the existing vacancies and they were deputed for six months course training from 01.03.2011. The petitioner was not eligible for appointment to the post of Grade II Warden, since he was involved in criminal case and was not acquitted honourably. For the foregoing reasons and submissions, the respondents pray that the writ petition may be dismissed.

4. In the Additional Counter Affidavit filed on behalf of the respondents, it is stated as follows:

(i) The petitioner's name was included in the provisional select test for the post of Grade II Warden in Prison Department. He was subjected to police verification and medical examination. In the Police verification Roll, the petitioner has given the following undertaking.

I am the applicant, do solemnly and sincerely declare that the answers furnished by me to the following questions are entirely true and accurate. I realize that if I am enlisted and my statement which has been made by me is false, I shall render myself liable to be dismissed for obtaining service under false pretences.

(ii) While filling up the Police Verification Roll, the petitioner had written as 'No' for the question 'Have you even been concerned in any criminal case as defendant'. He has not furnished the details of criminal case, C.C. Number and Court. The petitioner had suppressed the fact of involvement in criminal case. The Superintendent of Police, Kanyakumari District has informed that he was involved in criminal case in Aralvoimozhi Police Station Cr.No.307/2009 u/s 147, 148, 294(b), 323, 324, 506(ii) IPC. The petitioner was discharged as per Cr.P.C. Section 248(1). Opinion was called for from the Additional Public Prosecutor Judicial Magistrate Court, Boothapandy. She has opined that the petitioner was acquitted honourably in this case, but acquitted due to the fact that the complainant turned hostile. Hence, as per G.O.Ms.No.1410, Home Department, dated 17.10.2008, he was not appointed to the post of Grade II Warden in Prison Department.

(iii) The selection to the post of Grade II Warden is an initial appointment in the Department and therefore, the verification of the character and antecedents are of paramount importance in the selection. The petitioner had suppressed the fact of involvement in criminal case. He has not furnished the details of criminal case. Hence, the petitioner was not eligible for appointment to the post of Grade II Warden.

5. Mr.M.Ganesan, learned counsel appearing for the petitioner would strenuously contend that the impugned order is ex facie illegal, non-speaking and with total non-application of mind. He assailed the order on the ground that there was no show cause notice nor opportunity of hearing before the impugned order came to be passed. Therefore, there is a clear violation of the principles of natural justice, as no opportunity was afforded to him to explain his position. The respondents did not take into account that on suspicion and assumption the complainant has given a complaint; the prosecution witness 2 has stated that he did not know about the

incidents occurred; the investigating officer has not given evidence in the Court and the Assistant Public Prosecutor has remarked and endorsed in the case file not necessary to inquire of the other witness. The judgment passed by the Court below acquitting the petitioner under Section 248(1) of Criminal Procedure Code is deemed to be an 'honourable acquittal'. It is pertinent to note that against the order of the Court below, the respondents have not filed any appeal.

5a. In support of his case, learned counsel for the petitioner has relied on the following :

(i) a decision of the Calcutta High Court reported in AIR 1933 Calcutta 800 in the case of Major Robert Stuart Wauchope Vs. Emperor, wherein, in the last para, it is held as follows:-.. Lastly, I am of the opinion that some weight should have been given to the past character of the appellant. No doubt, if the prosecution had been able to prove misappropriation by direct evidence, no amount of evidence with regard to character would have been of any avail. But the present case depends upon circumstantial evidence and the question is what inference is to be drawn from circumstances, which may be given either an innocent or a sinister interpretation. It is exactly in a case of this kind that evidence of good character becomes important and it would be unreasonable to hold that there is no difference between a member of an honourable service with an unblemished record and an old thief with previous convictions. In conclusion, I need only say that I entirely agree with the learned brother that this appeal must be allowed. But although I find myself unable to agree with the decision of the learned Magistrate, I see no reason to suppose that in convicting the appellant as he did, he was not satisfied that the prosecution case was properly proved by legally admissible evidence.

