

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12th DAY OF NOVEMBER 2013

PRESENT

THE HON'BLE MR. JUSTICE MOHAN .M. SHANTANAGOUDAR

AND

THE HON'BLE MR. JUSTICE K.N. PHANEENDRA

WRIT PETITION NO.16176 OF 2011 (S-KAT)

c/w

WRIT PETITION NO.67030/2011 (S-KAT)

In W.P. No.16176/2011:

BETWEEN:

1. State of Karnataka
Rep by Secretary
Home Department
Vidhana Soudha
Bangalore-560 001.
2. The Superintendent of Police
Chitradurga District
Chitradurga.

..Petitioners

(By Sri P.B. Bajentri, HCGP.,)

AND :

1. Sri Yahyakhan M.R.
S/o Rasool Khan
Aged about 26 years
R/o Karekatte Post
Chennagiri Taluk
Davangere District.
2. Sri A.R. Bhabu
S/o Fakir Sab
Age Major
Working as Civil Police Constable
Role No.359508, Metal No.1260
Residing at Ome Tailors
DCM Road, Nitavalli
Davanagere District.

..Respondents

(By Sri C.R. Goulay, Adv., for R1)

This writ petition is filed under Article 226 & 227 of the Constitution of India praying to quash the order dated 31.3.2010 passed by the KAT in Application No.4520/2005 vide Annexure-A.

In W.P. No.67030/2011:

BETWEEN:

1. The Commandant,
10th Battalion,
Karnataka State Reserve Police,
Shiggaon, Haveri District.
2. The Additional Director General
of Police, Karnataka State Reserve

Police Carlton House,
Bangalore-560 001.

.. PETITIONERS

(By Sri P.B. Bajentri, HCGP)

AND:

Sri H.P. Parashivappa
s/o Puttappa,
Aged about 29 years
Resident of Moodala Hosahalli,
Yanaganahalli Post,
Hamarajanagar Taluk & district.

.. RESPONDENT

(By Sri K. Raghavendra Rao, Adv.)

This writ petition is filed under Article 226 & 227 of the Constitution of India praying to quash the order dated 31.3.2010 passed by the KAT in Application No.4432/2003 vide Annexure-A.

These writ petitions coming on for hearing, this day, **MOHAN .M. SHANTANAGOUDAR, J.,** made the following:-

ORDER

In Writ Petition No.16176/2011, the 1st respondent was selected as Police Constable (civil) as per the final select list dated 3.11.2004 issued by the 2nd petitioner; the

2nd petitioner addressed a letter to the Superintendent of Police, Davangere seeking verification regarding the character and antecedents of the 1st respondent and other candidates; the 2nd petitioner received reply from the Superintendent of Police, Davangere that the criminal case is pending against the 1st respondent; thereafter an Endorsement was issued by the 2nd petitioner to the 1st respondent deleting the name of the 1st respondent from the select list on 9.5.2005. However the appointment orders were issued in favour of others. Questioning such deletion of his name from the select list, Respondent No.1 approached Karnataka Administrative Tribunal ('KAT' for short) in Application No.4520/2005 which came to be allowed by the impugned order.

2. In Writ Petition No.67030/2011, the respondent was provisionally selected as Police Constable during the year 1993-94 by the Karnataka State Reserve Police Screening Committee, Bangalore. Though the respondent

was selected to the aforementioned post, he was not appointed on the ground that the criminal case is pending against him in Crime No.71/98 of Chamrajnagar Rural Police Station for the offences punishable under Sections 354 and 506 of Indian Penal Code. Being aggrieved by non-issuance of the appointment order in favour of the respondent, he approached KAT in Application No.4432/2003 which came to be allowed by the impugned order.

3. The respondent in Writ Petition No.16176/2011 was acquitted in criminal case foisted against him. The acquittal order was passed on 21.6.2006 after appointment of the other candidates was made. The respondent in Writ Petition No.67030/2011 was acquitted of criminal charges on 13.5.1999.

4. From the aforementioned facts, it is clear that as on the date of selection of the respondents, criminal cases

were pending against them. The said facts were not mentioned by the respondents in applications filed by them seeking appointment. The Appointing Authority having felt that the respondents have suppressed the material, did not choose to appoint them. The Tribunal however taking lenient view in the matter directed the petitioners to appoint the respondents to the posts of Police Constables, if there are vacancies in the categories and the Notification under which they had submitted their Applications. However it is made clear by the Tribunal that selection or appointment of other candidates shall not be disturbed while appointing the respondents.

5. It is no doubt true that the candidates were required to indicate as to whether they have ever been convicted by the Court of law or detained in any case for any offence and whether such conviction is sustained or set aside by the Appellate Court, if appealed against. The Tribunal, on facts has found that the candidates were not

required to indicate as to whether they were arrested in any case or as to whether any case is pending against them. However, the Appointing Authority has proceeded on the basis that the applicants ought to have indicated the fact of arrest or pendency of criminal case in their applications though there was no specific requirement to mention the said details. A column is also found in the application form requiring the applicants to mention as to whether they were subjected to any enquiry in connection with criminal offence. The Tribunal having found that the questions posed to the applicants in the application form are confusing, vague and inconsistent, took lenient view in the matter. The Tribunal is also of the opinion that while submitting the applications for appointment, the candidates would be in anxiety and it is possible that in an anxiety or hurry, the candidate may not have answered a particular question. None of the crimes alleged against the contesting respondents involved moral turpitude. In the matters on

hand, the Tribunal having found that the respondents are acquitted in the criminal cases launched against them, has passed the orders exercising its judicial discretion. Since we find that the discretion exercised by the Tribunal is just and proper, we do not propose to interfere in the order passed by the Tribunal.

Petitions fails and the same stand **dismissed**.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Gss/-