IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.1.2005

CORAM

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTSICE S.K. KRISHNAN

W.P.NO.16043 OF 2000
and
W.M.P.No.23271 of 2000

P.Virabhagu ....Petitioner

Vs.

1.The Union of India
rep. By the Secretary to Govt. of India
Ministry of Health & Family Welfare Services
Nirman Bhavan
New Delhi-1.
2.The Director
Jawaharlal Institute of Post-Graduate
Medical Examination and Research
Danvanthri Nagar
Pondicherry - 605 006.
3.The Deputy Director (Administration)
Jawaharlal Institute of Post-Graduate
Medical Examination and Research
Pondicherry.
4.The Under Secretary to the Government
Department of Personnel and Administrative
Reforms (Personnel Wing)
Chief Secretariat Buildings
Pondicherry. ..Respondents.

Writ Petition filed under Article 226 of the Constitution of India to issue Certiorarified Mandamus as prayed for therein.

For Petitioner : Mr.D. Bharathachakravarthy
For Respondents No.1 to 3: M/s.S.Rajalakshmi
for Mr.M.T. Arunan, ACGSC.
For Respondent No.4:Mr.T.Murugesan
Government Pleader for Pondicherry.

ORDER

S.K. KRISHNAN. J.

Challenging the order of the Madras Bench of the Central Administrative Tribunal in O.A.No.376 of 2000 dated 12.4.2000 and the Memorandum No.Estt.2(42)/97 of the third respondent, dated 20/22.9.1999, the petitioner has filed this Writ Petition to quash the same and for a direction to the second and third respondents to consider the petitioner for

appointment to the post of Groundman in the Jawaharlal Institute of Post Graduate Medical Examination and Research, Pondicherry against the vacancy for which the petitioner was selected in the interview held on 18.2.1999.

2. The petitioner was sponsored by the employment exchange, Pondicherry to the post of Ground man in the Jawaharlal Institute of Post Graduate Medical Examination and Research (hereinafter referred to as JIPMER) and thereupon the Administrative officer under the second respondent sent a call letter to the petitioner in Memorandum No.Estt.2(42)/97 dated 1.2.1999 asking the petitioner to appear for an interview to the said post on 18.2.1999. The petitioner was selected for the above said post and the same was displayed in the notice board. Thereafter, the first respondent issued a memorandum No.Estt.2(42)/97 dated 15.5.1999 asking the petitioner to fill up the attestation form enclosed therewith and the same was submitted by the petitioner after duly filled-in. However, the third respondent informed the petitioner by the impugned Memorandum No.Estt.2(42)/97 dated 20/22.9.1999 that the petitioner could not be considered for appointment to the post of Ground man. Thereafter, the petitioner sent a representation to the second respondent. Having not received any reply, the petitioner filed an application in O.A.No.376 of 2000 before the Central Administrative Tribunal, which dismissed the same by its order dated 12.4.2000. Hence, the present Writ Petition.

3. In the counter filed by the respondents, it is stated that the attestation form submitted by the petitioner was forwarded to the Chief Secretary of Pondicherry for furnishing a report on the character and antecedent of the petitioner. Based on the report of the Inspector General of Police, Pondicherry, the fourth respondent in his letter No.A.16012/9/99/DPAR/CC dated 3.9.1999 informed that since the individual involved in a case in Cr.No.23/94 under Section 160 I.P.C. , dated 24.2.1994 on the file of Lawspet Police Station and paid a fine of Rs.50/- before JFCM Court, Pondicherry in S.T.R.No.3278 of 1994 on 24.6.1994 and the individual had furnished false information in Col.No.12 of the attestation form, he is not suitable for Government Service. On the basis of the letter of the fourth respondent, who is the competent authority, the third respondent informed the petitioner by a Memo. No.Estt.2(42)/97 dated 20/22.9.1999 that the petitioner cannot be considered for the post of Ground man. It is stated that based on the report from the Character and Antecedents Authority and suppression of the fact in the Attestation Form by the petitioner despite warning Clause, the action of the third respondent is well within the ambit of Government Rules and Regulations and it is not violative of the principles of natural justice.

