

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2008

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.Nos.199, 200, 15755 and 15756 of 2008

Mr.Ganesan

...Petitioner in W.P.Nos.
199 & 15755 of 2008

Mr.G.Prabhu

...Petitioner in W.P.Nos.
200 & 15756 of 2008

Vs

1. The State of Tamil Nadu, rep.by
its Secretary to Government,
Home Department, Fort St.George,
Chennai-600 009.
2. The Director General of Police,
Chennai-600 004.
3. The Director,
The Tamil Nadu Uniform Civil Code
Recruitment Board,
Chennai-600 002. (amended as the
Director, Tamil Nadu Uniformed
Services Recruitment Board,
Anna Salai, Chennai, by order
dated 28.11.2008)

... Respondents in all
the writ petitions

PRAYER in W.P.Nos.199 and 200 of 2008:- Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent in Na.Ka.No.134857/ Appointment 2(1)/ 2007, dated 31.12.2007, quash the same and to consequently direct the respondents to appoint the petitioners as Sub-Inspector of Police.

PRAYER in W.P.Nos.15755 and 15756 of 2008:- Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the Amendment in Clause 2 Explanation (2) made in G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.1.2003 is illegal and ultra vires infracting Articles 14 and 16 of the Constitution of India.

For petitioners : Mr.L.Chandrakumar for
Mr.R.G.Narendhiran

For Respondents : Mr.A.Arumugam, Spl.G.P

O R D E R

Heard the arguments of Mr.L.Chandrakumar, learned counsel appearing for Mr.R.G.Narendhiran, learned counsel for the petitioners and Mr.A.Arumugam, learned Special Government Pleader appearing for the respondents.

2. In all the four writ petitions, the petitioners have described the third respondent as "the Director of Tamil Nadu Uniform Civil Code Recruitment Board". On being pointed out that there is no such post exists, the petitioners have filed a memo, dated 19.11.2008 seeking for amendment of the third respondent's description as "the Director, Tamil Nadu Uniformed Services Recruitment Board, Anna Salai, Chennai-600 002". Accordingly, the name of the third respondent will stand amended.

3. While W.P.Nos.199 and 15755 of 2008 were filed by one G.Ganesan, W.P.Nos.200 and 15756 were filed by one G.Prabhu and both of them are brothers and are the residents of Chokka Thevan Patti of Madurai District. In the first set of writ petitions, viz., W.P.Nos.199 and 200 of 2008, the prayer of the petitioners is to set aside the order dated 31.12.2007 passed by the second respondent Director General of Police. By the aforesaid order, dated 31.12.2007, the petitioners were informed that though they were selected to the post of Sub-Inspector of Police during the year 2006, on verifying their character and antecedents, it was found that they were involved in a criminal case in Crime No.80 of 2002, Valandor Police Station and charged under Sections 147, 148, 341, 323, 324, 506 (ii), 307, I.P.C. r/w. Section 3(1) of the TNPBDL Act and under Section 3(i)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, they will not be appointed to the said posts.

4. In that criminal case, G.Ganesan (the petitioner in W.P.No.199 of 2008) was arrayed as the 14th accused and G.Prabhu (petitioner in W.P.No.200 of 2008) was arrayed as the 15th accused. They were tried by the III Additional Sessions Court, Madurai in S.C.No.100 of 2003. After the trial, they were acquitted under Section 232, Cr.P.C. by the learned Sessions Judge vide his judgment dated 01.4.2004. In view of the above fact, they were informed by an order dated 19.12.2007 of the second respondent that since under Rule 13(b) of the Tamil Nadu Special Police Subordinate Service Rules (for short 'the said Rules'), for a person to be eligible to be recruited to the Police

Force, he should not have been involved in any criminal case and his prior conduct and character should be satisfactory. Since the petitioners' character and conduct were not satisfactory, they were not selected to the post of Sub-Inspectors of Police. However, they were informed by a revised order dated 31.12.2007 that they were not denied the posting on the ground of any suppression of information in the undertaking given before the Department. Their case was dealt with only in terms of Rule 13(b) of the said Rules. It is against these two orders, the petitioners have filed the first set of writ petitions.