(ii) a Supreme Court decision reported in AIR 1954 SC. 266 (Vol.41, C.N.60) in the case of Harihar Chakravarthy Vs. The State of West Bengal, wherein, it is held as under:

8. ... The appellant might or might not be guilty of this other offence, but he is certainly innocent of the offence with which he was charged and for which he was fully tried and therefore he is entitled to an acquittal and the learned Judge had no

power to set aside that order so long as he agreed, as he did, that the appellant was not guilty of the offence with which he was charged. Once a charge is framed and the accused is found not guilty of that charge an acquittal must be recorded under Section 258(1), Criminal P. C. There is no option in the matter and we are of the opinion therefore that the order setting aside the acquittal was in any event bad.

11. We may also reiterate the observations which were made by this Court in -- 'D. Stephens v. Nosibolla', (A), AIR 1951 SC 196 (A) in regard to the exercise of the revisional jurisdiction at the instance of a private complainant:

The revisional jurisdiction conferred on the High Court under Section 439, Criminal P. C. is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.

(iii) a Division Bench Judgment of this Court reported in (2006) 1 MLJ 230 in the case of Director General of Police, Chairman, Uniformed Services Recruitment Board, Chennai-600 009. and others Vs. C.Senthilkumar and another, wherein in paragraphs 11 and 12, it is held as under:

11. ... After finding that for suppression of such incident in the application form, their Lordships have concluded that he should not have been denied employment and set aside the order of the High Court and ordered appointment.

12. In W.P. No. 44297 of 2002 dated 30.9.2004, the Division Bench upheld the similar order passed by the Tribunal. Similar order has been passed by another Division Bench of this Court in the order dated 21.4.2005 made in W.P. No. 41789 of 2002 and 43754 of 2002.

(iv) yet another judgment of this Court reported in (2008) 4 MLJ 88 in the case of D.Mahadevan Vs. Director General of Police, Chennai, wherein, a learned single Judge of this Court has held thus :

8. A Full Bench of this Court in W.P. No. 38298 of 2005 etc. batch of cases Manikandan and Ors. vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board and Ors. by order dated 28.2.2008, held as follows: But the concept of double jeopardy, to some extent, is allergic to service law. In as many cases as one can think of, the Supreme Court has made it clear (i) that the imposition of a punishment and the denial of promotion did not amount to double jeopardy and (ii) that the conviction by a criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of misconduct, did not amount to double jeopardy.

Since the concept of acquittal is an acquittal, is an off shoot of the principle of double jeopardy underlying Section 300(1) of the Code, it cannot be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles applicable to Service jurisprudence. A person discharged does not even have protection under Section 300 of the Code and hence such a person cannot assail the Explanation 1 to the impugned Rule 14(b).

Therefore, we hold, in answer to the first issue referred to the Full Bench, that by virtue of Explanation 1 to Clause (iv) of Rule 14(b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified..............

10. In this context, it is relevant to refer to the judgment of the Bombay High Court in H.I. Kazi v. J.C. Agarwal, 1980(41) F.L.R. 171, where dealing with the term 'honourable acquittal', it has been observed as follows: It is very difficult to define what is the meaning of the word, 'honourable acquittal'. In my view, it will depend

on the fact and circumstances of each case as to whether a person can be said to have been discharged or acquitted honourably or not. The judgment of Supreme Court in State of Assam v. Raghvan 1972 S.L.R. 344, is relied on by both the sides on the meaning of honourable acquittal as well as to show whether in the facts and circumstances of the present case petitioner can be said to have been honourabley acquitted. At page 347 Paragraph 8, a reference is made to a note and administrative instructions appearing under the rule similar to one applicable in this case, which seem to show that the words 'honourably' meant, acquitted of or that the Government servant has been fully exonerated. According to the Supreme Court, this meaning was supported by a judgment of Calcutta High Court in Robert Stuart Wauchope v. Emperor 1934(61) I.L.R. Cal. 168.

