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“C.R.”

THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 15TH DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

OP(KAT) NO. 315 OF 2023

PETITIONER/S:

BINNESH BABU@ BINEESH BABU,
AGED 35 YEARS
S/O BABU, RESIDING AT NIKARTHIL HOUSE, THIRUTHUMMA, CHEMPU
VILLAGE, VAIKOM, KOTTAYAM, PIN - 686608
BY ADVS.
R.REJI KUMAR
P.R.JAYAKRISHNAN

RESPONDENT/S:

- 1 THE STATE OF KERALA ,
REPRESENTED BY SECRETARY TO GOVERNMENT, HOME (SSB) DEPARTMENT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM PALACE PO,
THIRUVANANTHAPURAM, PIN - 695004

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.

O.P.(KAT).No.315 of 2023

“C.R.”

Dated this the 15th day of March, 2024

J U D G M E N T

A.Muhamed Mustaque, J.

“Every saint has a past and every sinner has a future” is a famous phrase from Oscar Wilde's play *“A Woman of No Importance”*

1. The petitioner, lacking any past accolades to boast of, hailed from a marginalized community entrenched in poverty is caught in between the province of fortune and condemnation. He carried a history of criminal involvement long preceding his attempt at the competitive examination for Police Constable (Kerala Armed Police Battalion). He was advised by PSC on 18/7/2017. This advice was canceled by the Government



-:3:-

by proceedings dated 23/3/2018 noting that he was accused of 9 crimes. Citing Rule 10(b)(iii) of Part II of the Kerala State & Subordinate Service Rules, 1958, the Government deemed him unsuitable for appointment due to his questionable character and past indiscretions, thereby barring his entry into public service.

2. The petitioner is a Scheduled Caste community member and falls within the Below Poverty Line (BPL) category. He approached the Tribunal challenging the Government's decision. The Tribunal did not interfere with the Government's decision. This is how the petitioner approached this Court.

3. The following are the nine crimes as referred to in the reply statement filed by the official respondent/s before the Tribunal:

i) Vaikom Police Station.Cr.211/2004 U/s 447, 323, 324, 341, 326, 34 IPC The case is that due to the enmity towards the complainant, the accused persons (The applicant and his associates) criminally trespassed into the house of the complainant on 20-04-2004, restrained the complainant and attacked him with bike chain and stick and thus he sustained serious injuries etc. This case 248(i) CrPC on 29-09-2007 vide CC-535/2004 of Judicial First Class Magistrate Court, Vaikom.



-:4:-

ii) Thalayolaparambu Police Station Crime 251/2010 U/s 143, 147, 148,149,447, 294(b),323,324,427 IPC The case is that the accused persons (The applicant and his associates) unlawfully assembled themselves on 15-07-2010 and criminally trespassed into the house of the complainant and abused using filthy languages, attacked the complainant and his son using iron rod and wooden logs and destroyed the house hold articles worth Rs.1000/- etc. The applicant was the second accused in this case. This case was acquitted U/s 232 CrPC on 22-08-2014 vide SC-352/2012 of District & Sessions Court, Kottayam.

iii) Thalayolaparambu Police Station Crime 555/2011 U/s 12(10) r/w 20 of KPRB and RR Sand Act - The case is that on 15-10- 2011, the accused (The applicant) excavated 250 Cubic feet sand from Pullanthi river without any sanction or license from authority concerned etc. This case was acquitted U/s 255(i) CrPC on 27-022015 vide CC- 920/2013 of Judicial First Class Court, Vaikom.

iv) Thalayolaparambu Police Station Crime 672/2011 U/s 12(8)(10) r/w 20 of KPRB and RR Sand Act - The case is that on 08-12- 2011, the accused persons (The applicant & his associates) excavated about 200 feet sand from Pullanthi river for sale without any sanction or license from authority concerned etc. This case was acquitted U/s 256 CrPC on 07-09-2016 vide CC-298/2014 of Judicial First Class Court, Vaikom.

v) Thalayolaparambu Police Station Crime 22/2012 U/S 12(8)(10) r/w 20 of KPRB and RR Sand Act - The case is that on 09-01- 2012, the accused persons (The applicant & his associates) excavated sand from Pullanth river and filled it: In a boat for sale without any sanction or license from authority concerned etc. In this case, the accused (The applicant) pleaded guilty on 10-03-2014 and convicted and sentenced to fine Rs.1000/- by the Honourable Judicial First Class Court, Vaikom and the accused remitted the amount vide ST- 1563/2012.



