



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.15939 of 2013

Thavasilingam

... Petitioner

Vs.

1.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

2.The Director General of Police,
Chennai - 4.

3.The Tamilnadu Uniformed Services Recruitment Board,
807, Second Floor,
Anna Salai,
Chennai - 2
represented by its Chairman.

4.The Government of Tamilnadu,
Represented by its Secretary,
Home Department,
Chennai.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent No.2 in Rc.No.120610/RectII(1)/2011 dated 06.08.2013 disqualifying the petitioner on the ground of defective colour vision and to quash the same and to direct the respondents to appoint the petitioner as Sub Inspector of Police in Tamil Nadu Police Service in the recruitment process held during 2010 with all consequential benefits both service and monetary with in a period that may be fixed by this Honourable Court.

For Petitioner

:Mr.V.Kannan

For Respondents

:Mr.V.Muruganantham

Additional Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent No.2 in Rc.No.120610/RectII (1)/2011 dated 06.08.2013, disqualifying the petitioner on the ground of defective colour vision and to quash the same and to direct the respondents to appoint the petitioner as Sub Inspector of Police in Tamil Nadu Police Service in the recruitment process held during 2010 with all consequential benefits.

2.In the month of April, 2010, the third respondent issued notification, calling for applications from the eligible persons for the recruitment of Sub-Inspector of Police for the year 2010. Since the petitioner has required qualifications, he had applied for the same. The petitioner had been permitted to write the written examination held on 04.07.2010. Thereafter, the petitioner had been informed by the proceedings of the third respondent that the petitioner has passed in the written examination. Thereafter, the petitioner was subjected to physical efficiency test. After having physical eligibility test, the petitioner was called for medical check up. After having completed the medical check up, it was informed that the petitioner is having the defect of colour vision and opportunity of review was given to him as against the medical report, wherein it has been held that the petitioner has defective colour vision. Thereafter, the petitioner sent a representation dated 13.05.2011, requesting to reconstitute the medical board at the earliest for medical examination. Thereafter, the petitioner was directed to appear before the first respondent for conducting enquiry on 09.11.2011. The petitioner also appeared along with the Eye Test Report given by his doctor. Thereafter, the Government issued order dated 13.03.2012, for the constitution of the Second Medical Board for examination. The Director and Superintendent of Regional Institute of Ophthalmic and Government Ophthalmic Hospital, Chennai through letter had directed the petitioner to appear before the said Board on 19.10.2012. The petitioner also had appeared and he was examined by a team of doctors. Thereafter, after 10 months, the second respondent, by his proceedings dated 06.08.2013, stated that the report of the Second Medical Board dated 22.10.2012, had declared that both the eyes of the petitioner are unfit due to defective colour vision, so, the petitioner is not eligible for selection to the post of Sub Inspector of Police. Challenging the same, the petitioner has come forward with the present writ petition with the aforesaid prayer.

3.Heard both sides.

4.The learned counsel appearing for the petitioner would submit that the alleged report of the Second Medical Board, has been quoted, as reason for passing the impugned order. It seems to

whether s
part of

6. Per contra, the learned Additional Government Pleader appearing for the respondents by relying upon the counter affidavit and also upon the medical fitness certificate given by the Second Medical Board, would submit that the following has been given by the Second Medical Board to whom the petitioner was referred to, as per the direction of the Government, based on his request. The following shall be the report of the Second Medical Board.

NAME: THIRU K.THAVASILINGAM AGE 26 Yrs. SEX: Male

[https://hcservices\\$ecourts.gov/zh/hcservices/DataKAdaptLab/](https://hcservices$ecourts.gov/zh/hcservices/DataKAdaptLab/)

Remarks: BOTH EYES UNFIT DUE TO DEFECTIVE COLOUR VISION"



7. The learned Additional Government Pleader would submit that the Medical Board against the column, "Colour Vision" mentioned specifically as "defective", and in the remarks column it is specifically mentioned by the Medical Board that "both the eyes of the petitioner are unfit due to defective colour vision". In view of the categorical findings of the Medical Board that too from the Regional Institute of Ophthalmology, Government Ophthalmic Hospital, Chennai through their report dated 19.10.2012, the petitioner's candidature was not considered and therefore the same was rejected through the impugned order. The learned Additional Government Pleader would further submit that the petitioner has passed the written test and also the physical efficiency test, however, when he was medically examined two times by the Medical Boards, his eye vision, since has been shown as defective, he has been declared as unfit to be considered for the post of Sub Inspector of Police and therefore, there is no infirmity or unlawfulness attached with the impugned order and therefore, the imports of the impugned order are fully sustainable.

8. This Court has considered the said rival submissions made on both sides.

9. Insofar as the eligibility criteria to be fixed for direct recruitment to Tamil Nadu Special Police Subordinate Service is concerned the relevant Rule, namely, Rule 14-B of the Tamil Nadu Subordinate Service Rules, 1978 states the following:

"(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."