In my view, therefore, though it is very difficult to define precisely what is meant by the words 'honourably acquitted', it is safe to say that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, 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 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. In the present case, though there are some observations made at the end of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be little doubt that the accused was acquitted not by giving benefit of doubt, in spite of there being some evidence against him, but because the prosecution failed to prove the case against him. .... Mr. Cama has emphasized that accused No. 3 was acquitted because the prosecution failed to lead evidence of two witnesses. That his, defence was not believed but was only found to be probably true and that he was acquitted on the ground of the prosecution not having proved the case beyond reasonable doubt. He contends that when two views are possible on whether the judgment amounted to honourable acquittal or it did not, and the officer concerned had decided that this judgment did not amount to honourable acquittal, this Court

should not interfere with the decision. Assuming the correctness of the contention of Mr.Cama on the Court's power to interfere with such decision, I am of the view that the judgment clearly acquits the accused not on some technical ground or not because there was evidence both ways but the evidence of prosecution being found slightly wanting, the benefit of doubt was given to the petitioner. The judgment clearly establishes that the prosecution had miserably failed to establish the case against accused No. 3 and if this is not honourable acquittal, it is difficult to say what can be said to be the honourable acquittal. The decision, if any, arrived in the face of such a judgment cannot be said to be reasonable and therefore cannot be said to be bona fide and it discloses non-application of mind.

This decision squarely applies to the present case. Even Sushil Kumar's case cited above cannot help the respondent. There is absolutely no evidence in the criminal case to link the petitioner to the occurrence. The mere fact that his name finds a place in the F.I.R. cannot prove bad antecedents, since the evidence of even the author of the F.I.R. is in favour of the petitioner.

(v) yet another judgment of a learned Single Judge of this Court reported in (2009) 6 MLJ 13 in the case of M.Jahuber Sathik Vs. Chairman, Chennai and others, wherein, in paragraphs 11, 14 and 15, it is held as follows:-

11.No doubt there is no relationship of master and servant in the case of an aspirant to Government service. But at the same time, it cannot be said that the appointing authority is precluded from considering the eligibility of an aspirant with reference to the rules. Therefore, this Court is not inclined to subscribe to the contention of the petitioner that only after entry into government service, the authorities have the power to take disciplinary action against the government servant. But if an aspirant is a member or associated with a communal organisation which or does any activity falling under sub rules (b) and c of Rule 14-A of the Tamil Nadu Government Servants Conduct Rules, 1973, he can be disqualified from entering into government service. .....

14. ... That cannot be put aside against the petitioner, as he can always discontinue the agency at any time. The third reason does not hold water as the Sub Inspector of Police, who enquired the case in petition No.182 of 2008 has

found that the charge made in the petition was not proved. As long as the communal organisation in which the petitioner is stated to be a member is not categorised as one indulging or engaging in activities falling under Rule 14-A of the Government Servants Conduct Rules and in the absence of any adverse materials, disqualification of the petitioner from being considered to the post in Government service, is violative of Article 14 of the Constitution of India.

15. In an unreported judgment of this Court made in W.P.(MD)No.8537 of 2007, dated 31.01.2008, (S. Selvakumar Vs. The State of Tamil Nadu, rep. by the Home Secretary, Government of Tamil Nadu, Fort. St. George, Chennai - 9 and others), appointment to the post of Grade-II, Police Constable to a person, was denied on the ground that he was a Branch Secretary of a particular political party and that he was involved in many political agitations organised by the said political party and thus, his character was not upto the satisfaction of the Director General of Police, Chennai. Following the ratio decidenti in Ramashankar Raghuvanshi's case, a learned Judge of this Court, (Hon'ble Mr.Justice S.Nagamuthu) at Paragraphs 7 and 11 held as follows: 7. In the case on hand, it not the case of the respondents that the petitioner's involvement in a political party would affect his integrity and efficiency in police service. A bare perusal of the impugned order would go to show that he was rejected on the ground that he was the office bearer of a political party and involved in certain political agitations. Admittedly, the said political party in which he was the office bearer is not a banned organisation and the agitations in which the petitioner is alleged to have participated are also not anti social or anti national or unlawful agitations. Thus, in my considered opinion as held by the Hon'ble Supreme Court the rejection of the petitioner that he was involved in politics as a member of a political party and also participated in some of the political agitations cannot be a valid ground at all and the same cannot be a disqualification under Rule 14(b) of the Tamil Nadu Special Police Subordinate Rules 1978.

