M. Mareeswaran Vs The Director General of Police, The Superintendent of Police and The Commandant, Tamil Nadu Special Police

Court: Madras High Court (Madurai Bench)

Date of Decision: Sept. 14, 2010

Acts Referred: Constitution of India, 1950 â€" Article 14, 16
Criminal Procedure Code, 1973 (CrPC) â€" Section 397, 482
Penal Code, 1860 (IPC) â€" Section 302, 304, 324, 34
Tamil Nadu Special Police Subordinate Service Rules, 1978 â€" Rule 14

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: T. Lajapathi Roy, for the Appellant; S.C. Herold Singh, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The Petitioner was an aspirant for the post of Police Constable Grade II for the recruitment made in the year 2003-2004.

He was successful up to the written test and thereafter his antecedents and character sought to be verified by the department. On such enquiry it

was found that the Petitioner was involved in crime number 167 of 2002 in the Kamuthi Police Station and charged u/s 302 IPC as the first

accused. The said case was tried by the Additional Sessions Fast Track Court, Ramanathapuram in S.C. No. 120 of 2003 and the Petitioner was

acquitted on 24.12.2003. Therefore, the Petitioner was informed that as per Rule 14(b) of the Tamil Nadu Special Police Subordinate Service

Rules his conduct and character were not satisfactory and he would not be eligible to grant the appointment. Even without reference to this order,

the Petitioner was sent for basic training by order dated 14.02.2009. The Petitioner has come forward to challenge the order by which he was

stated to be disqualified from entering into service.

2. The contention of the Petitioner was that since the Petitioner was already joined the service and the same cannot be cancelled without notice and

that under Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules in explanation 2 it is stated that a person who was acquitted of

the charges honorably is eligible for the next selection but not the current one lack rationale behind it.

3. Even these issues have been gone into by this Court as well as by the Hon''ble Apex Court. The validity of the Rule under challenge in this writ

petition was upheld by this Court in Mr. Ganesan and Mr. G. Prabhu Vs. The State of Tamil Nadu , wherein this Court in paragraphs 15 to 23 has

held as follows:

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.

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 G. Balasubramanian Vs. State of Tamil Nadu and The Tamil Nadu Uniformed Services Recruitment Board, , 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 prerequisite 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 vires 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 vires 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 Delhi Administration through its Chief Secretary and Others Vs. Sushil

Kumar, 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 u/s 304 IPC, u/s 324 read with Section 34 IPC and u/s 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.

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

u/s 397 read with Section 482, Code of Criminal Procedure. 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 Code of Criminal Procedure 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.

4. In the light of the above, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.