-:5:-

vi) - Thalayolaparambu Police Station Crime 273/2012 U/s 12(10) r/w 20 of KPRB and RR Sand Act The case is that on 11-04- 2012, the accused persons (The applicant & his associates) excavated about 250 feet sand from Pullanthi river and stored it for sale without any sanction etc. This case was acquitted U/s 255(i) CrPC on 30-06- 2015 vide CC-779/2013 of Judicial First class Magistrate Court, Vaikom.

vii) Thalayolaparambu Police Station Crime 431/2012 U/s 12(10) r/w 20 of KPRB and Regulation of Removal of Sand Act The - case is that on 15-06-2012, the accused (The applicant) excavated about 100 feet sand from Pullanthi river and stored it for sale without any sanction etc. In this case the accused (The applicant) pleaded guilty on 31-03-2014 and convicted and sentenced to fine Rs.1000/- by the Judicial First Class Court, Vaikom and the accused remitted the amount vide ST454/2013.

viii) Thalayolaparambu Police Station Crime 761/2012 U/s 12(10) r/w 20 of KPRB and Regulation of Removal of Sand Act The case is that on 15-11-2012, the accused (The applicant) excavated about 70 feet sand from Pullanthi river and stored it for sale without any sanction etc. This case was acquitted U/s 256 CrPC on 09-01-2017 vide CC-140/2014 of Judicial First Class Court, Vaikom.

ix) Thalayolaparambu Police Station Crime 862/2012 U/s 107 This case was registered against the applicant since he is continuously involved in anti-social activities and committed breach of peace and in order to prevent him from such activities, to obtain bond from him under section 107 CrPC to keep the peace. He executed bond on 18-04-2013 before the Sub Divisional Magistrate, Pala vide MC- 09/2013.

4. Apart from the above, the Government noted that the petitioner neglected to disclose details of any convictions while completing the



-:6:-

verification process. Consequently, the Government was of the view that he suppressed material facts while the verification roll was filled.

5. As evident from the statement provided, he was acquitted in all cases registered against him under the Indian Penal Code. The conviction he faced was related to violations of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002. He pleaded guilty to two offences and paid a fine of Rs.1000 each. Additionally, he was subjected to a bond under Section 107 of the Cr.P.C .We examined the initial offence registered against him, wherein the Magistrate's Court in C.C.No.211/2004 conclusively determined that the petitioner was falsely implicated due to a family dispute with a close relative. In the second crime registered against him, the criminal court specifically noted that no one testified against the petitioner, who was implicated merely to link them to the alleged crime. Crimes numbered 3 to 8 involve the illegal removal of sand from the river by the petitioner and others. In cases numbered 3, 4, 6, and 8, the petitioner was acquitted. In cases numbered 5 and 7, he pleaded guilty and was fined Rs.1000 each. Case number 9 pertains to the invocation of Section 107 of the Cr.P.C.



-:7:-

6. Part II Rule 10(b)(iii) of KS & SSR stipulates that no individual shall be eligible for appointment to any service through direct recruitment unless the State Government is satisfied that the individual's character and antecedents qualify them for such service.

7. Upon reviewing the Government order, it appears that the Government proceeded as though involvement in criminal cases would debar a candidate from seeking public employment for appointment under public service. It is crucial to note that what matters here is the character background suitable for appointment in public service. 'Character' means a person's pattern of thought and action especially regarding moral choices.' [Taber's cyclopedic medical dictionary]. In the Bouvier's Law Dictionary volume 1, 8th edition; character is defined as 'the possession by a person of certain qualities of mind or morals, distinguishing him from others'.