11. A close reading of the above said Judgment would go to show that since a Member of the Central Administrative Tribunal must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial functioning or militate there against, the Hon'ble Supreme Court held that

association with antisocial elements, unlawful organisations and political affiliations are also matters to be considered. In the case on hand, for appointment of a Police Constable it is not my endeavour to say that the political affiliation of an individual should be never taken into account. I am also to say that the political affiliation of the particular candidate is to be taken into account, but at the same time, it is to be further seen as to whether the particular candidate has involved in any illegal activities by resorting to any agitation organised by the political party etc., As held by the Hon'ble Supreme Court in Ramashanker Raghuvanshi's case (cited supra), being a member of a political party is not a sin. What is relevant is only his antecedents and character. In the case on hand, in the impugned order, except stating that the petitioner was the Branch Secretary of a political party and also involved in political agitations, there are no materials to brand him as disqualified for being appointed in police service. Thus, applying the principles laid down by the Hon'ble Supreme Court in the cases cited supra, I do not find any material to show that the petitioner had bad character and bad antecedents so as to disqualify him under Rule 14(b) of the Tamil Nadu Special Police Subordinate Rules 1978.

(vi) Similarly, in the case of S.Parbaharan Vs. Thalavai Commandant, Tirunelveli District reported in (2009) 6 MLJ 8, in paragraphs 14 and 15, the learned Single Judge has held as follows:-

14. As held by the Supreme Court, Probation of Offenders Act is a reformative measure and its object is to reclaim amateur offenders, who, if spared the indignity of incarceration, can be usefully rehabilitated in Society. Recognising the environmental influence in the commission of crimes, a legislation has been brought about to rehabilitate those offenders below the age of 21 years and conferred the powers on the criminal Courts to release, having regard to the nature of the offence and the character of the offender. In the case on hand, the petitioner, though committed certain offences at the younger age, seemed to have realised his mistakes and had been selected as a policeman in the Central Industrial Security Force. he had served in the force from sometime, without any adverse notice, till he was selected and ppointed as a police constable in the Tamil Nadu State Police Subordinate Service. It is said that many men have failed in

their action, when they were young and ignorant, but they have stood the test may a times, in later part of their lief. The conduct and aptitude of the petitioner in securing an employment in a disciplined force, that too, in one of the Special Establishments like, Central Industrial Security Force, itself would go to show that the change in the attitude of the young offender into a member of a disciplined force.

15. Looking at a person, with a closed mind to incarcerate, for the rest of his life in securing an employment in State or Central service, although he had working in a parliamentary force, would defeat the very object of the Act. When the makers of law viz., legislative have enacted a specific laudable reformative legislation and the menders of law, the Court of competent jurisdiction with a view to rehabilitate the petitioner, has released him under the Probation of Offenders Act, the executive, who is bound to give effect to the law and order of the Court, cannot punish a young offender indefinitely by denying his right to seek employment. The contention of the petitioner that he had disclosed the fact of involvement in a criminal case and the subsequent order of the learned Judicial Magistrate in the application submitted before the selection authorities has not been disputed by the respondent. Therefore, the reasons adduced by the respondents for cancellation of appointment, cannot be countenanced.

(vii) yet another Supreme Court decision reported in (2011) 4 SCC 644 in the case of Commissioner of Police and others v. Sandeep Kumar, wherein in paragraphs 8 and 12, it is held as follows:

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.............

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

6. On the other hand, the learned Additional Advocate General would contend that it is true that the petitioner went through all the tests as prescribed by the respondents; Equally, the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State, that too, a police force which is a disciplined one. 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 the petitioner to the disciplined force. He would further contend that the petitioner was selected only on provisional basis and that by itself, does not confer any automatic right to be appointed for the post which he had appeared for. It is also his contention that the petitioner was not acquitted honourably, but acquitted due to the fact that the complainant turned hostile. Therefore, the view taken by the appointing authority in the facts and circumstances of the case cannot be found fault with under any circumstance.

