

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.22863 of 2017

and

WMP.No.24039 of 2017

L.Moorthy

... Petitioner

Vs.

1.The Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board
Old Commissioner of Police Office Campus
Pantheon road
Egmore, Chennai-08.

2.The Chairman of the Sub Committee,
Tamil Nadu Uniformed Services
Recruitment Board,
Armed Reserve police Ground of Salem
Kumarasamy Patty, Hasthampatty Post
Salem Tk & Dist.

... Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents and particularly the 2nd respondent properly to re-measure the petitioner's height and to send him to medical checkup if he is amenable other fitness.

For Petitioner : Mr.P.Vijendran

For Respondents: Mr.K.Venkataramani
Additional Advocate General-VII
Assisted by
Mr.K.Dhananjayan
Special Government pleader

O R D E R

The relief sought for in this writ petition is for a direction to the respondents, to give one more opportunity to the petitioner to re-measure the petitioner's height and send him to medical checkup and other formalities.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner having succeeded in the written examination, was called for physical test conducted on 02.08.2017. The cut off height fixed for Hind Adi Dravida was 167 cm. He appeared for the physical test before the 2nd respondent. According to the petitioner, the 2nd respondent did not properly measure his height and he was recorded to be 166 cm, while in reality he is 168 cm. It was further contended that on 21.7.2017, he made a request to the 1st respondent to measure the petitioner properly.

3. The learned Additional Advocate General appearing on behalf of the respondents /Police department made a submission that the petitioner was granted two opportunities in respect of the measurement of height, and both the opportunities were availed by the petitioner and the measurement was taken even by digital device, which showed that the writ petitioner was not within the height limit prescribed under the recruitment rules.

4. The requirements for the Physical Measurement Test/ Endurance Test/ Physical Efficiency Test are as follows:-

I. Physical Measurement Test - PMT (Minimum requirement)
Height

Category	Men	Women
OC, BC, BC (M), MBC/DNC	170 cms	159 cms
SC, SC (A), ST	167 cms	157 cms

Chest - Men

Normal	81 cms
Expansion	5 cms

- * No chest measurement for Women
- * No PMT for Ex-Servicemen

II. Endurance Test - ET

Men	-	1500mtrs	-	7 minutes
Ex-Servicemen	-	1500mtrs	-	8 minutes
women	-	400mtrs	-	2 min 30 sec.

Note: PMT and Et are in qualifying nature and no marks awarded.

III. Physical Efficiency Test - PET

Norms for Men

Sl. No	Event	1 Star - 2 Marks	2 Star - 5 Marks
1	Rope Climbing (compulsory)	5.0 mtrs	6.0 mtrs
2	Long Jump or High Jump	3.80 mtrs 1.20 mtrs	4.50 mtrs 1.40 mtrs
3	Running 100 mtrs or Running 400 mtrs	15.0 Sec. 80.0 Sec.	13.50 Sec. 70.0 Sec.

Norms for Women

Sl. No	Event	1 Star - 2 Marks	2 Star - 5 Marks
1	Long Jump (compulsory)	3.00 mtrs	3.75 mtrs
2	Cricket Ball throw or Shot put	17.0 mtrs 4.25 mtrs	24.0 mtrs 5.50 mtrs
3	Running 100 mtrs or Running 200 mtrs	17.50 Sec. 38.0 Sec.	15.50 Sec. 33.0 Sec.

Norms for Ex-servicemen

Sl. No	Event	1 Star - 2 Marks	2 Star - 5 Marks
1	Shot put (7.26Kg)	5.00 mtrs	6.00 mtrs

Sl. No	Event	1 Star - 2 Marks	2 Star - 5 Marks
2	Long Jump or High Jump	3.25 mtrs 0.90 mtrs	4.50 mtrs 1.40 mtrs
3	Running 100 mtrs or Running 200 mtrs	17.00 Sec. 85.0 Sec.	13.50 Sec. 70.0 Sec.

5.Considered the rival submissions made by both sides.

6.The High Court of Andhra Pradesh, in the case of Dr.B.R.Bapuji Vs. Dr.N.Sivaramamurthy, Registrar, TU & Ors. reported in 1994 (2) Labour Law Journal 650 in paragraphs 17 and 20 as follows:-

"17. Once it is found that the second respondent possesses the two preferential qualifications and that the constitution of the Selection Committee was not vitiated in any manner, his appointment cannot be interfered with. In a judicial review, it is not open to this Court to assess the relatives merits of the candidates interviewed by the Selection Committee consisting of experts in that field.

20. The file produced before me by the University shows that the Selection Committee was headed by the Vice-Chancellor and it consisted of four members besides himself. Out of the four, one was a nominee of the Vice-Chancellor and the other three were external experts. They interviewed six candidates including the petitioner and the second respondent decided unanimously to recommend the second respondent for the post in question. In the absence of any vitiating factors like defect in the constitution of the Selection Committee, breach of principles of natural justice, failure to adhere to any mandatory statutory provisions etc., it is not open to this Court to interfere with the recommendation of the Selection Committee."

