Case relating to Departmental Promotion:

Parties : Manikandan & Others Versus The Chairman, Tamil Nadu Uniformed Services Recruitment Board & Others

Court : High Court of Judicature at Madras

Case No : W.P No.38289 of 2005 and W.P.M.P.No.38287 of 2005, W.P.No.27907 of 2006 and M.P.No.2 of 2006, W.P.Nos.5525, 6260, 7832, 9648 and P.Nos.1, 2 & 3 of 2007 W.P.No.21953 of 2007 and M.P.No.1 of 2007

Judges: THE HONOURABLE CHIEF JUSTICE MR. A.P. SHAH, THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA & THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

Appearing Advocates : For the Petitioners: K. Venkatramani, S.C., M/s. M. Muthappan, M/s. V.P. Rajendran, M/s. S. Chandrasekaran, G. Jermiah, Advocates. For the Respondents: P. Raja Kalifulla, Government Pleader.

Date of Judgment : 28-02-2008

Head Note :-

Constitution of India - Article 14, Article 16, Article 226 - Service - Tamil Nadu Special Police Subordinate Service Rule, 1978 - Rule 14(b) – Validity of - The impugned Rule creates a classification of persons, who were not involved in criminal cases and persons, who were involved in criminal cases. The object of creating such a classification is to ensure that only those persons, whose character and antecedents were beyond any shadow of doubt alone, are permitted entry into the police service of the State. The Rule is only a reflection of the intention of the Government to maintain purity of administration. The Rule merely provides a check post or a filter point, to ensure that only those, who had a clean record of personal life, are admitted into the system. That the existing system, has already come under heavy dose of criticism, cannot be swept under the carpet. Therefore, as an employer, the Government is entitled to prescribe, especially in a disciplined force like the police force, such a restriction at the entry level. There cannot be a dispute about the proposition that an employer has the right to prescribe any qualifications for appointment to a post. If that be so, an employer has a concomitant right even to prescribe disqualifications when it comes to appointment to a post. The prescription that Caeser's wife should be above suspicion, cannot be said to be faulty at least in this regard - Persons who were never involved in criminal cases, need not be treated as equals to or on par with persons who were involved in criminal cases merely because they are acquitted later, especially in the matter of selection to the Police Service of the State. The classification made between them, is not only reasonable but also has a nexus with the object sought to be achieved - It is too late in the day to suggest that the employer does not have the right to choose a person untainted with any allegations. The attempt made to assail the impugned rules on the ground of violation of Articles 14 and 16 of the Constitution is fragile. The impugned rules themselves appear to be a product of the application of the right to equality. A person, who was never involved in any criminal case, cannot be equated to a person, who was involved in a criminal case, merely because he is acquitted later, at least insofar as matters of public employment are concerned. Therefore, the challenge to the impugned rule on the ground of infringement of Articles 14 and 16 of the Constitution must fail.

Para 12 to 19(FB)

Constitution of India - Article 226 - Service - Tamil Nadu Special Police Subordinate Service Rules, 1978 - Rule 14(b) – 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 - 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 - The entire scheme of the Code of Criminal Procedure, 1973, speaks only of acquittal and not of an "honourable acquittal" or "acquittal on benefit of doubt". These concepts appear to have been developed by courts over the years. But there seems to be a reason for this - Section 300(1) of the Code prescribes that a person tried for an offence by a competent court and convicted or acquitted of such offence, shall not be liable to be tried for the same offence or on the same facts for any other offence which could have been charged against him in the same trial. However, the Explanation to Section 300 of the Code makes it clear that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of Section 300 - The reason as to why the Code does not make a distinction between an acquittal on benefit of doubt and an honourable acquittal, is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted or acquitted once. What is provided under Section 300(1) of the Code, is only a reassurance of the constitutional right guaranteed under Article 20(2). The principle behind this prescription under section 300 of the Code is to avoid double jeopardy to a person. If the Code recognises such a distinction, it may make inroads into this concept of double jeopardy - Since the concept of "acquittal is an acquittal", is an off shoot of the principle of double jeopardy underlying section 300(1) of the Code, it cannot be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles applicable to Service jurisprudence. A person discharged does not even have protection under section 300 of the Code and hence such a person cannot assail the Explanation 1 to the impugned rule 14(b) - By virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu 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 - The failure of a person to disclose his involvement in a criminal case, at the earliest point of time, when the application form is filled up, is fatal. His subsequent disclosure, whether before acquittal or after acquittal, will not cure the defect. In any case, the subsequent disclosure may not have any effect upon his selection, since his case will then fall under any one of the 2 Explanations under clause (iv) of Rule 14(b) and make him ineligible for the current selection or for all future selection depending on whether the acquittal is honorable or otherwise.