6a. To substantiate his stand, learned Additional Advocate General has relied on the following :

(i) a Supreme Court decision reported in (1996) 11 SCC 605 in the case of Delhi Administration Vs. Sushil Kumar

3..... 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 records 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. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his

case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service. (ii) A Full Bench decision of this Court reported in 2008 (2) CTC 97 in the case of Manikandan and others Vs. The Chairman, Tamil Nadu Uniformed Services, Chennai and others

33. In Dharam Pal Singh and others -vs- State of Rajasthan and others {2000 (4) S.L.R. 612}, the Full Bench of the Rajasthan High Court considered the effect of suppression of the involvement in a criminal case on the right of appointment of a person and also the effect of ultimate acquittal in the criminal case, upon the right to get appointed. In paragraph No.26, the majority view was summarised as follows:-

26. In the light of the facts stated and the discussion made above, we answer the questions 1 to 3 aforementioned as follows:- (1)That a candidate was persecuted or subjected to investigation on a criminal charge is a material fact, suppression of which, would entitle an employer to deny employment to a candidate on that ground. (2) That ultimate acquittal of a candidate, who was prosecuted on a criminal charge, would not condone or wash out the consequences of suppression of the fact that he was prosecuted.

(3) That suppression of material fact would by itself disentitle a candidate from being appointed in service.

Though in paragraph No.138 of the said judgment, one of the learned Judges of the Rajasthan High Court held that the mere registration of a First Information Report, is by itself not sufficient to visit him with disqualification or stigma, the said paragraph did not form part of the majority view. The majority view was reflected only in paragraph No.26. .....

39. In any event, it is well settled that provisional selection does not confer an automatic right to appointment. The petitioners in all these writ petitions, crossed the stages of physical fitness test, written test, interview and medical test in the entire process of selection. In the last lap of selection, police verification of their character and antecedents took place. The petitioners in all these writ petitions had adverse reports in the last lap and hence, the appointing authority did not issue orders of appointment. The stage at which the petitioners were shown the red card by the referee, is not the stage at which the petitioners had acquired an inviolable right to be appointed. Therefore, the petitioners cannot make out a grievance, especially when their involvement in the criminal cases either prior to the date of commencement of selection or during the course of selection process, is not disputed.

40. Therefore, in conclusion, we hold that the amended Rule 14(b) of the Special Rules for Tamil Nadu Police Subordinate Services is not ultra vires or unconstitutional. We also hold that the non selection of the writ petitioners or the rejection of their candidatures, by the respondents, either on the basis of their involvement in criminal case or on the basis of the suppression of their involvement, is perfectly valid and justified. In answer to the reference made to the Full Bench, we hold-

(a) that by virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case, can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified; and (b)That the failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case. (iii) an unreported decision of this Court dated 28.11.2008 made in W.P.Nos.199 of 2008, etc. in the case of Ganesan and another Vs. The State of Tamil Nadu and others :

15. Since the entire controversy centers around the interpretation of Rule 14(b), it is necessary to extract the entire rule, as it stands today after the amendment and it is as follows :- "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 does not have more than one wife living 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." (Emphasis Added)...

19. Thus, it is clearly seen that under Explanation (1) to Rule 14(b), even an honourable acquittal shall be treated as a person involved in a criminal case. The impugned orders dated 31.12.2007 (challenged in W.P.Nos.199 and 200 of 2008) do not suffer from any infirmity. On the date of selection, the judgment of the Criminal Court in S.C.No.100 of 2003 dated 01.4.2004 which was on record had only granted the benefit of doubt while acquitting the petitioners. Therefore, the respondents were correct in stating that though the petitioners' names were in the selection list, their antecedents showed that they were involved in a criminal case.

7. Heard the learned counsel on either side and carefully perused the materials available on record.

8. In the backdrop of the above pleadings, the points that arise for consideration in this Writ Petition are :

(1) Whether the acquittal or discharge of a person in a criminal case on benefit of doubt would amount to a stigma on the life of a person so as to make him

ineligible as per Rule 14 (b), Explanation-1 of the Tamil Nadu Special Police Subordinate Rules ?

