

W.P.(MD).No.12980 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.12980 of 2023

and

W.P(MD)No.10985 of 2023

Arunkanth

... Petitioner

Vs.

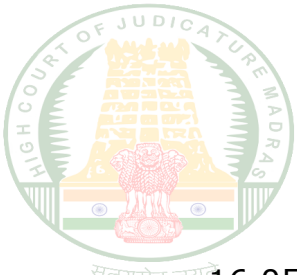
1.Tamil Nadu Uniformed Services Recruitment Board,
Represented by its Chairman/Member Secretary,
Recruitment Sub-Committee, Tenkasi Centre,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore,
Chennai – 600 008.

2.The Director General of Police,
Mylapore,
Chennai – 600 004.

3.The Superintendent of Police,
Tenkasi,
Tenkasi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent vide office proceedings in Na.Ka.No.A4/9695/2023 dated



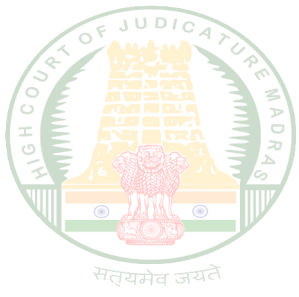
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16.05.2023 and quash the same as illegal and consequently direct the respondents to issue appointment order to the petitioner and send him for training for the post of Grade II Police Constables (Armed Reserve, Tamil Nadu Special Force, Jail Warder and Firemen) with effect from the date of original selection within the period stipulated by this Court.

For Petitioner : Mr.R.Karunanidhi
For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent, dated 16.05.2023 and consequently direct the respondents to issue an appointment order to the petitioner and send him for training for the post of Grade II Police Constables (Armed Reserve, Tamil Nadu Special Force, Jail Warder and Firemen) with effect from the date of original selection within the period stipulated by this Court.



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2.Heard Mr.R.Karunanidhi, learned counsel appearing for the petitioner and Mr.P.Veera Kathiravan, learned Additional Advocate General appearing for the respondents and perused the materials available on record.

3.The petitioner completed 10th standard in the year, 2013 and subsequently, completed 12th standard in the year 2015 and he also qualified in B.Com (CA) in the year 2018. On 16.07.2022, the petitioner applied for the post of Grade-II Constable. He participated in the written examination on 27.11.2022 and he got qualified in the same. Thereafter, the respondents called the petitioner for physical efficiency test on 07.02.2023. He scored 65 marks out of 70 marks in the written examination and 24 marks out of 24 in the physical efficiency test and totally, he got 89 marks in the written examination and physical efficiency test. While so, during the month of April, 2023, he was called for medical examination. In the meanwhile, on 16.05.2023, the third respondent passed the impugned order mentioning that the petitioner was involved in a criminal case which was dropped for further action and on that basis, he was not selected by citing the involvement in the criminal case and his selection was rejected. Challenging the same, this Writ Petition came to be filed.

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4.The learned counsel appearing for the petitioner submitted that a criminal case has been filed as against the petitioner and other accused in Crime No.567 of 2017 on the file of the Srivilliputhur Town Police Station for the alleged offences under Sections 143, 188, 353, 295 and 297 of I.P.C and it was with respect to the raising of slogans and seeking withdrawal of NEET examination which was organized by college students and the petitioner also participated in the same. Accused No.8 of the said crime number filed a quash petition before this Court in CrI.O.P(MD)No.2156 of 2022 and this Court, by order, dated 01.02.2022 quashed the said Crime No.567 of 2017 on the file of Srivilliputhur Town Police Station and the relevant portion of which is extracted as follows:-

"2..... After all, during the relevant time, the accused were College going students. The petitioner is now aged about 24 years and he must have been around 18 or 19 years then. One can take judicial notice of the fact that during the relevant time, conducting of NEET examination caused considerable public unrest. Death of a student by name, Anitha, made the whole issue highly emotional. Therefore, the conduct of the petitioner can very well be understood.



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Admittedly, they did not indulge in any act of violence. It is seen that the FIR was registered wayback on 08.09.2017. No explanation is also forthcoming for the non-filing of the final report. In these circumstances, continuance of the prosecution is clearly not warranted. Therefore, the impugned FIR is quashed. This Criminal Original Petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed."

5. Since this Court made a pertinent observation that the benefit of the order passed in CrI.O.P(MD)No.2156 of 2022, dated 01.02.2022 would enure in favour of the non-petitioning accused also, this petitioner did not file any quash petition and on the basis of the order passed by this Court, the case against all the accused in the said crime number was closed as referred on the basis of the High Court order, dated 01.02.2022. Hence, the impugned order, dated 16.05.2023 is liable to be quashed and the petitioner is entitled to be appointed as Grade-II Police Constable.