5. The writ petitions came up for admission on 04.1.2008 but it was not admitted. Subsequently, the very same petitioners have filed two new writ petitions being W.P.Nos.15755 and 15756 of 2008 challenging the Explanation (2) to Rule 14(b) of the said Rules as illegal and ultra vires Articles 14 and 16 of the Constitution. Those two writ petitions along with earlier writ petitions came to be admitted on 03.7.2008. On the same day, this Court granted an interim-direction directing the respondents to keep the two posts of Sub-Inspectors of Police vacant. A further direction to send the petitioners for training for the posts in the ensuing batch itself was also issued. It was stated that such training will not confer any right on them.

6. The respondent State filed applications for vacating the interim directions granted by this Court in M.P.No.2 of 2008. When that matter came up for hearing, this Court by an order dated 06.11.2008 made the following order:-

"From the perusal of the said order, it is evident that considering the acquittal in the criminal case by this Court on merits and for the next recruitment, the petitioners are not eligible to participate due to their over age, direction was given to give training to the petitioners subject to the result in the writ petition. By permitting the writ petitioners to undergo training, no prejudice will be caused to the respondent. Hence, no case is made out to vacate the order passed on 03.7.2008. M.P.Nos.2 (2 counts) of 2008 in both these writ petitions are dismissed."

7. Aggrieved by these two interim orders, the matters were taken on appeal to the Division Bench vide Writ Appeal Nos.1284 and 1285 of 2008 as well as W.A.No.1305 of 2008. The first two writ appeals, namely, W.A.Nos.1284 and 1285 of 2008 were allowed by the Division Bench vide its judgment dated 10.11.2008. The Division Bench passed the following order:-

'3. We, therefore, direct that the writ petitions, if they are otherwise ready, should be heard and disposed of by Hon'ble Mr.Justice K.Chandru, as early as possible, but we are requesting the learned Judge to dispose of the same by 05th December, 2008. The pending writ petitions may appear in the list of the learned Judge under the caption 'to be mentioned' on 14th of November, 2008.

4. We make it clear that two posts shall be kept vacant since there are two writ petitioners. Filling up of those two posts will be subject to the result of the writ petitions. We further make it clear that we do not make any observation on the merits of either of the parties. The learned Judge of the Writ Court will decide those questions."

8. Subsequently, in the other Writ Appeal being W.A.No.1305 of 2008, a similar order came to be passed by the Division Bench vide its judgment dated 13.11.2008. Thus all the four writ petitions came to be posted before this Court.

9. Mr.L.Chandrakumar, learned counsel for the petitioners submitted that the present writ petitioners on their sheer merit were selected to the post of Sub-Inspectors of Police in the Selection held for the year 2006. For the verification of their antecedents and character, the respondents relied upon the judgment of the Criminal Court in S.C.No.100 of 2003 dated 01.4.2004. It was stated that since the Criminal Case had ended in acquittal, by giving benefit of doubt, by virtue of Special Rules, they shall be treated as persons involved in Criminal Case as per Explanation (1) to Rule 14(b) of the Rules. But the petitioners, after the rejection of their appointments, by orders dated 31.12.2007 and after filing of two writ petitions in January 2008, moved the Madurai Bench of this Court with Cr.R.C. (MD) No.369 of 2008 filed under Section 397 read with Sections 401 and 482, Cr.P.C. to expunge the remarks of the Criminal Court describing their 'acquittal of benefit of doubt' and to declare it as 'honourable acquittal' and the said Criminal Revision Case filed by them was allowed by this Court vide order dated 01.4.2008. In the operative portion of the order, it was observed as follows:-

'5. in my considered opinion, the observation of the learned III Additional Sessions cum PCR Court, Madurai that the acquittal is on the basis of benefit of doubt requires to be modified so as to record the acquittal honourable.

6. For all the reasons stated above, this Criminal Revision Case is allowed and the finding of the Lower Court that the petitioners are acquitted on giving benefit of doubt is modified and the petitioners shall stand acquitted honourably".

10. For rendering such a finding, the Court took an inspiration from another case in CrI.R.C.No.289 of 2008, dated 28.2.2008 in Somasundaram -vs- The State through the Inspector of Police, Melur Police Station, Madurai. It is not clear as to how the petitioners, when they were especially acquitted by the Criminal Court, can file a Revision Petition under Section 397, Cr.P.C. and that too, after a period of four years from the date of Trial Court's original judgment. It is also not clear as to how any such observations can be made by this Court either under Section 397 or under Section 482, Cr.P.C.

11. Be that as it may, the petitioners based upon the said order passed by this Court, dated 01.4.2008 contended that as they have been honourably acquitted, the Explanation (1) to Rule 14(b) of the said Rules is not attracted. Assuming that Explanation (1) stands in the way of granting a posting order under Explanation (2) to Rule 14 (b), makes it clear that in case of honourable acquittal, it would be treated as not involved in a criminal case, but the candidate can claim a right for appointment only by participating in the next recruitment.