7. The Constitution Bench of the Hon'ble Supreme Court of India, in the case of the University of Mysore Vs. Govinda Rao and another reported in AIR 1965 Supreme Court 491 made an observation in this regard. His Lordship Gajendragadkar, J. while speaking for the Bench made an observation in paragraph no.12 as follows :

"In our opinion, in coming to the conclusion that appellant No. 2 did not satisfy the first

qualification, the High Court is plainly in error. The judgment shows that the learned Judges concentrated on the question as to whether a candidate obtaining 50 per cent marks could be said to have secured a high Second Class Degree, and if the relevant question had to be determined solely by reference to this aspect of the matter, the conclusion of the High Court would have been beyond reproach. But what the High Court has failed to notice is the fact that the first qualification consists of two parts-the first part is: a high Second Class Master's Degree of an Indian University, and the second part is: its equivalent which is an equivalent qualification of a foreign University. The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University, which appellant No. 2 had obtained was equivalent to a high Second Class Master's Degree of an Indian University. This aspect of the question pertains purely to an academic matter and Courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that appellant No. 2 fulfilled the first qualification. If only the attention of the High court had been drawn to the equivalent furnished in the first qualification, we have no doubt that it would not have held that the Board had acted capriciously in: expressing the opinion that appellant No. 2 satisfied all the qualifications including the first qualification. As we have already observed though the High Court felt some difficulty about the two remaining qualifications, the High Court has not rested its decision on any definite finding that these qualifications also had not been satisfied. On reading the first qualification, the position appears to be very simple; but unfortunately, since the equivalent qualification specified by cl. (a) was apparently not brought to the notice of the High Court, it has failed to take that aspect of the matter into account. On that aspect of the matter, it may follow that the Master's Degree of the Durham University secured by appellant No. 2, would satisfy the first qualification and even the second. Besides, it appears that appellant No. 2 has to his credit published works which by themselves would satisfy the second qualification. Therefore, there is no doubt that the

High Court was in error in coming to the conclusion that since appellant No. 2 could not be said to have secured a high Second Class Master's Degree of an Indian University, he did not satisfy the first qualification. It is plain that Master's Degree of the Durham University which appellant No. 2 has obtained, can be and must have been taken by the Board to be equivalent to a high Second Class Master's Degree of an Indian University, and that means the first qualification is satisfied by appellant No. 2. That being so, we must hold that the High Court was in error in issuing a writ of quo warranto, quashing the appointment of appellant No. 2. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the experts with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against 38-2 S. C. India/64 the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decisions. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show 'that the High Court applied tests 'Which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane

and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified. "

8. This apart, the Hon'ble Supreme Court in the case of S.L.Soni Vs. State of MP and another reported in 1995 Supplementary (3) SCC 156 held in paragraph 4 as follows:-

"4. Pursuant thereto, excluding the adverse comments made for the year ending with March, 1978, the Committee reconsidered the matter and found the appellant not eligible for promotion. Though Sri Pandey sought to canvass the claim on merits, we cannot evaluate ourselves the relative merits. A high level committee objectively considered the claim and found the appellant was not fit for promotion on merits. We are satisfied about this on perusal of the proceedings of the Committee. "

9. In the case of Durga Devi and Another Vs. State of HP and Ors. reported in (1997) 4 SCC 575 in paragraph 4 held as follows :-

"4. In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observation

of this Court in Dalpat Abasaheb Solunke case are squarely attached to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties."

10. In the case of Vijay Syal and Another Vs. State of Punjab and Ors. reported in 2003 (9) SCC 401, para 12 are relevant and are extracted hereunder :

"12. As can be seen from the difference of marks secured by the candidates in the interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further, marks secured in the interview and the marks secured in the written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So, 25 marks for interview out of 240 as against 200 for the written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or given scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in the interview so as to give an advantage or march to an undeserving candidates over others who had shown extraordinary merit in the written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to a Scheduled Caste were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any malafides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the

interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections."

11.The legal issue on the subject is well settled by the Hon'ble Supreme Court of India as well as by the High Courts. This Court is also of the firm opinion that a mere selection will not confer any right and the process of selection can be challenged by the candidates only on the limited grounds i.e. to say if the process of selection is in violation of the statutory rules or certain malpractices or irregularities occurred on account of the act of the authorities while conducting the process of selection. Thus, the Constitutional Courts can interfere with the process of selection only on exceptional circumstances i.e. if there is any illegality or irregularity found in the process of selection.

12.Merely for providing a second chance to the candidates for performing their Physical Efficiency Test /Endurance Test / Physical Measurement Test, a writ cannot be filed, and this Court cannot issue any such directions for the Competent Authorities for the purpose of re-doing the tests as cited above. The events of 100 meters, 200 meters, 400 meters, long jump and rope climbing etc., are like competition and a small slippery while performing such events will not confer any right to the candidates for seeking another round of chance. Success in athletic competition are momental in nature and a slippery cannot be a claim to seek another chance and this Court cannot issue any direction under Article 226 of the Constitution of India to the Competent Authorities to redo the events.

13.What is to be considered is the principles of reasonableness and fairness. This Court is bound to analyze the reasonableness in the process of selection. Once the selection process has been conducted by following the procedures uniformly to all the candidates which is accepted in normal parlance, the same will be final and the Courts cannot issue any direction to redo the events.

14.The learned counsel further raised a ground that the events may be conducted by some other authorities in order to get the fairness. Such an idea mooted out by the learned counsel cannot be considered as this Court found that the procedures adopted in the selection process is just and fair.

15.Hence, no further consideration is required in this regard and accordingly the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1.The Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board
Old Commissioner of Police Office Campus
Pantheon road
Egmore, Chennai-08.

2.The Chairman of the Sub Committee,
Tamil Nadu Uniformed Services
Recruitment Board,
Armed Reserve police Ground of Salem
Kumarasamy Patty, Hasthampatty Post
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+1 CC to the Government Pleader High Court, Madras SR.No.63392/17

W.P.No.22863 of 2017

SJ(CO)
VC (13/10/2017)

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