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6.Per contra, the learned Additional Advocate General appearing for the respondents vehemently submitted that though the petitioner did not suppress the pendency of the said Crime No.567 of 2017 on the file of Srivilliputhur Town Police Station in his application for recruitment, in view of the order passed by the Hon'ble Apex Court in the case of **Sathish Chandra Yadav Vs. Union of India and others** reported in **2022 SCC Online SC 1300**, the appointing authorities were bound by the directions given by the Hon'ble Apex Court in the said case and hence relying upon the said Judgment, in which the Hon'ble Supreme Court has held that even in a case where the employees have made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidates. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post. In view of the said Judgment, the authorities have rejected the candidature of the petitioner and hence, he prayed for dismissing the Writ Petition.



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7.The Hon'ble Division Bench of this Court in a batch of cases in W.A(MD)Nos.938 of 2020 etc., batch cases, dated 05.06.2023 (The Director General of Police and others Vs. K.Indhu Kumar) while dealing with similar matters as far as similar of this case is concerned, has held as follows:-

"19. In the light of the above said deliberations, the preposition of law could be summarized as follows:

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself."

8.The writ petitioner in this case while he was a student participated in the protest organized by fellow students protesting as against the NEET examination and the right to protest for a common cause is a fundamental right which is available to each and every citizen of this Country and for the purpose of participating in the said protest, the said crime number came to be filed. In CrI.O.P(MD)No. 2156 of 2022, dated 01.02.2022 filed by one of the accused in the said

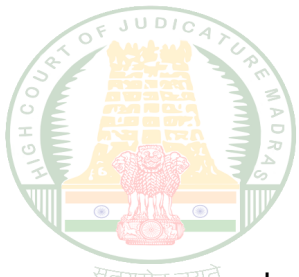


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crime number, the learned Single Judge of this Court has rightly observed that the alleged accused in the said crime did not indulge in any act of violence and on the death of a student by name Anitha, the whole issue went emotional across the State and bound by the emotional outrage which caught across the State, the entire student community across the State indulged in protest. As a result of which, all the students participated in the said protest and there is no criminal implication for having participated in the said protest and on that basis, the F.I.R came to be quashed. However, without considering the fact that the said crime number has already been quashed and consequently, the case was also referred on the basis of the High Court order, the appointing authorities, without application of mind, rejected the candidature of the petitioner stating that the persons who are acquitted under benefit of doubt or hostility of complaint will be treated as involved in criminal case and he will not be considered for appointment as per Rule 14(b) of TNSPSS Rules or Rule 13 of TNPSS Rules. However, the petitioner was neither acquitted on the benefit of doubt or hostility of the complainant, but the crime which was registered as against him in an earlier stage and never culminated in the filing of a charge-sheet and it was closed on the basis of the High Court order, where the High Court has already held that it was only a

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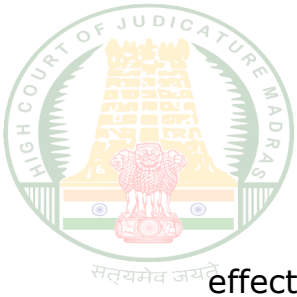
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protest and it cannot have any criminal implication. The respondent authorities failed to consider the fact that there are no other criminal antecedents as against the petitioner and this particular crime has nothing to do with any criminal implication as far as the petitioner is concerned and he had only exercised his fundamental right to protest by participating in the protest organized by his fellow students and definitely, it will not have any implication as to the nature of the job for which he has applied to as Grade-II Police Constable.

9. In view of the same and on the basis of the order passed by the Hon'ble Division Bench of this Court and the Hon'ble Division Bench of this Court has also relied upon the Judgment passed by the Hon'ble Supreme Court in the case of **Sathish Chandra Yadav Vs. Union of India and others** reported in **2022 SCC Online SC 1300** while dealing the batch of writ appeals, this Court is inclined to quash the impugned order, dated 16.05.2023 passed by the third respondent.

10. Accordingly, the impugned order, dated 16.05.2023 passed by the third respondent is quashed and subsequently, directing the respondents to issue an appointment order to the petitioner and send him for training to the post of Grade-II Police Constable with

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effect from the date of original selection within a period of twelve weeks from the date of receipt of a copy of this order.

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11. With the above observation, this Writ Petition is allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. Tamil Nadu Uniformed Services Recruitment Board,
Represented by its Chairman/Member Secretary,
Recruitment Sub-Committee, Tenkasi Centre,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai – 600 008.
2. The Director General of Police,
Mylapore,
Chennai – 600 004.
3. The Superintendent of Police,
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L.VICTORIA GOWRI, J.

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