

Madras High Court

S. Ramesh vs The Director General Of Police And ... on 23 October, 2007

Author: P Jyothimani

Bench: P Jyothimani

ORDER P. Jyothimani, J.

1. The common issue involved in all these cases relate to the selection of Grade II Police Constables in the State of Tamil Nadu for the year 2001-2003, for which the petitioners have made application as they are fully qualified. and passed in written test, apart from the certificate verifications and the physical efficiency test like rope climb, 100 mts. running, long jump, etc., After they successfully came out of the above tests, they were directed to appear before the Medical Board, and the petitioners have also appeared. While deciding about the antecedents, the respondents found that the petitioners were involved in some criminal cases, in which, they were either acquitted or discharged. On the basis that the petitioners had not disclosed about their involvement in the criminal cases and also considering other circumstances and based on the character and antecedents, the claims of the petitioners were rejected by the respondents.

2. Invariably, in these cases, the petitioners were involved in cases of petty offence as well as offence under Sections 147, 148, 321, 323 read with Section 34 IPC. It is relevant to point out that in some cases, the criminal Courts have acquitted the petitioners giving benefit of doubt on the basis that the prosecution has failed to prove the charges against the concerned petitioners beyond reasonable doubt.

3. In this regard, it is relevant to extract Section 248 of Code of Criminal Procedure.

Section. 248: Acquittal or conviction.-

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(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.

(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 be 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).

4. It is, therefore, clear that on conclusion of trial, the Criminal Court can acquit a person finding that he is not guilty, but while recording the reason for acquittal, the Court may conclude that the charges are not proved beyond reasonable doubts and therefore, the benefit of doubt is given in favour of the accused.

5. Likewise, the criminal court has the jurisdiction to discharge the accused where no case against the accused has been made out. In this regard, Section 245 of the Code of Criminal Procedure states as follows:

Section 245. When accused shall be discharged.-

(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this Section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Therefore, in both the cases of acquittal under Section 248 or discharge under Section 245 Cr.P.C. after a person is acquitted or discharged, there appears to be no stigma on his character. On the other hand, it differs from acquitting a person under the Probation of Offenders Act, wherein there is a finding of guilt on the part of the accused, given by the Magistrate, but however, for the reasons recorded, under the Probation of Offenders Act, in order to give an opportunity to reform, he is released on certain conditions. Of course, in such cases, it would amount to a stigma on the character of the accused concerned.

6. It is relevant to point out that none of the petitioners herein were released under Probation of Offenders Act. In fact, in one of the cases, this Court has quashed the criminal case against the accused concerned in W.P. No. 21953 of 2007, finding that there is absolutely no ground to proceed against the petitioner therein.

7. In this regard it is relevant to refer Rule 14(b) of the Tamil Nadu. Special Police Subordinate Service Rules, 1978 which states 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 of infirmity unfitting him for such service and

(ii) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service.

(iii) That such a person does not have more than one wife living.

(iv) That he has not involved in any criminal case before police verification.

It is not in dispute that the said provision, viz., Rule 14(b) was given effect from 30.01.2003.

8. Explanations to Rule 14 the Tamil Nadu Special Police Subordinate Service Rules, 1978 also state as follows:

Explanation: 1. A person who is acquitted or discharged on benefit of doubt or due to the fact that the complaint "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.

Therefore, according to the respondents, the said Rule imposes a disqualification for appointment of a person, if he is found involved in any criminal case at the time of verification. The Explanations state that the acquittal or discharge on benefit of doubt or due to the fact that complainant "turned hostile" should be treated as if the person is involved in criminal case.

9. In a similar circumstance, at the time, of regularisation of services of a person who was appointed in a Clause-IV post on ad hoc basis, when his character and antecedents were called for from the Superintendent of Police, it was found that the petitioner therein was involved in an offence under Section 294 IPC, viz., causing annoyance by doing obscene act or signing obscene song in public, and on the orders of criminal Court, he paid a fine of Rs. 20/-. On that basis, the services of the petitioner therein was terminated. While setting aside the termination order, in Pawan Kumar v. State of Haryana and Anr. , the Supreme Court has held that the conviction under Section 294 IPC would not involve moral turpitude depriving him of the opportunity to serve the State unless and until the facts and circumstances, which led to the conviction, met the requirements of the policy decision of the Government regarding determination of moral turpitude. The relevant portion of the judgement of the Supreme Court is as follows:

12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts, took a policy decision on 2.2.1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the List of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26.3.1975 explained the policy decision of 2.2.1973 and decided to modify the earlier decision by streamlining

determination of moral turpitude as follows:

...The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

- (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.
- (2) Whether the motive which led to the act was a base one.
- (3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not included, in it but which in certain situations and circumstances may involve moral turpitude.