Para 25 to 30 & 35(FB)

Cases Referred:

1. P. Virabhagu -vs- Union of India (2005) 1 C.T.C. 420

2. K. Ram Prasad -vs- State of Tamil Nadu decided on 06.12.2005 in W.P.No.21671 of 2005 and W.A.No.1963 of 2005

3. T. Sekar -vs- Secretary to Government (2007) 1 MLJ 510

4. Pawan Kumar -vs- State of Haryana and another, 1996 (4) SCC 17

5. Delhi Administration -vs- Sushil Kumar (1996) 11 S.C.C. 605

6. V. Veeramani and another -vs- State of Tamil Nadu rep. by its Secretary to Government, Home (Pol.IX) Department, Chennai and others (2007) 3 MLJ 676

7. State of Punjab -vs- Ram Singh Ex Constable (1992) 4 Supreme Court Cases 54

8. State of Madhya Pradesh -vs- Ramashankar Raghuvanshi (1983) 2 SCC 145

9. T.S. Vasudevan Nair -vs- Director of Vikram Sarabai Space Centre and others 1988 (supp) SCC 795

10. Commissioner of Police, Delhi and another -vs- Dhaval Singh (1999) 1 S.C.C. 246

11. Dharam Pal Singh and others -vs- State of Rajasthan and others 2000 (4) S.L.R. 612

12. Director General of Police -vs- C.Senthil Kumar and another MANU/TN/2025/2005

13. R. Radhakrishnan -vs- The Director General of Police and others 2007(12) SCALE 539

Comparative Citations:
2008 (2) MLJ 1203; 2008 (2) LW 106, 2008 (2) CTC 97, 2008 (1) TLNJ 577 (Civil)

Judgment :-

(Prayer:-Writ petitions filed under Article 226 of the Constitution of India for the issuance of writs of certiorarified manadmus, calling for the records of the respondents in connection with the impugned orders passed by the 2nd respondent in Na.Ka.No. 140155/Appointment.3/2005-22 dated 26.07.2005 and Na.Ka.No. 161874/Appointment.3/05 dated 15.09.2005, Na.Ka.No.080992 /Appointment. 3/2003 dated 02.02.2004, dated 03.01.2004, dated 30.12.2003, Na.Ka.No.117734/appointment. 3/2003 dated 26.08.2003 and letter No.D3/4197/2006 dated 11.12.2006, Na.Ka.No.92366/appointment. 1(1)/2006-5 dated 4.11.2006, Na.Ka.No.039098/Rect.3/2005 dated 12.05.2005 and Na.Ka.No .123305/Rect 1(2)/06 dated 05.09.2006 respectively and quash the same and direct the respondents to select and appoint the petitioners as Grade-II Police Constables in Tamil Nadu Police Subordinate Service and grant such other further reliefs.)

V. Ramasubramanian, J.

Finding a conflict of opinion between the judgment of a Division Bench in P. Virabhagu -vs- Union of India {(2005) 1 C.T.C. 420}, which was followed by another Division Bench in an unreported decision in K. Ram Prasad -vs- State of Tamil Nadu decided on 06.12.2005 in W.P.No.21671 of 2005 and W.A.No.1963 of 2005 on the one hand and the decision of the latest Division Bench in T. Sekar -vs- Secretary to Government {(2007) 1 MLJ 510} on the other hand, Justice P. Jyothimani sought a reference of the following issues to the Full bench;

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?