12. According to the learned counsel for the petitioner, the said Explanation it does not help the case of the petitioners for two reasons, viz., (i) no one knows as to when the next recruitment will take place; and (ii) even assuming such a recruitment takes place in all likelihood, the petitioners may cross the maximum age for such recruitment. Therefore, he wants this Court to strike down that portion of the Explanation (2), where it says that the person, who was honourably acquitted, should get his chance only in the next recruitment. He submitted that the petitioners have participated in the 2006 selection process. At that time, the Sessions Court had acquitted them by granting benefit of doubt and, therefore, they were non-suited by the application of Explanation (1) to Rule 14(b), the subsequent modification of the Trial Court's order made by this Court in CrI.R.C.(MD).No.369 of 2008 dated 01.4.2008 granting a declaration that they were honourably acquitted should date back to the original selection process and, therefore, they should be given the post of Sub-Inspectors of Police. He also submitted that the case filed against them was foisted due to communal feelings in the village and they were innocent of the charges. Even a perusal of the Criminal Court's judgment will show that no overt act is attributed to them. In such view of the matter, he pleaded for allowing of the

writ petitions in their favour and for a direction to appoint them as Sub-Inspectors of Police under the Tamil Nadu Special Police Subordinate Services Rules.

13. The learned Special Government Pleader contended that the issues raised in the present writ petitions are squarely covered by the judgment of the Full Bench in Manikandan and others -vs- The Chairman, Tamil Nadu Uniformed Services, Recruitment Board, Chennai and others reported in 2008 (2) CTC 97. Inasmuch as Explanation (1) to Rule 14(b) has been upheld by this Court, the petitioners cannot indirectly get over that judgment by bringing new set of arguments and it is not open to them. What weighed with the Full Bench to uphold the vires of the Rule including Explanation (1) to Rule 14(b) will also be available to the respondents for upholding the vires of Explanation (2) to Rule 14(b) of the Rules. Therefore, he pleaded for the dismissal of the writ petitions.

14. In the light of the rival submissions, the following questions emerges for consideration:-

- (i) Whether Explanation (2) to Rule 14(b) is ultra vires Articles 14 and 16?
- (ii) Whether the subsequent order passed by this Court dated 01.4.2008 in the Crl.R.C.(MD) No.369 of 2008 will enure to the benefit of the petitioners? and
- (iii) Whether the petitioners' challenge to the impugned orders dated 31.12.1997 is justified?

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)

16. In the aforesaid Rule, Explanation (1) to Rule 14(b) came to be challenged before this Court in a batch of writ petitions. This Court vide its judgment in V.Veeramani and another -vs- State of Tamil Nadu, rep. by its Secretary to Government, Home (Pol.IX) Department, Chennai reported in (2007) 3 MLJ 676, while upholding Rule 14(b), in paras 17 and 24 had observed as follows:-

"17. ... Therefore, if the law provides for an action against the Government servant, who is similarly involved in any criminal action while in service or after retirement from service, there is no reason as to why the same law should not be made as a pre-requisite for entering into service."

... ..

24. After a survey of all the aforesaid decisions, it can be firmly said that Explanation (1) to Rule 14(b)(iv) does not suffer from the vices of arbitrariness and it is not discriminatory. A Government servant whether in service or before enters into service or his post retirement, is controlled by similar Rules. Therefore, the contention of the learned counsel for the petitioners that the Rules are discriminatory must fail. Lastly, it must be stated that the State also being an employer can set its own standards in the matter of recruitment of its own personnel and in the case of Uniformed Services, it must apply rigorous standard so that all and sundry does not get into the force."

17. The vices of the said Rule also came to be considered subsequently by a Full Bench in Manikandan's case (cited supra). In paras 39 and 40, the Full Bench has been held as follows:-

"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 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
- (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."

18. The Supreme Court vide its judgment in Delhi Administration through its Chief Secretary and others -vs- Sushil Kumar reported in (1996) 11 SCC 605 in dealing with the selection of persons to Uniformed Services, in para 3 had observed as follows:-

"The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304

IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted."

(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.