(2) Whether the non-disclosure of involvement in a criminal case, which has ultimately ended in acquittal, can be a ground for disqualifying the persons concerned from entering into the Government service ?

9. In fact, earlier, the very same above two issues were referred to a Full Bench for consideration by a learned single Judge in view of a conflict of opinion between two Division Bench decisions viz., one in P.Virabhagu v. Union of India, 2005 (1) CTC 429, and the other in T.Sekar v. Secretary to Government, 2007 (1) MLJ 510. On such reference being made, the Full Bench, after referring to various decisions of the Supreme Court and also this Court, by its decision, dated 28.02.2008, in Manikandan and Others v. The Chairman, Tamil Nadu Uniformed Services, Recruitment Board, Chennai, and Others, reported in 2008 (2) CTC 97, answered the issues in the following terms :

(1) By virtue of Explanation 1 to Clause (iv) of Rule 14 (b) of the Tamil Nadu Special Police Subordinate Service Rules, a person acquitted on benefit of doubt or discharged in a criminal case can still be considered as disqualified for selection to the police service of the State and that the same cannot be termed as illegal or unjustified ; and

(2) The failure of a person to disclose in the application form, either his involvement in a criminal case or the pendency of a criminal case against him, would entitle the appointing authority to reject his application on the ground of concealment of a material fact, irrespective of the ultimate outcome of the criminal case.

10. Keeping the above answers of the Full Bench of this Court, if we consider the case on hand, for better appreciation, it is appropriate to state the rule position as under :

By G.O.(Ms.) No.101, Home (Police-IX) Department, dated 30.01.2003, the Government of Tamil Nadu issued an amendment to the Tamil Nadu Special

Police Subordinate Service Rules, 1978, in exercise of the powers conferred under the Tamil Nadu District Police Act,1859, and Section 9 of the Chennai City Police Act read with the Proviso to Article 309 of the Constitution of India. One of the amendments introduced under the said Government Order was the addition of Clause (iv) and Explanations 1 and 2 under the existing Rule 14 (b). The Rule 14 (b), as it stood prior to amendment contained only Clauses (i), (ii) and (iii). After the amendment and the introduction of Clause (iv) with Explanations 1 and 2, the amended Rule read as follows : 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; (ii) that his character and antecedents are such as to qualify him for such service ;

(iii) that such a person does 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. In this case, the name of the petitioner was included in the provisional select list for the post of Grade II Warden in Prison Department, after being subjected to written test and Physical Efficiency Test. But, when he was subjected to Police Verification, which was mandatory, he was found to have been involved in a criminal case in Crime No.307 of 2009 on the file of Aralvoimizhi Police Station for various criminal offences, which, ultimately ended in acquittal. At this juncture, the whole controversy is as to, whether the said acquittal is honourable or on benefit of doubt due to the fact that the complainant turned hostile. In order to decide the

said controversy, it is necessary to study the judgment of the criminal court, which acquitted the petitioner. Para 6 of the said judgment is quite relevant for this purpose. English translation of the said para reads as under :