2. In P. Virabhagu -vs- The Union of India {2005(1) C.T.C. 429}, the case of a person, who was denied appointment on the basis of his conviction for an offence of affray U/s. 160 IPC. and the non disclosure of the same, came up before a Division Bench of this Court. Since the offence involved was a petty offence, resulting in the imposition of a fine, the Division Bench set aside the order of refusal of appointment. In para. Nos. 39 and 40 of the said Judgment, it was held as follows:-

"39. We are of the opinion that when the offence committed by the petitioner is a petty one, it cannot be a bar to the petitioner to enter into Government, while the petitioner, otherwise, is eligible to hold that post.

40. In this regard, the principles laid down by the Supreme Court in Pawan Kumar -vs-State of Haryana and another, (1996 (4) SCC 17), are squarely applicable to the case on hand."

3. In an unreported decision in K. Ram Prasad -vs- State of Tamil Nadu (W.P.No.21671 of 2005 and W.A.No.1963 of 2005 decided on 06.12.2005), a Division Bench of this Court (to which, two of us, viz., The Chief Justice and Justice F.M.Ibrahim Kalifulla, were parties) held as follows:-

"12. 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 summary 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. 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 -vs- The Union of India (2005 (1) CTC 429) referred to above."

4. Several learned Judges of this Court have allowed writ petitions following the aforesaid Division Bench decisions. However, another Division Bench in T. Sekar -vs- Secretary to Government {(2007) 1 MLJ 510} took up the question as to whether the acquittal on benefit of doubt could be a ground to deny appointment in Tamil Nadu Police Service. After referring to the amended Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, the Division Bench held in paragraph Nos.10 and 11

as follows:-

"10. The present case of the appellant is similar to Delhi Administration through its Chief Secretary and Others -vs- Sushil Kumar. That apart, if the relevant Rule 14(b), as amended on 30.01.2003 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.

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."

5. In view of the said Division Bench judgment in T. Sekar -vs- Secretary to Government, the learned Single Judge considered that there was a conflict of opinion between the decisions of the Division Benches and sought a reference of the issues elicited in paragraph No.1 above for the consideration of the Full Bench. As seen from the reference, there are 2 issues, which require consideration, viz.,

(a) the effect of an order of acquittal or discharge of a person involved in a criminal case with reference to Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, and

(b) the effect of non disclosure of the same at the time of applying for appointment to the Police Service of the State.

6. While the 2nd issue has been the subject matter of litigation for a long time, the 1st issue has cropped up on account of an amendment to the aforesaid Tamil Nadu Special Police Subordinate Service Rules.

7. By G.O.(Ms.)No.101, Home (Police-IX) Department, dated 30.01.2003, the Government of Tamil Nadu issued an amendment to the Tamil Nadu Special Police Subordinate Service Rules, 1978, in exercise of the powers conferred under the Tamil Nadu District Police Act, 1859 and Sec. 9 of the Chennai City Police Act read with the proviso to Article 309 of the Constitution of India. One of the amendments introduced under the said Government Order was the addition of Clause (iv) and Explanations 1 and 2 under the existing Rule 14(b). The Rule 14(b), as it stood prior to amendment
contained only Clauses (i), (ii) and (iii). After the amendment and the introduction of Clause (iv) with Explanations 1 & 2, the amended Rule reads 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.

(iv) That he has 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."

8. The validity of the aforesaid amendment was challenged earlier in a writ petition. But the challenge failed and the Rule was upheld by Justice K. Chandru, in V. Veeramani and another -vs- State of Tamil Nadu rep. by its Secretary to Government, Home (Pol.IX) Department, Chennai and others {(2007) 3 MLJ 676}. It was held therein as follows:-
"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) does not suffer from vires or 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."

9. However, without realizing that the Rule has already been upheld, some of the writ petitioners in the present batch of cases have filed petitions for amendment seeking to incorporate a challenge to the constitutional validity of the aforesaid amended Rule, since the writ petitions did not contain a prayer for declaring the Rule to be ultra vires, when they were filed in the first instance. Despite the fact that the validity of the Rule has already been upheld by a learned Judge (and there is no appeal against the said order), we have permitted amendments and we have also heard Mr. K. Venkatramani, learned Senior Counsel and Mr.G.Jermiah, learned counsel for the writ petitioners and Mr. P. Raja Kalifulla, learned Government Pleader for the respondents, both on the merits of the individual cases and on the validity of the Rule.