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted.

Further, a Division Bench of this Court consisting of P. Sathasivam, J. (as he then was) and S.K. Krishnan, J. in *P. Virabhagu v. The Union of India* rep. By the Secretary to Government of India, Ministry of Health & Family Welfare Services, Nirman Bhavan, New Delhi-1 and Ors. , wherein the petitioner applied for the post of Groundman in JIPMER, he was not selected on the basis that a report was received from the Inspector General of Police, Pondicherry, informing that he was involved in a case in Cr. No. 23/94 under Section 160 IPC on the file of Lawspet Police Station and paid a fine of Rs. 50/- before Judicial First Class Magistrate, Pondicherry in S.T.R. No. 3278 of 1994 and while filling up Column No. 12 of the attestation form, the petitioner furnished false information by not disclosing about the previous conviction. After elaborately discussing various judgements on this point including the above said judgement of the Apex Court, the Division Bench has set aside the order of the respondent in refusing employment and directing to appoint the petitioner. The relevant portion of the judgement is as follows:

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 are 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 of the Tribunal dated 12.04.2000® is also set aside.

But in the present writ petitions, the petitioners were not convicted, but they were all acquitted.

10. Following the above said Division Bench judgement (cited supra), the Hon'ble First Bench of this Court consisting of A.P. Shah, C.J. and F.M. Ibrahim Kalifulla, J. in *K. Ramprasad v. State of Tamil Nadu* rep. By its Secretary, Home Department, Chennai 9 and Ors. in W.P. No. 21671 of 2005 and W.A. No. 1963 of 2005, by judgement dated 06.12.2005 has held that these cases were tried summarily and a small amount of fine was paid as a measure of plea bargaining, placing reliance on the judgement of the Supreme Court in *Jagtar Singh v. Director, Central Bureau of Investigation* 1993 Supp. (3) SCC 49. The Division Bench has held as follows:

12. We may also refer to the decision of the Supreme Court in *Jagtar Singh v. Director, Central Bureau of Investigation* 1993 Supp (3) SCC 49 wherein Kuldeep Singh, J., speaking for the Bench observed that on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it would be improper to hold that the appellant is not a desirable person to be appointed to the Government service.

13. As observed in Pawan Kumar's case large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summa courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. In the case on hand also, the so called conviction is based on a minor incident which arose out of a family dispute for which the petitioner has been sentenced to pay a fine of Rs. 50/-. The offence allegedly committed by the petitioner is a petty offence.

14. The decisions cited by the learned Special Government Pleader are clearly distinguishable. In *Kendriya Vidyalaya Sangathan's case* 2003 (2) SLR 602, a criminal case was registered against the respondent Ram Ratan Yadav for offence under Sections 323, 341, 294, 506-B read with Section 34 IPC. The contention of the respondent therein was that due to lack of knowledge, mistake occurred in filling up the attestation form. The Tribunal rejected the story of the respondent and came to the conclusion that the intention of the respondent was to deliberately mislead the Department. The Supreme Court held that the High Court was not justified in interfering with the finding of fact recorded by the Tribunal. The Full Bench decision of the Rajasthan High Court in *Dharam Pal Singh v. The State of Rajasthan* 2000 (4) SLR 612 and the Division Bench decision of the Rajasthan High Court in *Virendra Singh and Ors. v. State of Rajasthan* 2001 (3) SLR 88 referred to by the learned Special Government Pleader are also clearly distinguishable.

15. In our opinion, the issue involved in the case on hand is squarely covered by the decision of the Division Bench of this Court in *P. Virabhagu v. The Union of India* referred to above.