8. If criminal cases reveal a character unsuitable for the requirements of a public servant, then the character revealed in those criminal cases becomes a relevant factor. The necessary traits required include personal integrity, adherence to the law, and competence in enforcing rules or laws. There must be a proximity of the history and



-:8:-

considerations for keeping an individual in public service. The antecedents, as mentioned in the rule above, should be of a nature that gives room for the opinion that the individual's character has not improved or reformed while being considered for appointment in public service. The past shall hold him but shall not withhold his aspirations for improvement and progress. Society or the State should not harbor contempt for such a person solely because he was involved in any criminal case. The State's stance is to discourage individuals of ill repute who lack character from holding public service positions, but that does not mean a sinner's transgression should not contempt him indefinitely.

9. We examined this case from a factual background and found that absolutely no overt act was proven in the IPC offence registered against him. The Criminal Court concluded that no evidence was available to link the petitioner to the case. We, in **State of Kerala v.Durgadas (2023 KHC 637)**, held that opinion regarding character cannot be solely based on prosecution allegations. In cases of acquittal, there must be an independent inquiry into the incidents mentioned in the prosecution's allegations. No such inquiry was conducted in this matter. The petitioner paid a fine of Rs.1000 twice. This burden of fine weighs heavily on him. In a country where legal proceedings are often



-:9:-

unaffordable, litigation becomes a luxury for those in dire circumstances who may find themselves drowning in the misery of their misfortunes, one would prefer condemnation by paying a fine rather than face the ordeal of trial and drain of a purse. It is not uncommon within the system for the police to hold the most vulnerable and most deprived accountable to the law when they fail to capture real culprits who fled from the clutches of the law. The petitioner should not carry the stigma of being convicted twice for Rs.1000/- indefinitely. The State overlooked the fact that the petitioner belongs to the less fortunate members of society who struggle to afford a square meal a day. In public service, past achievements alone are not enough, one must consistently demonstrate good character until retirement. What prevents the State from appointing a candidate to public service is the candidate's character. All the cases against him were registered five years ago, before he received the appointment advice. There is no proximity to the period during which he received the appointment advice for public service. The live link of the character from the time of the last prejudicial offence must be maintained to prevent him from joining public service. The State still has ample opportunity to oversee his character when he starts working in public service. He should not be condemned indefinitely. The State glossed over



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that belongs to the Scheduled Caste community and comes from a Below Poverty Line (BPL) family whose members suffer inequalities and social backwardness in social structure. The unbalanced scale of justice represents him. The mighty hand of State must tilt the scale of justice to align the lives of those who are vanquished by circumstances. The State must raise its role as a responsible welfare State to secure social citizenship, instead of acting solely as an authority wielding power to enforce its will. If this tiny man is lost, a generation is lost. Our power corridors are built in a negative frame to find fault with a person rather than to soothe fears or instill a sense of responsibility to transform him into a responsible citizen. We all need to be reminded that every individual's struggle is against their past, and those who realize their past mistakes and are prepared to move towards the future are the ones who truly enhance the beauty of the world. Past achievements not necessarily determine one's future as bright. One who learns from his past and fears distrust of everyone in the future is truly valuable. In the realm of public employment, the past is relevant but not decisive. If sinners are not allowed to reform, we all will become sinners. Section 86(2) of the Police Act, 2011 had indeed acknowledged this notion and asserted that an individual involved in a criminal case, particularly



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those involving violence or moral turpitude, would not be eligible for appointment unless he is acquitted. We had advert to the rules governing the character vis-a-vis in **Durga Das case (supra)** and opined that general provisions of KS&SSR would bind even if such cases result in the acquittal of that candidate.

10. We observed that the payment of fines and all the criminal cases occurred between 2010 and 2012, and there is no live link to his character for consideration in public employment or appointment. The past is the past. The system should not foster dismay and condemnation towards him indefinitely. Let us all be beacons of hope, despite his condemnation, poverty, and marginalization by societal structures.