Validity of the Rule:-10. Before venturing to test the validity of the Rule, it is imperative to keep in mind, an important fact, namely, that the Rule relates to appointment to police service. Time and again, the Supreme Court has sent a note of caution that the police service is a disciplined service requiring the maintenance of strict discipline. In State of Punjab -vs-Ram Singh Ex Constable {(1992) 4 Supreme Court Cases 54}, the Supreme Court held as follows:-"The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

11. As seen from G.O.Ms.No.101, dated 30.01.2003, the impugned Rule has been issued in exercise of the power conferred upon the Government under the Tamil Nadu District Police Act, the Chennai City Police Act and the proviso to Article 309 of the Constitution. The Rule is not assailed on the ground of lack of competence. It is challenged only on the ground that it is violative of Articles 14 and 16 of the Constitution. But it is well settled that if a Rule passes the twin tests of (i) being founded on an intelligible differentia and (ii) such differentia having a nexus with the object sought to be achieved, it cannot be said to be violative of Articles 14 and 16 of the Constitution.

12. The impugned Rule creates a classification of persons, who were not involved in criminal cases and persons, who were involved in criminal cases. The object of creating such a classification is to ensure that only those persons, whose character and antecedents were beyond any shadow of doubt alone, are permitted entry into the police service of the State. The Rule is only a reflection of the intention of the Government to maintain purity of administration. The Rule merely provides a check post or a filter point, to ensure that only those, who had a clean record of personal life, are admitted into the system. That the existing system, has already come under heavy dose of criticism, cannot be swept under the carpet. Therefore, as an employer, the Government is entitled to prescribe, especially in a disciplined force like the police force, such a restriction at the entry level. There cannot be a dispute about the proposition that an employer has the right to prescribe any qualifications for appointment to a post. If that be so, an employer has a concomitant right even to prescribe disqualifications when it comes to appointment to a post. The prescription that Caeser's wife should be above suspicion, cannot be said to be faulty at least in this regard.

13. Persons who were never involved in criminal cases, need not be treated as equals to or on par with persons who were involved in criminal cases merely because they are acquitted later, especially in the matter of selection to the Police Service of the State. The classification made between them, is not only reasonable but also has a nexus with the object sought to be achieved.

14. As a matter of fact, this Court as well as the Supreme Court, on a number of occasions, have upheld the decisions of the Government not to issue appointment orders to persons, who were involved in criminal cases, despite having been acquitted subsequently. Now let us deal with those cases.

15. In State of Madhya Pradesh -vs- Ramashankar Raghuvanshi {1983) 2 SCC 145}, a person employed in a Municipal School, as a teacher, was absorbed into Government service, when the School was taken over by the Government. However, the absorption was subject to the verification of his antecedents and medical fitness. On verification, it was found that the teacher had taken part in R.S.S. activities. Therefore, his services were terminated. When the termination was challenged, the High Court set aside the same for violation of the mandate of Article 311 of the Constitution. The Order of the High Court was challenged before the Supreme

Court. While dismissing the Special Leave Petition, Justice Chinnappa Reddy held as follows:-"The right to freedom of speech and expression, the right to form associations and unions, the right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the laws, the right to equality of opportunity in matters relating to employment or appointment to any office under the State are declared Fundamental Rights. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organization. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some Service Conduct rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted anyone to commit violent deeds. There is no reference to any addiction to violence or vice or any incident involving violence, vice or other crime.

We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce 'McCarthyism' into India. 'McCarthyism' is obnoxious to the whole philosophy of our Constitution. We do not want it."

But, the said case is not an authority for the proposition that a person involved in a criminal case can also be placed on the same footing as a person, who was involved in political activities. Again the Supreme Court made a distinction in the said case, between a person, who is already in Government service and a person, who is yet to enter into Government service, in paragraph No.10 of the said judgment, as follows:-"10. We are not for a moment suggesting that even after entry into government service, a person may engage himself in political activities. All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution."