11. It was based on the number of decisions in this regard, many single Judges of this, Court in respect of appointment to the Grade II Police, Grade I Police as well as Sub-Inspectors, allowed the respective writ petitions, including the batch of writ petition in W.P. No. 1635 of 2005 etc. dated 22.12.200B in R. Thirumal v. The Secretary to Government, Home Police Department, Chennai 9 and Ors. and it is stated that based on the above cited judgements, concerned individuals have been selected. However, during the course of argument it is brought to the notice of this Court the latest Division Bench judgement (S.J. Mukhopadhaya and F.M. Ibrahim Kalifulla, JJ.) of this Court in T. Sekar v. Secretary to Government, Home Department, Chennai and Anr. . The Division Bench, while dealing with a similar case based on Rule 14(b) as amended by G.O.Ms. No. 101 dated 30.01.2003 has found that the various cases referred to therein were not applicable to the facts of the case and placing reliance upon the Explanation to Rule 14(2)(b) has held that the petitioner who was discharged on the ground of benefit of doubt is clearly covered by Explanation to Rule 14(b), which has come into effect from 30.01.2003 and therefore the acquittal on the ground of benefit of doubt is not a clear acquittal on merit and therefore under Explanation to Rule 14(b), such person is not eligible for appointment. The relevant portion of the judgement of the Division Bench is as follows:

7. The aforesaid case laws referred by Counsel for the appellant are not applicable to the present case as the appellant has disclosed everything including the criminal case as was lodged'-against him and his acquittal in such case. The judgement of the trial Court was also brought to the notice of the authorities prior to the appointment. The only question that requires to be determined is whether acquittal due to grant of benefit of doubt could be a ground to deny appointment in Tamil Nadu Police Service.

8. Admittedly, the appellant was accused No. 120 in Crime No. 120 of 2000 on the file of Sivagiri Police Station for offence punishable under Sections 147, 148, 334, 427 and 307 I.P.C. From the judgement dated 30.10.2001 in S.C. No. 3 of 2001, passed by the 2nd Additional Court of Sessions, Tirunelveli it is apparent that the appellant was granted benefit of doubt and so he was acquitted See para 22 of the trial Court judgement. Thus it cannot be accepted that it is a case of clear acquittal on merit.

9. In the case of Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar , the Supreme Court noticed that the candidate was acquitted of the offence under Sections 304 and 324 read with 34 IPC The Central Administrative Tribunal, New Delhi, allowed the claim of the candidate for appointment in the Police Service. Though the said applicant was physically fit, passed the written test and interview and was provisionally selected, on account of the antecedent record, the Appointing Authority in the said case also found it not desirable to appoint a person of such record as Constable of the disciplined force. The Supreme Court held that though the person was discharged or acquitted of criminal offence, the same has nothing to do with the question. What will be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. The decision of the Appointing Authority focussing on this aspect having found the candidate not desirable to appoint, the Tribunal's decision was set aside and the decision of the Appointing Authority was, upheld.

10. The present case of the appellant is similar to Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar (supra). This apart, if the relevant Rule 14(b), as amended on 30.1.2003 is looked into, it will be evident that the appellant was not entitled for appointment having been discharged on the ground of benefit of doubt. Rule 14(b) originally read as follows:

14. Qualification:

...

(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 that service; and

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

Subsequently, in exercise of power conferred by Sections 8 and 10 of the Tamil Nadu District Police Act, 1859 and Sections 9 and 10 of the Chennai City Police Act 1988 read with proviso to Article 309 of the Constitution of India, the said Rule was amended vide G.O.Ms. No. 101 dated 30.1.2003 and the following amendment was made in Rule 14:

In the said Rules in Rule 14;

(1) ...

(2) In Sub-rule (b), after Clause (iii), the following Clause shall be added, namely:

(iv) that he was 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 view of the specific provision made in Rule 14(b), the appellant cannot claim any right for appointment in the Police force of the State, We find no ground made out to interfere with the order passed by the learned single Judge. The writ appeal, being devoid of any merit, is dismissed. However, there will be no order as to costs.

12. Therefore, there appears to be a conflicting view between the two Division Benches and also certain important issues involved to be finally decided, viz.,

(i) 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?

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

In view of the important issues involved in these cases, I am of the view that the matter has to be settled finally by an authoritative judicial pronouncement, by referring the same to a Larger Bench. Therefore, the matter may be placed before My Lord, the Hon'ble Chief Justice for orders for referring the matter to a Larger Bench.