6. In this case, P.W.1, Murugan, the person, who gave complaint in respect of the occurrence and who was injured in the occurrence, and P.W.2 Annadurai @ Sasi the eye-witness of the occurrence were examined. P.W.1, in his evidence, has stated that he does not know the accused, that he had compromised with the accused, that in the year 2009, at 2.00 P.M., when he had gone for Vinayagar idol procession, some persons came together and attacked on his head with iron rod and stone, that owing to that, he sustained injury on his head, that he did not know who were they, since the accused were not present in the said crowd, that while he was undergoing treatment in the hospital at Asaripallam, the police came and obtained statement of complaint, that since enmity has prevailed already between the accused and him (P.W.1) and that he gave the complaint on the basis of suspicion, that only the accused must have attacked him. P.W.2, in his evidence, has deposed that he knows P.W.1 Murugan, that he knows the accused, that he does not know about the occurrence which took place between P.W.1 and the accused, that since the aforesaid P.Ws.1 and 2 did not adduce evidence in corroboration with the evidences on the side of prosecution, they were treated as hostile witnesses. P.W.1, the person, who gave the complaint in this case and the person, who was injured, and P.W.2, the eye witness to the occurrence, were treated as hostile witnesses. The Additional Public Prosecutor made an endorsement in the charge sheet that it was not necessary to examine the other eye witness in this case, namely, Sundaram, Gandhi, Jayanthi, who admitted P.W.1 in the hospital, the witness of observation mahazar, namely Sormappan, Chandrakumar and Dr.Muralidharana, the Government Doctor, who administered treatment to P.W.1 and issued wound certificate, the aforesaid witnesses were not examined. In this case, on behalf of the police, the Head Constable was examined as P.W.3. From his evidence, it becomes evident that whatever steps ought to be taken by the police department, had been taken. Since P.W.1, the person who was injured in the occurrence of this case, and who lodged the complaint, in respect of the occurrence in this case, and P.W.2, the eye witness to the occurrence were treated as hostile witnesses, since the other witnesses in this

case were examined and since it is not possible to prove this case on the basis of the evidence on the side of the police department, this Court decides that the aforesaid charges framed against the accused are not proved beyond any reasonable doubt through the evidences and exhibits on the side of prosecution.

12. The above para 6 of the trial Court would clinchingly establish that the acquittal of the petitioner was based on benefit of doubt coupled with the fact that the complainant turned hostile, as enshrined in Explanation (1) to Clause (iv) of Rule 14 (b) of the Rules. As per 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. Therefore, the said acquittal of the petitioner by the trial Court is of no benefit to the petitioner for claiming appointment.

13. At this point, it is relevant to examine the legal position. Section 248 of the Code of Criminal Procedure,1973, provides for acquittal or conviction. As per sub-section (1) thereof, if, in any case under this Chapter in which a change has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal. Under sub-section (2), where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 of Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law. Under sub-section (3), where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of Section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon, provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2) .

14. A perusal of the above section would indicate that it is not defined as to what would be the nature of acquittal, whether it is honourable acquittal or acquittal on

benefit of doubt or acquittal beyond reasonable doubt. In the absence of any definition or explanation, the competent Government has to clarify the position. In this regard, it is to be stated that the Government of Tamil Nadu, by a Government Order in G.O.Ms.No.101, Home (Police-IX) Department, dated 30.01.2003, has brought an amendment to the Tamil Nadu Special Police Subordinate Service Rules,1978, in exercise of the powers conferred under the Tamil Nadu District Police Act,1859, and Section 9 of the Chennai City Police Act read with the Proviso to Article 309 of the Constitution of India and one of the amendments introduced under the said Government Order was the addition of Clause (iv) and Explanations 1 and 2 under the existing Rule 14 (b), which clarify the position that 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 and that 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.

15. The above position has arisen for consideration on a legal principle and on consideration of various decisions of the Supreme Court and the High Courts, which were reflected in paras 10 and 11 of a decision of this Court in D.Mahadevan v. Director General of Police, reported in (2008) 4 MLJ 88, which are reproduced hereunder :

10. In this context, it is relevant to refer to the judgment of the Bombay High Court in H.I. Kazi v. J.C. Agarwal, 1980(41) F.L.R. 171, where dealing with the term 'honourable acquittal', it has been observed as follows: It is very difficult to define what is the meaning of the word, 'honourable acquittal'. In my view, it will depend on the fact and circumstances of each case as to whether a person can be said to have been discharged or acquitted honourably or not. The judgment of Supreme Court in State of Assam v. Raghvan 1972 S.L.R. 344, is relied on by both the sides on the meaning of honourable acquittal as well as to show whether in the facts and circumstances of the present case petitioner can be said to have been honourabley acquitted. At page 347 Paragraph 8, a reference is made to a note

and administrative instructions appearing under the rule similar to one applicable in this case, which seem to show that the words 'honourably' meant, acquitted of or that the Government servant has been fully exonerated. According to the Supreme Court, this meaning was supported by a judgment of Calcutta High Court in Robert Stuart Wauchope v. Emperor 1934(61) I.L.R. Cal. 168.