Thus 2 fundamental distinctions were drawn in the said case, viz.,

(i) that involvement in political activities in the past is not equivalent to the involvement in criminal cases; and

(ii) that after entry into service, a person is bound by the Service Rules, even if the rules bar the Government servant from indulging in political activities.

In other words, the Government's right to regulate the conduct of its employees, by appropriate Service Rules, was recognized by the Apex Court in this judgment. The Supreme court also found in the said case on facts that the employee was not found to have been involved in any crime or violence or vice.

16. In Pawan Kumar -vs- State of Haryana & another {(1996) 4 SCC 17}, the services of an adhoc appointee were terminated on the ground that he had been convicted for an offence under Section 294 IPC and that therefore, his character and antecedents did not befit his regularisation in service. His challenge to the order of termination was rejected by the trial Court, 1st appellate Court and the High Court. But the Supreme Court reversed the decisions of the Courts below and granted him relief on the ground that his conviction for an offence under Section 294 IPC., on its own, did 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 of the State. While holding so, the Apex Court made certain observations in paragraph No.14 of the judgment, which are as follows:-"14. Before concluding this judgment we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs.2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

Thus, the Apex Court, just indicated its mind and ultimately left it to the wisdom of the Government to frame appropriate rules or regulations.

17. In Delhi Administration -vs- Sushil Kumar {(1996) 11 S.C.C. 605}, the provisional selection of a person for appointment as a Constable in the Delhi Police Services, was cancelled after it was found at the time of verification of his character and antecedents that he was involved in a criminal case. But the Central Administrative Tribunal directed his appointment on the ground that he was subsequently discharged and/or acquitted of the offence and hence, he could not be denied the right of appointment. However, the Supreme Court reversed the decision of the Tribunal and held as follows:-

"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. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offices, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."

The law so laid down by the Supreme Court in this case, still holds the field. As seen from the passage extracted above, the emphasis in such cases, is not so much on the ultimate outcome of the criminal case, as it is on the conduct of a person which led to his involvement or implication in the criminal case.

18. It is relevant in this context to refer to Rule 3(c) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, which is in pari materia with Rule 17(c) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. The said Rule reads as follows:-"3(c)(i)(1) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of the service any such penalty as is referred to in clause (i) of that sub-rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment): but he shall be given a reasonable opportunity of making any representation."

Thus in the case of existing Government servants, the elaborate procedure prescribed under rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules for the imposition of a major penalty, are made inapplicable, when it is proposed to take action on the basis of a conviction by a criminal court. Even the Central Civil Services (Classification, Control and Appeal) Rules, 1965, contains a similar provision in Rule 19, which reads as follows:-"19. Special procedure in certain cases- Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government Servant on the ground of conduct which had led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government Servant may be given an opportunity of making representation

on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

Therefore, the focus of the Government, as an employer, either at the time of recruitment or during the course of employment, has always been on the conduct rather than on the ultimate outcome including conviction. This is what was highlighted by the Supreme Court in Sushil Kumar's case cited above.

19. It is too late in the day to suggest that the employer does not have the right to choose a person untainted with any allegations. The attempt made to assail the impugned rules on the ground of violation of Articles 14 and 16 of the Constitution is fragile. The impugned rules themselves appear to be a product of the application of the right to equality. A person, who was never involved in any criminal case, cannot be equated to a person, who was involved in a criminal case, merely because he is acquitted later, at least insofar as matters of public employment are concerned.
Therefore, the challenge to the impugned rule on the ground of infringement of Articles 14 and 16 of the Constitution must fail.

Effect of acquittal or discharge on benefit of doubt.

20. Having found that the amended Rule 14(b) cannot be assailed as ultra vires, let us now take up the first question referred to the Full Bench, viz., as to whether the acquittal or the discharge of a person on benefit of doubt would make a person ineligible for appointment to public service forever, by virtue of Explanation-1 under Clause (iv) of Rule 14(b) of the aforesaid Rules.