11. We noted in the verification report that he mentioned cases and convictions. Clause 19 requests the disclosure of offences for which he was convicted. Unfortunately, these clauses are in English and are also confusing. In response to the clause, he mentioned that he had cases, but it was over two years ago. However, he did not provide the case numbers. This does not necessarily imply suppression since he did refer to the cases he was involved in. Any prudent person could have



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requested details of the cases. Non-disclosure of case numbers cannot be interpreted as suppression. If he had not disclosed the cases at all, it would indeed hold against him. However, in this case, it was a curable defect.

12. The petitioner's counsel relied on the well-known Jean Valjean, the story of the less fortunate. Jean Valjean is the protagonist of *Les Misérables* and is a character who changes throughout the story. Valjean is a hardened criminal who is released from prison after 19 years for stealing a loaf of bread to feed his starving family. He emerges from prison as a bitter man, filled with disdain for society. When a Bishop, M. Myriel, shows him kindness, he decides to change his ways and becomes a business owner and a loving father to Cosette. Valjean is a test case for Victor Hugo's theories about the redemptive power of love and compassion. (source - Google Generative AI)

13. The State must act with fairness and genuine concern for its citizens, striving to achieve the status of a true welfare State by addressing social disparities and acknowledging that not everyone has the same access to resources and opportunities. These disparities result in diverse challenges. An individual's personality varies in social structure based on traits, social and cultural environment, family



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background etc. Uniform standards are inadequate for effectively addressing these challenges. Recognising that individuals are shaped by unequal circumstances and may not receive equal respect, the State shall tailor its response to the circumstances based on the relative requirements. The State should realize that social upbringing shapes character and there is no single form of social upbringing due to diverse circumstances. Attempting to apply identical measures (in a matter like this relating to character) to all individuals can be counterproductive to the State's larger objectives. Instead, the State should focus on evolving character, by fostering a sense of belonging within the desired societal framework. Condemnation alienates and deepens social division resulting in further marginalizing those who have already been marginalized.

14. This case serves as a reminder of those less fortunate individuals who have faced obstacles due to the overwhelming power of the State. A quote from Najwa Zebian in her famous book "Sparks of Phoenix" is befitting here. *"Strength does not mean that you have no struggle or that you are completely at peace with a hurtful past. It means that you don't allow the past to make you shrink and fall again"*. Thus, the petitioner succeeds. Cancellation of advice is set aside. We



-:14:-

direct the respondents to appoint him in accordance with the law based on the advice.

The original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

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-:15:-

APPENDIX OF OP(KAT) 315/2023

PETITIONER EXHIBITS

- Exhibit P.1 CERTIFIED COPY OF THE ORDER DATED 31-05-2023
IN OA NO.2377/2021 OF THE KERALA
ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH,
ERNAKULAM
- Exhibit P.2 CERTIFIED COPY OF THE OA NO.2377/2021 ISSUED
BY THE REGISTRY, KAT, ADDITIONAL BENCH,
ERNAKULAM
- Exhibit P.3 TRUE COPIES OF THE RELEVANT PAGES OF THE
RANKED LIST DATED 21-06-2016 FOR THE POST OF
CONSTABLE (KAP 1 BATTALION), ERNAKULAM
PUBLISHED BY THE 2ND RESPONDENT
- Exhibit P.4 TRUE COPY OF THE NOTIFICATION DATED 29-05-
2018 ISSUED BY THE 2ND RESPONDENT CANCELLING
THE EXT P.3 RANKED LIST
- Exhibit P.5 TRUE COPY OF THE GAZETTE NOTIFICATION DATED
12-03-2015 FOR THE POST OF CONSTABLE (KAP 1
BATTALION), ERNAKULAM ISSUED BY THE 2ND
RESPONDENT
- Exhibit P.6 TRUE COPY OF THE GO DATED 05-06-2009 ALONG
WITH ANNEXURE 1 ATTESTATION FORM ISSUED BY
THE ADDITIONAL CHIEF SECRETARY, GOVERNMENT
OF KERALA
- Exhibit P.7 TRUE COPY OF THE REPLY STATEMENT DATED 31-
12-2018 FILED BY THE 1ST RESPONDENT IN OA
NO.1116/2018 BEFORE THE HON'BLE KERALA
ADMINISTRATIVE TRIBUNAL