10. So, who ever be the candidate who shall be not be eligible for appointment to the Service by direct recruitment, if is of unsound health and not having active habits and also not free from any bodily defect or infirmity. Only based on the through examination the certificate given by the Medical Board of Regional Institute of Ophthalmology, Government Ophthalmic Hospital has certified that the petitioner's both eyes are unfit due to defective colour vision. In this regard, when a similar issue arose for consideration before the Hon'ble Apex Court in <https://hccsecrets.gov.in/hccsecrets/> similar recruitment to the Post of Sub-Inspector (Executive) at Delhi, after having incorporated the relevant Rules of Delhi Police has held as follows:



"2.The only question for decision is whether colour blindness was a disqualification prescribed for the post of Sub-Inspector (Executive) according to the rules applicable at the relevant time. Admittedly, the relevant provision in the rules introduced by amendment dated May 8, 1978 was applicable in the present case and the same reads as under -

'(a) that the vision is up to the following standard:

(i) For Constables, Head Constables and Sub-Inspectors (Executive)

Visual acuity (both eyes).

6/12 without glasses.

(ii) For Drivers and traffic staff.

Visual acuity (both eyes).

6/12 without glasses.

Shall be free from
Colour blindness.

(iii) For clerical staff and technical hands.

Distant vision

Near vision

Better eye

Worse eye."

11.The Hon'ble Apex Court at paragraph 3 held as follows:

"3.The contention of learned counsel for the appellants is that the expression 'shall be free from colour blindness' is applicable both to sub-clauses (i) and (ii) of clause (a) and not merely to sub-clause (ii). It is on this basis that the learned counsel for the appellants supported the non-appointment of the respondent on the ground that he was colour blind. We are unable to accept this contention. Reading the above extract as a whole, it is clear that the requirement that the candidate should be free from colour blindness is only for the post of Drivers and traffic staff in sub-clause (ii) and that does not apply to sub-clause (i) relating to Constables, Head Constables and Sub-Inspectors (Executive). It is obvious that the disqualification of colour blindness has no application to sub-clause (iii) and this was rightly not disputed by learned counsel for the appellants. In such a situation, the applicability (sic inapplicability) of the disqualification of colour blindness to sub-clause (i) is further supported by the fact that the other expression "visual acuity (both eyes) 6/12 without glasses" is repeated identically in sub-clause (i) also even though it finds place in sub-clause (ii). If the words 'shall be free from colour blindness' appearing in sub clause (ii) were applicable also to sub-clause (I), the other expression "visual acuity (both eyes) 6/12 without glasses" would not have been repeated in clause (i) when it finds place in sub-clause (ii). That apart, there is clearly discernible



13. In view of the above said facts and circumstances and in view of the law laid down by the Hon'ble Apex Court, this Court is of the considered view that the issue can once again be remitted to the respondents for reconsideration and in the said process the respondents shall refer the petitioner once again to the Medical Board of Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Chennai - 8 and get a detailed findings and percentage of defects of colour blindness of the petitioner and based on which a decision can be taken by the respondents.

(i) The impugned order is quashed and the matter is remitted to the respondents for reconsideration.

During the process of reconsideration, the respondents shall refer the petitioner for medical reexamination once again to the Medical Board of Regional Institute of Ophthalmology and

Government Ophthalmic Hospital, Chennai - 8. The Medical Board shall examine the actual percentage of colour vision and the defects in this regard of the petitioner and the same can be recorded by reasoning, as to whether with the said percentage of defects in colour vision, the petitioner shall be able to perform the duty of a Sub-Inspector of Police in the Uniformed Services of the State.

(iii) After getting the report from the Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Chennai - 8, based on the said views expressed by the Medical Board, as has been indicated above, the final decision can be taken by the respondents.

(iv) For the completion of the said task as has been indicated above, the reference shall be made to the Medical Board within a period of four weeks from the date of receipt of a copy of this order. Thereafter, after due intimation about the date and time of the re-medical examination the same shall be done by the concerned medical Board within a period of two weeks thereafter and after receipts of medical reports, the respondents shall take a decision thereon about the eligibility of the petitioner's candidature and to pass final orders thereunder either to appoint the petitioner or otherwise for the said recruitment to the post of Sub-Inspector of Police, within a period of three weeks thereafter.

(v) Whenever the medical Board gives any intimation to the petitioner, fixing the date and time for the petitioner for re-examination, the petitioner shall appear before the Medical Board without fail and if the petitioner fails in this regard, the above direction shall not be applicable on the respondents.

15. With the above directions and observations, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

2. The Director General of Police,
Chennai - 4.

3. The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
607, Anna Salai,
Chennai - 2



4.The Secretary,
Home Department Secretariat,
Government of Tamilnadu,
Chennai.

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5.The Medical Board of Regional Institute of
Ophthalmology and Government Ophthalmic Hospital,
Chennai - 600008.

+1cc to The Spl.Government Pleader Sr.No.9692

+1cc to Mr.V.Kannan, Advocate Sr.No.9435

sj

vb/mr/sar3/26.05.2017/8p/8c

W.P. (MD) No.15939 of 2013

21.02.2017