20. It was only thereafter they had moved this Court for expunging the remarks from the order of the Sessions Court by ingeniously filing a petition under Section 397 read with Section 482, Cr.P.C. It is highly doubtful whether this Court has got any such power in granting a declaratory relief that the petitioners were acquitted honourably and the Trial Court was wrong in describing the acquittal as one granted due to benefit of doubt. So far as Criminal Procedure Code is concerned, there is no distinction between the 'honourable acquittal' and 'acquittal on benefit of doubt'. Such distinctions have been brought only in Service Law through Court judgments. Whatever may be, the legality of the order passed by this Court dated 01.4.2008 declaring that the petitioners' acquittal was honourable, that cannot invalidate the impugned order dated 31.12.2007 passed by the respondents.

21. The present attempt to seek for a declaration that Explanation (2) to Rule 14(b) is violative of Articles 14 and 16 of the Constitution cannot be accepted. It is only an enabling provision for any candidate having got 'honourable acquittal' to be allowed to participate in the next recruitment drive. The fact that the

petitioners may either become overaged or the next recruitment may take number of years cannot be a ground to invalidate an otherwise valid rule. Hard cases may not make a rule look bad. But that cannot be a ground to invalidate such rules. Explanations (1) and (2) to Rule 14(b) will have to be read together. In Explanation (1) to Rule 14(b), all types of acquittal, including discharge, were treated as being involved in a criminal case. That rule has been held to be constitutionally valid. Therefore, the petitioners do not derive any benefit as the rule has been correctly applied while passing the impugned orders dated 31.12.2007.

22. Explanation (2) only makes a further classification in relation to honourable acquittal alone. Such a case will come only when a person is selected and on verification, it is found that he was involved in a criminal case but the case was yet to be disposed of and subsequently if it ends in an honourable acquittal or treated as a mistake of fact, then only, he will be treated as not involved in criminal case. Further he can claim the right for appointment only by participating in the next recruitment. The case of the petitioners does not come within the Explanation (2) to Rule 14(b), because their acquittal by the Criminal Court at the time of verification was not honourable. Further, their cases were rejected by treating them as falling under Explanation (2) to Rule 14(b). The petitioners' case do not come under Explanation (2). Therefore, the question of their challenging the vires of Explanation (2), does not arise.

23. Assuming that they can have the benefit of Explanation (2), then certainly, they will have to stand or fall by the very same rule. The question of challenging the said rule, that too, by outsiders, like the petitioners, is impermissible. The intention behind framing of the said Rule is very clear. Even in cases of subsequent honourable acquittals, the State wanted the concerned candidates to go through another selection process as the earlier stigma attached to the non-selection has been removed only in cases of honourable acquittal. The petitioners cannot state that their cases should be considered in the selection held for the year 2006 itself. In such a case, Explanation (1) will come into operation and they will be certainly disqualified. Further, the Rule itself has been upheld by the Full Bench. The fact that they may be overaged or that there may not be any selection in the near future, cannot be a ground to invalidate an otherwise valid rule. Hence, the challenge to the vires of Explanation (2) or an attempt to re-interpret the said rule to suit the convenience of the petitioners must necessarily fail.

24. Apart from the above facts, this Court had the benefit of going through the Trial Court's judgment and the findings rendered therein. It is seen that specific charges were framed against the two petitioners by the Special Court that they were part of the

unlawful assembly. The case also involved an offence under the SC/ST Prevention of Atrocities Act, 1989. It was an alleged assault launched by the members belonging to Other Backward Class Communities on the Adidraavidars of the Village. The conduct of the petitioners in getting involved in such a criminal case and thereafter to get entry into the police force by ingenious arguments cannot be countenanced by this Court.

25. As rightly found by this Court in Veeramani's case (cited supra) which was approved by the Full Bench in Manikandan's case (cited supra), the State being an employer can set its own standards in the matter of recruitments of its personnel and in cases of Uniformed Services, it can apply rigorous standards so that all and sundry will not get into the force.

26. Under the above circumstances, the writ petitions filed by the petitioners are totally misconceived, devoid of merits and there is no unconstitutionality in Explanation (2) to Rule 14(b). Hence, all the writ petitions will stand dismissed. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
Home Department,
Fort St.George, Chennai-600 009.
 2. The Director General of Police, Chennai-600 004.
 3. The Director,
Tamil Nadu Uniformed
Services Recruitment Board, Anna Salai, Chennai.
- 2 ccs To Mr.R.G.Narendhiran, Advocate, SR.66832

W.P.Nos.199, 200,15755 &
15756 of 2008

GG(CO)
SRA(15/12/2008)