4. Heard both sides.

5. It is an admitted fact that the employment exchange, Pondicherry sponsored the petitioner to the second

respondent for selection to the post of Ground man in JIPMER. No doubt, in the interview conducted by the Selection Committee under the Second Respondent on 18.2.1999, the petitioner was provisionally selected.

6. Subsequently, the petitioner was asked by the first respondent to submit the attestation form after duly filled-in and the same was submitted by the petitioner, after duly filled in, to the authority concerned. Thereafter, the third respondent sent the attestation form to the Chief Secretary, Government of Pondicherry for verification of the petitioner's character and antecedent.

7. After verification, the fourth respondent sent a report to the Second respondent informing that the petitioner was not a suitable person for Government Service. On that basis, the third respondent issued a memorandum to the petitioner informing him that the petitioner could not be considered for appointment to the post of Ground man.

8. Aggrieved against the memorandum issued by the third respondent in his letter dated 20/22.9.1999, the petitioner submitted a representation to the second respondent to reconsider his decision and to appoint the petitioner as Groundman. However, the same was not considered. Thereafter, the petitioner approached the Central Administrative Tribunal by filing an application in O.A.No.376 of 2000, challenging the memo the third respondent as unconstitutional and violative of Articles 14 and 16 of the Constitution of India. However, the Tribunal dismissed the said application on 12.4.2000.

9. As against the dismissal order passed by the Tribunal, present Writ petition has been filed by the petitioner.

10. The only point to be decided in this petition is whether the memo issued by the third respondent is arbitrary and violative of Articles 14 and 16 Constitution of India.

11. It is not in dispute the reasons stated by the respondents 1 to 3 in their counter for not considering the petitioner to the post of Ground man as he is not suitable for Government Service. The reasons stated in the counter are as follows.

a. The petitioner involved in a case in Cr.No.23 of 1994 under Section 160 I.P.C. dated 24.2.1994 of Lawspet Police Station and that he paid a fine of Rs.50/- on 24.6.1994 before the First Class Judicial Magistrate, Pondicherry in S.T.R.No.3278 of 1994.

b. The petitioner had furnished a false information in Col.No.12 of the attestation form.

12. Since the third respondent found the petitioner that he is not suitable for Government Service for the reasons stated above, he sent a memorandum, dated 20/22.9.1999 informing the same to the petitioner.

13. The learned counsel appearing for the petitioner would submit that the Tribunal without analysing the

circumstances has erroneously concluded that the impugned order passed by the third respondent is justifiable one and hence, it upheld the order passed by the third respondent.

14. At this juncture, it is just and necessary for this Court to refer to the said order passed by the Tribunal. The order of the Tribunal reads as follows:

> "We cannot sit on appeal over such orders. The applicant has not been recruited at all. Once if the character and antecedents is found unfit, we do not think that the principles of natural justice to be complied with. When a person appears for an interview with regard to the recruitment, it is always open to the official respondents to verify the character and antecedents. When the same is found unfit, the the impugned order in our view has been correctly passed and we do not think that we can sit on appeal over such orders. There are no merits in the application and the O.A. is accordingly dismissed."

15. The learned counsel for the petitioner would submit that the Tribunal passed the above order without applying its mind and therefore, the same has to be set aside for the following reasons.

16. It is factually incorrect to hold that the applicant has not been recruited at all. It is pointed out that the petitioner was selected provisionally by the authority concerned after following the procedures for recruitment as stated above and therefore, it is incorrect to say that the petitioner has not been recruited at all. At this juncture, the learned counsel appearing for the petitioner would contend that since the petitioner was provisionally selected and his selection was displayed in the notice board and after getting the attestation form duly filled-in by the petitioner, the issuance of memo, dated 20/22.9.1999, by the third respondent informing that the petitioner cannot be considered for appointment to the post of Groundman without assigning any reason therefor, is arbitrary and therefore, the same has to be set aside.

17. Further, the learned counsel would contend that the third respondent before issuing such memo, he should have given an opportunity to explain his stand or position to the reason on which the respondent disqualified the petitioner for appointment to the post of Groundman and therefore, the issuance of the said memo, without affording any opportunity to the petitioner, is in violation of principles of natural justice.