In my view, therefore, though it is very difficult to define precisely what is meant by the words 'honourably acquitted', it is safe to say that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, 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 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. In the present case, though there are some observations made at the end of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be little doubt that the accused was acquitted not by giving benefit of doubt, in spite of there being some evidence against him, but because the prosecution failed to prove the case against him. ....

11..... Since on the materials available on record I find that the petitioner has been honourably acquitted, the criminal case shall not be a bar to his selection to the post of Sub Inspector, if he is otherwise qualified and eligible.

16. From a reading of the above principles, it is clear that if the accused is acquitted after full consideration of evidence because the prosecution witnesses were disbelieved and the prosecution has miserably failed to prove the charges, it would amount to honourable acquittal. Further, it is also clarified that if the accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable

acquittal. Therefore, the explanation (1) to Rule 14 (b) of the Rules clarifies the position that if any person is acquitted on benefit of doubt, he is not entitled to claim the benefit of eligibility for appointment.

17. A thorough reading of the judgment in question would give a clear impression to this Court on considering the reasoning given by the criminal court that in this case, on behalf of the police, the Head Constable was examined as P.W.3 and from his evidence, it becomes evident that whatever steps ought to be taken by the police department, had been taken; since P.W.1, the person who was injured in the occurrence of this case, and who lodged the complaint, in respect of the occurrence in this case, and P.W.2, the eye witness to the occurrence were treated as hostile witnesses and since the other witnesses in this case were examined and since it is not possible to prove this case on the basis of the evidence on the side of the police department, this Court decided that the charges framed against the accused are not proved beyond any reasonable doubt through the evidences and exhibits on the side of prosecution. When the important witnesses turned hostile and no other witnesses were examined except the police personnel who had deposed that it was their duty to take whatever steps that had to be taken, it has to be stated that the acquittal in this case cannot be construed to be honourable acquittal and it is only to be construed as acquittal on benefit of doubt and also due to the fact that the complainant turned hostile. Therefore, while taking into consideration the explanation (1) to Rule 14 (b) of the Rules which says that a person acquitted or discharged on benefit of doubt or due to the fact that the complainant turned hostile, the claim of the petitioner for appointment cannot be accepted.

18. That apart, while filling up the Police Verification Roll, the petitioner had written as NO for the question Have you ever been concerned in any criminal case as defendant When that being so, he has given an undertaking in the very same Police Verification Roll stating I do solemnly and sincerely declare that the answers furnished by me to the following questions are entirely true and accurate. I realize that if I am enlisted and my statement which has been made by me is false, I shall render myself liable to be dismissed for obtaining service under false pretenses. By giving such an undertaking, without furnishing the details of the

criminal case pending against him, the petitioner has suppressed the material fact of his involvement in the criminal case, thereby disentitling him from being appointed in service.

19. Police service is a disciplined service and it requires to maintain strict discipline. Any laxity in this behalf erodes discipline in the service, causing serious effect in the maintenance of law and order. Similarly, the post of Grade II Police Constable / Jail Warden is an initial appointment in the Police Department. Therefore, verification of the character and antecedents of the individual are of paramount importance in the selection. In the present case, only based on verification of the character and antecedents of the petitioner, his candidature for appointment to the post in question has been rejected by the second respondent vide the impugned order, by giving valid reasons.

20. With regard to the authorities cited in this case, it is to be stated that except the Full Bench decision of this Court in Manikandan's case, cited supra, relied upon by the learned Additional Advocate General, which is directly on the points in issue on hand, the authorities cited by the learned counsel for the petitioner are not of any help to the petitioner.

21. In view of the discussion made by me in the foregoing paragraphs, this Writ Petition is dismissed. No costs. Consequently, the connected M.P(MD) Nos.1 and 2 of 2011 are also dismissed.

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