

ITEM NO.35

COURT NO.13

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 2188/2024

[Arising out of impugned final judgment and order dated 29-09-2023 in OPKAT No. 267/2021 passed by the High Court of Kerala at Ernakulam]

THE STATE OF KERALA & ORS.

Petitioner(s)

VERSUS

DURGADAS & ANR.

Respondent(s)

WITH

Diary No(s). 36755/2024 (XI-A)
 (FOR ADMISSION and I.R. and IA No.208520/2024-CONDONATION OF DELAY IN FILING and IA No.208522/2024-EXEMPTION FROM FILING O.T.)

Date : 14-11-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
 HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Harshad V. Hameed, AOR
 Mr. Dileep Poolakkot, Adv.
 Mrs. Ashly Harshad, Adv.

For Respondent(s) Mr. Mohammed Sadique T.a., AOR
 Mr. Kaleeswaram Raj, Adv.
 Ms. Thulasi K Raj, Adv.
 Ms. Aparna Menon, Adv.
 Ms. Chinnu Maria Antony, Adv.

Mr. R K Kapoor, Adv.
 Ms. Charu Modi, Adv.
 Mr. Rishabh Gupta, Adv.
 Ms. Aakriti Kapila, Adv.
 Dr. Reji Kumar R., Adv.
 Mr. P.R.Jayakrishnan, Adv.
 Mr. Puneet Singh Bindra, AOR

UPON hearing the counsel the Court made the following
 O R D E R

Special Leave Petition (C) No.2188/2024

1. The original application filed by the respondents herein against the non-appointment was challenged by him before the Administrative Tribunal. The Tribunal by its order dated 19.03.2021 passed the following order:

"We find that it is difficult to uphold Annexure A14 order. The exclusion of the applicant from appointment cannot be sustained. Annexure A14 order is therefore quashed and it is declared that the applicant is entitled for appointment as Police Constable in India Reserve Battalion-Commando Wing. The 1st respondent is directed to issue necessary orders in the light of what has been stated above within one month from the date of receipt of this order."

2. The said order was upheld by the High Court by the order impugned herein. Paragraph 9 of the order impugned is quoted hereunder:

"9. Now, coming back to the findings in the impugned order, the impugned order was based on a report of the Additional Director of Police I (Intelligence) dated 10.11.2020. The impugned order was proceeded as though the candidate was convicted. This appears to have been a mistake. However, the impugned order refers to the report of the Additional Director of Police dated 10.11.2020. We had the advantage of looking at the report which was placed before us during the course of argument. That report clearly indicates that the attempt to enquire about the character with reference to the incident which was subject matter of the crime was not fructified as the investigation officer was not alive. It was also stated that the de facto complainant and all key witnesses turned hostile in the prosecution. Except the allegation of the prosecution absolutely no materials were available to hold against the candidate Durga Das. It is not safe to assess the character based on the prosecution allegations alone. In such

circumstances, the conclusion arrived at by the Government to hold against the candidature of Durga Das is erroneous and unsustainable. The Court in such circumstances actually is not overturning the decision but only interfering with the process leading to the decision. The Government could not have concluded that the character is bad to disqualify him from becoming a member of the service without any materials merely based on prosecution allegations. Thus we concur with the findings of the Tribunal and dismiss the original petition."

3. The Special Leave Petition is filed on behalf of the State. We have issued notice on 05.02.2024.

4. Heard learned counsel for the parties.

5. Learned counsel referred to certain decisions of this Court including the decision of this Court in Satish Chandra Yadav vs. Union of India and Ors.¹.

6. The position of law as it emerges from the decision of this Court in Satish Chandra Yadav (supra) does not impinge upon the decision of the High Court as the High Court has passed its decision on the facts and circumstances of the case. In this view of the matter, there is no occasion for us to interfere with the judgment of the High Court.

7. The Special Leave Petition is dismissed.

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8. Delay condoned.

9. We are not inclined to interfere with the impugned judgment passed by the High Court. Hence, the Special Leave Petition is

dismissed.

10. The question of law raised by Mr. Harshad V. Hameed, learned counsel for the petitioner-State is kept open for being considered in an appropriate case.

11. Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
AR-cum-PS

(NIDHI WASON)
COURT MASTER (NSH)