18. In support of his contention, the learned counsel relied on the following decisions.

19. In S. GOVINDARAJU VS. K.S.R.T.C. AND ANOTHER (A.I.R.1986(2) S.C.362), the Supreme Court deals with the affording of an opportunity to an employee before deletion of

his name from the selection list, otherwise, it held that, it would amount to violation of principles of natural justice.

20. In the above said decision, the appellant was selected for appointment as conductor in the Karnataka State Road Transport Corporation. After the completion of one year service, his service was terminated. Challenging the said termination order passed by the department, he approached the High Court of Karnataka by filing a Writ petition under Article 226 of the Constitution of India as void and illegal for the non-compliance of Section 25F of the Industrial Disputes Act, 1947.

21. However, a learned Single Judge of the High Court of Karnataka rejected the petition holding that the order of termination was made in terms under which employment was given to him and it did not amount to retrenchment in view of Section 2(oo)(bb) of the Act.

22. As against the order passed by the learned Single Judge, the appellant preferred a civil appeal before the Supreme Court.

23. While dealing with the above said case, the Supreme Court held as follows:

> "Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice. We accordingly allow the appeal and set aside the order of the High Court and also the order of termination and direct that the appellant shall be treated in service and be paid his back wages and other benefits. The appeal is allowed with costs."

24. The decision in STATE OF MADHYA PRADESH V.

RAMASHANKAR RAGHUVANSHI AND ANOTHER (1983 I L.L.J. 299) deals with the removal of a teacher from service on the basis of the police report that the teacher had taken part in R.S.S. and Jan Sangh activities.

25. It is a case, wherein, the respondent prior to his absorption into Government Service as a teacher, he took part in R.S.S. and Jan Sangh activities. However, he was terminated from service on the basis of the report of the Superintendent of Police, Raigarh, dated 31.10.1974 to the effect that the individual was not a fit person to be entertained in Government Service as he had taken part in R.S.S. and Jan Sangh activities. When the matter was brought before the Hon'ble Supreme Court by the State Government, while deciding the Civil Appeal, their Lordships have held in para-2 of the judgment as follows:

> "2.India is not a police State. India is a democratic republic. More than 30 years ago, on January 26, 1950, the people of India resolved to constitute India into a democratic republic and to secure to all its citizens "Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity"; and to promote "Fraternity, assuring the dignity of the individual". This determination of the people, let us hope, is not a forgotten chapter of history. The determination has been written into the articles of the Constitution in the shape of Fundamental Rights and they are what makes India a democratic republic and what marks India from authoritarian or police States. The right to freedom of speech and expression, the right to form associations and unions, the right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the laws, the right to equality of opportunity in matters relating to employment or appointment to any office under the State are declared Fundamental Rights. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some Service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted anyone to commit violent deeds. There is no reference to any addiction to violence or vice or any incident involving violence, vice or other crime. All that

is said is that before he was absorbed in government service, he had taken part in some "RSS or Jan Sangh activities". What those activities were has never been disclosed. Neither the RSS nor the Jan Sangh is alleged to be engaged in any subversive or other illegal activity; nor are the organisations banned. Most people, including intellectuals, may not agree with the programme and philosophy of the Jan Sangh and the RSS or, for that matter, of many other political parties and organisations of an altogether different hue. But that is irrelevant. Everyone is entitled to his thoughts and views. There are no barriers. Our Constitution guarantees that. In fact members of these organisations continue to be Members of Parliament and State Legislatures. They are heard, often with respect, inside and outside the Parliament. What then was the sin that the respondent committed in participating in some political activity before his absorption into government service? What was wrong in his being a member of an organisation which is not even alleged to be devoted to subversive or illegal activities? The whole idea of seeking a police report on the political faith and the past political activity of a candidate for public employment appears to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association. It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment. But why seek a police report on the political faith of a candidate and act upon it? Politics is no crime. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment? Would it not lead to devastating results, if such a policy is pursued by each of the Governments of the constituent States of India where different political parties may happen to wield power, for the time being? Is public employment reserved for "the cringing and the craven" in the words of Mr Justice Black of the United States Supreme Court? Is it not destructive of the dignity of the individual mentioned in the Preamble of the Constitution? Is it to be put against a young man that before the cold climate of age and office freezes him into immobility, he takes part in some political activity in a mild manner. Most students and most young men are exhorted by national leaders to take part in political activities and if they do get involved in some form of agitation or the other, is it to