21. It is contended by the learned Senior Counsel appearing for the petitioners that the Code of Criminal Procedure recognises only one type of acquittal and that the Code does not create a dichotomy between what has come to be accepted in common parlance as "an honourable acquittal" and "an acquittal on benefit of doubt".

22. The Code of Criminal Procedure, 1973, refers to "acquittal" under Sections 232, 235, 248, 255 and 300. The word "discharge" is used in the Code in Sections 227, 239 and 245. Section 227 enables a Court of Session to discharge an accused if upon consideration of the record of the case and the documents submitted, he considers that there is no sufficient ground for proceeding against the accused. Section 232 enables a Court of Sessions to order the acquittal of a person, if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence to show that the accused committed the offence. Thus, discharge under Section 227 can be ordered before recording the evidence and the acquittal under Section 232 can be ordered after the evidence for the prosecution is recorded.

23. Similarly, Section 239 enables a Magistrate to discharge the accused, if after considering

the police report and the documents sent along with it under Section 173, he considers the charge against the accused to be groundless. In cases instituted otherwise than on police report also, the Magistrate is entitled to discharge an accused, if after taking all the evidence as is referred to in Section 244, he considers that no case against the accused has been made out.

24. While the acquittal or discharge referred to in the above provisions, relate to a stage prior to the conclusion of the entire trial, the acquittal contemplated U/s. 248 and 255, by a Magistrate in a warrant case or summons case, is after trial.

25. Thus it is seen that the entire scheme of the Code of Criminal Procedure, 1973, speaks only of acquittal and not of an "honourable acquittal" or "acquittal on benefit of doubt". These concepts appear to have been developed by courts over the years. But there seems to be a reason for this.

26. Section 300(1) of the Code prescribes that a person tried for an offence by a competent court and convicted or acquitted of such offence, shall not be liable to be tried for the same offence or on the same facts for any other offence which could have been charged against him in the same trial. However, the Explanation to Section 300 of the Code makes it clear that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of Section 300. Therefore, the bar under Section 300(1) for a 2nd trial for the same offence or for a 2nd trial on the same facts for any other offence, may not be applicable in certain cases, where an accused is discharged.

27. The reason as to why the Code does not make a distinction between an acquittal on benefit of doubt and an honourable acquittal, is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted or acquitted once. What is provided under Section 300(1) of the Code, is only a reassurance of the constitutional right guaranteed under Article 20(2). The principle behind this prescription under section 300 of the Code is to avoid double jeopardy to a person. If the Code recognises such a distinction, it may make inroads into this concept of double jeopardy.

28. But the concept of double jeopardy, to some extent, is allergic to service law. In as many cases as one can think of, the Supreme Court has made it clear (i) that the imposition of a punishment and the denial of promotion did not amount to double jeopardy and (ii) that the conviction by a criminal Court and the disciplinary proceedings initiated either on the basis of conduct which led to the conviction or on pure questions of misconduct, did not amount to double jeopardy.

29. Since the concept of "acquittal is an acquittal", is an off shoot of the principle of double jeopardy underlying section 300(1) of the Code, it cannot be imported into service law, where the principle of double jeopardy itself is looked down upon. Therefore, the Explanation 1 to Rule 14(b) of the impugned Rules, treating a person acquitted on benefit of doubt, as a person involved in a criminal case, is only in tune with well settled principles applicable to Service jurisprudence. A person discharged does not even have protection under section 300 of the Code

and hence such a person cannot assail the Explanation 1 to the impugned rule 14(b).

30. Therefore, we hold, in answer to the first issue referred to the Full Bench, that by virtue of Explanation 1 to clause (iv) of Rule 14 (b) of the Tamilnadu 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.

Non Disclosure

31. Coming to the second question referred to us, it is seen that the Apex court has always held suppression of a material fact to be a vitiating factor. The only case in which the Supreme Court held the non disclosure by a person of his conviction in a criminal case to be of no consequence, is the one in T.S. Vasudevan Nair -vs- Director of Vikram Sarabai Space Centre and others (1988 (supp) SCC 795). But the Supreme Court made it clear in the said judgment that it was passed in the special facts and circumstances of the case. That case arose out of the denial of employment to a person, who was convicted under the Defence of India Rules for shouting slogans against the Government during emergency. He did not disclose it while seeking employment. Therefore he was denied employment. The Supreme Court considered the special facts and circumstances of the case and directed his appointment. The Supreme Court did not lay down, any proposition of law in the said case, that the non disclosure by a person of his involvement or conviction in a criminal case, can be condoned.