be to their ever lasting discredit? Some times they get involved because they feel strongly and badly about injustice, because they are possessed of integrity and because they are fired by idealism. They get involved because they are pushed into the forefront by elderly leaders who lead and occasionally mislead them. Should all these young men be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it? We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce "McCarthyism" into India. "McCarthyism" is obnoxious to the whole philosophy of our Constitution. We do not want it."

26. In ALOK GUPTA VS. STATE OF MADHYA PRADESH AND ANOTHER(1988-I-L.L.J.401), Gwalior Bench of the Madhya Pradesh High Court held as follows:

"6. The short question, therefore is what is to be found projected in Annexure R-1? Does it show that petitioner was tried for the case which was registered against him for any activity in which his moral turpitude was involved? Does it show conclusively that he was a person whose conduct and character manifested propensities inherent in an undisciplined person? The only facts which are disclosed by Annexure R-1 are that he was exercising his Fundamental Right to make a peaceful demonstration against certain policy of the Government of the day. He is not shown to have been involved in any violent act or any anti-social or anti-State activities. True, there is a reference in the order that he was raising slogans praising "R.S.S." which according to Shri Qureshi was a banned "association" during the period of emergency. However, what would that indicate? It would merely indicate some kind of illegal activity or at the most some political activity, but not anti-social or anti-State activity. Nothing beyond that. If I have to remember what was said long ago in Kameshar

Prasad (1962-I-L.L.J.-294) Ram Manohar Lohia (AIR) 1966. SC.740 and Ramashankar Raghuvanshi (1983-I-LLJ-299) I cannot but refute Shri Qureshi's contention as misconceived."

27. In PAWAN KUMAR VS. STATE OF HARYANA AND ANOTHER ((1996) 4 SCC 17) , the appellant was appointed on a Class IV post on ad hoc basis. While he was in service, he was convicted in a summary trial for the offence under Section 294 I.P.C. for causing annoyance to others by doing an obscene act in public or singing/reciting an obscene song in public and was ordered to pay a fine of Rs.20/-. When the authorities called for a report with regard to the character and antecedents of the appellant for regularisation of his service, the Superintendent of Police informed the above fact and on that ground the service of the appellant was terminated. Since the appellant has become unsuccessful before the Courts below, including the High Court, he approached the Supreme Court. While dealing with the above said case, the Supreme Court held as follows:

"13. We had required of the respondents to produce before us the copy of the judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the Court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4-6-1980 was imposed a fine of Rs20. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of the summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns FIR No. 231 of 3-6-1980 under Section 294 IPC. Therefrom it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular? Mere payment of fine of Rs 20 does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294 IPC

per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

14.Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

28. In REGIONAL MANAGER, BANK OF BARODA VS. PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL AND ANOTHER((1999)2 SUPREME COURT CASES 247), the Supreme Court held as follows:

"8. The facts which are well established on record and which have weighed with us for coming to the aforesaid conclusion may now be noted. It is true that the respondent made a wrong statement while replying to Query 27 of the application form that he had not been prosecuted at any time. It is equally true that the Labour Court itself found that giving a false statement should not be deemed to be such a grave misconduct which may be visited with extreme punishment of termination from service. However, it has also to be noted that the appellant-Management while issuing show-cause notice for the first time on 26-12-1980 has in terms noted in the said notice that not only the criminal proceedings were