32. In Commissioner of Police, Delhi and another -vs- Dhaval Singh {(1999) 1 S.C.C. 246}, the Court was concerned with the case of a person, who suppressed the factum of his involvement in a criminal case, at the time of submitting an application for appointment to the post of Constable. However, before the selection reached its final stage, he voluntarily made a disclosure. But he was not selected for appointment on the ground of concealment of a material fact. The Central Administrative Tribunal set aside the orders of the Commissioner of Police and directed him to consider offering appointment to the affected individual. The said order was challenged before the Supreme Court and the Court held as follows:-"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15.11.1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial Court – it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of

the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect, which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

It is seen from the passage extracted above that in the said case the Supreme Court was convinced about the bonafides of the individual. The individual concerned, failed to disclose his involvement in the criminal case at the first instance. But subsequently, he made a voluntary disclosure, to the appointing authority, even before his acquittal by the criminal Court. The Supreme Court recorded a finding that the candidate made a voluntary disclosure even before his acquittal. The Supreme Court found on facts that the concerned individual did not wait till his acquittal, to make a disclosure, but made a disclosure even at a time when it was to his disadvantage. Therefore, the said decision cannot be relied upon by the writ petitioners.

33. In Dharam Pal Singh and others -vs- State of Rajasthan and others {2000 (4) S.L.R. 612}, the Full Bench of the Rajasthan High Court considered the effect of suppression of the involvement in a criminal case on the right of appointment of a person and also the effect of ultimate acquittal in the criminal case, upon the right to get appointed. In paragraph No.26, the majority view was summarised as follows:-"26. In the light of the facts stated and the discussion made above, we answer the questions 1 to 3 aforementioned as follows:-1) That a candidate was persecuted or subjected to investigation on a criminal charge is a material fact, suppression of which, would entitle an employer to deny employment to a candidate on that ground.

2) That ultimate acquittal of a candidate, who was prosecuted on a criminal charge, would not condone or wash out the consequences of suppression of the fact that he was prosecuted.

3) That suppression of material fact would by itself disentitle a candidate from being appointed in service."

Though in paragraph No.138 of the said judgment, one of the learned Judges of the Rajasthan High Court held that the mere registration of a First Information Report, is by itself not sufficient to visit him with disqualification or stigma, the said paragraph did not form part of the majority view. The majority view was reflected only in paragraph No.26.

34. In the Director General of Police -vs- C.Senthil Kumar and another MANU/TN/2025/2005), a Division Bench of this Court held as follows:-

"9. It is to be noted that the offence said to have involved by the first respondent herein relates to the Madras City Police Act. No doubt he was convicted and sentenced to pay a fine of Rs.100. It is the claim of the 1st respondent that omission to refer the same in the application form is not a deliberate one and by inadvertently the same was not mentioned. However, according to him, the correct information was brought to the notice of the authority without further loss of time. In the first decision referred to above, viz., 1996(4) Supreme 764 their Lordships have held that punishment of fine up to Rs.2,000 on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service.

10. In 1999 (1) SCC 246 the Hon'ble Supreme Court, after finding that the concerned authority did not apply its mind to the intimation given by the applicant regarding acquittal in the criminal case and the same was supplied before canceling the appointment and ultimately set aside the order of the authority and issued necessary direction.

11. In 1988 (Supp) SCC 795, three Judges of the Honourable Supreme court have concluded that the denial of appointment on the sole ground of non-disclosure of such conviction is not justified. In that case, the person concerned had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. After finding that for suppression of such incident in the application form, their Lordships have concluded that he should not have been denied employment and set aside the order of the High Court and ordered appointment."