pending but had ultimately ended in conviction of the respondent. The appellant itself thought it fit to await the decision of the criminal case before taking any precipitate action against the respondent for his misconduct. Thus, according to the respondent, this suppression was not so grave as to immediately require the appellant to remove the respondent from service. On the contrary, in its wisdom, the appellant thought it fit to await the decision of the criminal proceedings. This may be presumably so because the charge against the respondent was that he was alleged to have involved himself in an offence under Section 307 of the Indian Penal Code. It was not an offence involving cheating or misappropriation which would have a direct impact on the decision of the appointing Bank whether to employ such a person at all. We may not delve further into the liberal approach of the appellant itself when it did not think it fit to immediately take action against the respondent but wait till the decision of the criminal case. Be that as it may, once the Sessions Court convicted the respondent, the appellant issued the impugned notice dated 26-2-1980. It can therefore be safely presumed that if the Sessions Court itself had acquitted the respondent, the appellant would not have decided to terminate his services on this ground. So far as the notice dated 26-2-1980 is concerned, in the reply to the said show-cause notice filed by the respondent, he had mentioned that an appeal was pending in the High Court against the said conviction. In that view of the matter, once the High Court ultimately acquitted the respondent for any reason, with which strictly we are not concerned, the net result that follows is that by the time the Labour Court decided the matter, the respondent was already acquitted and hence there remained no real occasion for the appellant to pursue the termination order. Consequently, that was a sufficient ground for not visiting the respondent with the extreme punishment of termination of service. But even that apart, though the conviction was rendered by the Sessions Court on 20-2-1979, the show-cause notice for the first time was issued by the appellant after one year, i.e., on 26-2-1980 and thereafter, the termination order was passed on 18-4-1983. That itself by the passage of time, created a situation wherein the original suppression of involvement of the respondent in the prosecution for an offence under Section 307 of the Indian Penal Code did not remain so pernicious a misconduct on his part as to visit him with the grave punishment of termination from service on these peculiar facts of the case and especially when the Labour Court

also did not award any back wages to the respondent from 1983 till the respondent's reinstatement by its order dated 29-9-1995 and one month thereafter and when the High Court also did not think it fit to interfere under Article 226 of the Constitution of India on the peculiar facts of this case. In our opinion, the interest of justice will be served by maintaining the order passed by the Labour Court and as confirmed by the High Court subject to a slight modification that the respondent may be treated to be a fresh recruit from the date when he was exonerated by the High Court, i.e., from 13-1-1988 which can be treated as 1-1-1988 for the sake of convenience. It is ordered accordingly. From 1-1-1988, the respondent will be treated to have been reinstated into the services of the Bank on the basis that he will be treated as a fresh recruit from that date and will be entitled to be placed at the bottom of the revised scale of pay for Clerks and will also be entitled to other allowances which were available in the cadre of Clerks in the Bank's service. The respondent will be entitled to back wages with effect from 1-11-1995, i.e., from the date when the Labour Court awarded the reinstatement of the respondent. It also directed that the appellant-Bank will work out appropriate back wages payable to the respondent from 1-11-1995 in the time-scale of Clerks as available from 1-1-1988, treating his services to be continuous from that date and accordingly, working out of his salary and emoluments on a notional basis with the usual increments from 1-1-1988 and the actual arrears of pay and other permissible emoluments from 1-11-1995 till reinstatement of the respondent by the appellant. All such arrears will be paid to the respondent within a period of four weeks from 1-3-1999. The respondent who is present before us takes notice of this order and his counsel on his instructions states that the respondent will report for duty pursuant to the present order before the Regional Manager, Bank of Baroda, Northern Zone, Meerut on 1-3-1999. Learned counsel for the appellant agrees to the said course being adopted. The appeal will stand dismissed subject to the aforesaid modifications. IA No. 2 for passing order under Section 17-B of the Industrial Disputes Act, 1947 will not survive in view of the present order. We make it clear that this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future. There would be no order as to costs."

29. Emphasising the above legal principles, the learned counsel appearing for the petitioner would contend that the petitioner was not indulged in any anti-social, anti-State

or grave offence but what was the offence committed by the petitioner is affray, i.e. the petitioner caused public nuisance and therefore, in the light of the principles laid down by the Supreme Court, the Writ Petition is to be ordered as prayed for.

30. Further, the learned counsel appearing for the petitioner would submit that if the above said post was filled up by the authorities, to which the petitioner was selected, by this time, the respondents may be directed to appoint the petitioner as and when vacancy arises for the above said post or any post carrying the same scale of pay which requires the same qualifications.