Thus the above decision of the Division Bench in C. Senthil Kumar's case was on the basis of 3 decisions of the Apex Court. But the peculiar circumstances pointed out by the Supreme Court for rendering the decisions in those 3 cases, namely T. Vasudevan Nair's case, Pawan Kumar's case and Dhaval Singh's case, were not noted by the Division Bench in the aforesaid decision (in Senthil Kumar's case). Therefore the decision of the Division Bench does not appear to reflect the correct position. In any case, the said decision was without reference to the amended rule 14(b). Therefore the writ petitioners cannot rely upon the same.

35. The issue is now set at rest by the Apex court in R. Radhakrishnan -vs- The Director General of Police and others {2007(12) SCALE 539}, which is the latest in this series of decisions. The Supreme Court has clarified the law on the point, as follows:-

"10. Indisputably, the Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English.He, therefore, knew and understood the implication of his statement or omission to disclose a vital information.The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who has not made such disclosures and were, thus, similarly situated had not been appointed.

11. The question came up for consideration before this Court in Delhi Administration through its Chief Secretary and others -vs- Sushil Kumar {(1996) 11 SCC 65}, wherein it was categorically held:

"3.... The Tribunal in the impugned order allowed the application on the ground that since the respondent and 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 "

12. Mr. Prabhakar has relied upon a decision of this Court in T.S. Vasudevan Nair v. Director of Vikram Sarabhai Space Centre and Others (1998 Supp. SCC 795). The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

Thus the above latest decision of the Apex Court has cleared the cloud of suspicion on the issue. Therefore we hold that the failure of a person to disclose his involvement in a criminal case, at the earliest point of time, when the application form is filled up, is fatal. His subsequent disclosure, whether before acquittal or after acquittal, will not cure the defect. In any case, the subsequent disclosure may not have any effect upon his selection, since his case will then fall under any one of the 2 Explanations under clause (iv) of Rule 14(b) and make him ineligible for the current selection or for all future selection depending on whether the acquittal is honorable or otherwise.

36. Coming to the individual cases, it is seen that all these cases fall either under the category covered by Explanation-1 to Rule 14(b) of the aforesaid Rules or under the category of suppression of the factum of involvement in the criminal case. Therefore, none of the writ petitioners are entitled to any relief. In order to appreciate the factual position in these individual cases, the following tabular form would be of use:-37. From the above table, it is seen that the petitioners in all these writ petitions were involved in criminal cases for offences under the Indian Penal Code and that they have been acquitted after the selection process commenced. In one case, viz., W.P.No.21953 of 2007, the charge sheet was quashed by this Court. However, on the date, on which, the petitioners made applications for appointment, the petitioners were facing trial of a criminal case. None of these petitioners, admittedly, disclosed the pendency of

the criminal cases in the application forms. But the contention of Mr. K. Venkatramani, learned Senior Counsel for the writ petitioners, is that all these petitioners subsequently sent representations to the concerned authorities, bringing to their notice, the factum of their involvement in the criminal cases and the eventual acquittal. But the learned Government Pleader disputed the same. But even assuming for the sake of argument that the petitioners had made post facto disclosure, the same may not advance their cause for the simple reason that all of them had criminal cases pending against them on the date of being considered for appointment. Therefore, by virtue of Explanation 1 under clause (iv) of Rule 14 (b) of the Special Rules for Tamil Nadu Police Subordinate Services, they were disqualified from participating in the selection process. The non disclosure of their involvement in the criminal case, in the application forms, merely added up one more factor, for rejecting their candidature.

38. It was contended by Mr. K. Venkatramani, learned Senior Counsel for the writ petitioners, that the amendment to the rules were introduced under G.O.Ms.No.101, Home (Police-IX) Department, dated 30.01.2003 and that therefore, the selection process initiated before the said date, cannot be influenced by the amendment. But we are unable to countenance the said contention. The application forms issued to the petitioners, contained a question relating to the involvement of a candidate in any criminal case. The format of the application form remained unchanged both before and after the amendment. Therefore, the petitioners had a duty to make a true disclosure while filling up the form.

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 virus 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.

In view of the above, all the writ petitions fail and they are dismissed. No costs.