31. On the contrary, the learned counsel appearing for the respondents reiterated the contentions raised in the counter statement.

32. Further, he would submit that as the petitioner is not a suitable person for Government Service, he was not considered for appointment to the post of Ground man and therefore, the order of the third respondent was upheld by the Tribunal and in such circumstances, this writ petition may be dismissed.

33. It is not disputed that the petitioner has committed an offence of affray on 24.2.1994 and a case was registered in Cr.No.23/94 under Section 160 I.P.C. on the file of Lawspet Police Station and that the petitioner paid a fine of Rs.50/- in the Court of First Class Judicial Magistrate, Pondicherry in S.T.R.3278 of 1994 on 24.6.1994 and the above said fact was suppressed by filling the Col.No.12 as not applicable.

34. In this case, it is necessary to discuss about the object behind for getting a report from the authority concerned with regard to character and antecedent of an individual, who is selected for appointment in Government Service.

35. We are of the view that the main object and intention of the Government for seeking report of the Police authorities concerned with regard to character and antecedent of the individuals while recruiting them for Government Service is to prevent the anti-social elements, hard core criminals, habitual offenders, and anti-State elements from entering into the Government Service.

36. In this case, the offence committed by the petitioner is affray under Section 159 I.P.C., which reads as follows:

"159.Affray-When two or more persons, by fighting in a public place disturb the public peace, they are said to "commit an affray".

37. The punishment Section 160 I.P.C. reads as follows:

160. Punishment for committing affray- Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

38. From the above, it is clear that the offence committed by the petitioner is a petty offence.

39. We are of the opinion that when the offence committed by the petitioner is a petty one, it cannot be a bar to the petitioner to enter into Government Service, while the petitioner, otherwise, is eligible to hold that post.

40. In this regard, the principles laid down by the Supreme Court in PAWAN KUMAR VS. STATE OF HARYANA AND ANOTHER ((1996) 4 SCC 17) , are squarely applicable to the case on hand.

41. For the sake of convenience and importance, we reproduce some of the observations of the Supreme Court in the above said decision, which are as follows:

> "13. We had required of the respondents to produce before us the copy of the judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the Court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4-6-1980 was imposed a fine of Rs20. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of the summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns FIR No. 231 of 3-6-1980 under Section 294 IPC. Therefrom it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular? Mere payment of fine of Rs 20 does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect

of Section 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

14.Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

42. Following the principles laid down in the above said decision, we are of the view that since the offence committed by the petitioner is a petty one, it cannot stand in the way of getting a job, which would decide the fate of the individual, while the petitioner is otherwise eligible to the said post and got selected.

43. In the above circumstances, we of the view that the memo No.2(42)/97 issued by the third respondent dated 20/22.9.1999 is arbitrary and not sustainable under law and therefore, the same is liable to be set aside. Accordingly, the said memo is set aside. Consequently, the order the Tribunal dated 12.4.2000 is also set aside.

44. In result, the Writ Petition is allowed as prayed for. However, if the said post was filled up by the respondents 1 to 3 by this time, the respondents 1 to 3 are directed to appoint the petitioner as and when the vacancy arises for the above said post or any post carrying the same

scale of pay and also the same qualifications, whichever is earlier. No costs. Connected W.M.P. is closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

RNB

To

1. The Secretary to Govt. of India
The Uniion of India,
Ministry of Health & Family Welfare Services
Nirman Bhavan
New Delhi-1.
2.The Director
Jawaharlal Institute of Post-Graduate
Medical Examination and Research
Danvanthri Nagar
Pondicherry - 605 006.
3.The Deputy Director (Administration)
Jawaharlal Institute of Post-Graduate
Medical Examination and Research
Pondicherry.
4.The Under Secretary to the Government
Department of Personnel and Administrative
Reforms (Personnel Wing)
Chief Secretariat Buildings
Pondicherry.

+ 1 CC to Mr.D.Bharatha Chakravarthy, Advocate SR NO 3259

W.P.NO.16043 OF 2000
and
W.M.P.No.23271 of 2000
DATE:28.1.2005

MJ(CO)
GP/31.1