

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2018

Coram

The Hon'ble Mr.Justice Satrugana Pujahari

Writ Petition No.24972 of 2018

and

W.M.P. Nos.29017 to 29021 of 2018

P.Ashok Kumar ... Petitioner

Vs.

1. Tamil Nadu Uniformed Services Recruitment Board

Represented by its Chairman (DGP)

Old Commissioner of Police Campus,

Pantheon Road, Egmore,

Chennai-600 008.

2.The Chairman

Sub Committee

Tamil Nadu Uniformed Services Recruitment Board

Old Commissioner of Police Campus,

Pantheon Road, Egmore,

Chennai-600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent made in C.No.R2/5474/2018 dated 07.09.2018 (Disqualification slip) issued to the petitioner (Enrolment no.0605074) and quash the same and further directing the respondents to consider the claim of the petitioner for appointment for the post of Gr.II-PC, Jail Warden, Firemen in the Common Recruitment 2017-2018.

For Petitioner : Mr.V.M.Venkatramana

For Respondents : Mrs.Narmada Sampath

Additional Advocate General

Assisted by Mrs.R.Janaki

Additional Government Pleader

O R D E R

Heard Mr.V.M.Venkatramana, the learned counsel appearing for the petitioner and Ms.Narmada Sampath, learned Additional Advocate General appearing for the respondents.

2. The case of the petitioner in this case is that after clearing the written examination conducted for the post of Gr.II -PC, Jail Warden, Firemen, he appeared for the physical measurement test, wherein his chest measurement was marked as 84 cms (normal) and 87 cms (Expansion) and he was given a

slip of disqualification on 07.09.2018, for not having chest expansion of 5 cms as required. The petitioner came to challenge the same on the ground that since the required measurement of 81 cms (Normal) and 86 cms (Expansion) for his category is possessed by the petitioner, he could not have been disqualified.

3. However when the matter taken up for hearing, on admission, counsel appearing for the petitioner submits that he has been made illegally disqualified inasmuch as his measurement was not properly taken. According to him, there was 5 cm difference in expansion and hence the impugned order be quashed and remeasurement be taken. No doubt, the aforesaid was not the pleading of the petitioner. His case was that he was qualified by the aforesaid measurement. But in response, the learned Additional Advocate General submits that the measurement taken was correct. He having not qualified in the physical measurement test made disqualified. They have video graphed everything still the respondents are ready to take the remeasurement test before the Registrar General as has been done by this Court earlier in many occasions, but with the condition that if on such measurement it is found that the petitioner's allegations is baseless, this writ petition be dismissed with exemplary cost. It is also submitted that the same be done immediately, as if done at a latter date petitioner by doing exercise has every chance of reaching the expansion. In such premises, this Court came to pass the order as follows:

□4. Therefore, the Registry is directed to place the matter before the Registrar General or Registrar Judicial at 10.30 am on 25.09.2018 and this Court directs the petitioner and the Personal Recruitment Board to take up the chest measurement of the petitioner in front of the Registrar General at 11.00 am tomorrow or in a time convenient to the Registrar General and furnish the report to this Court positively by 4.00 pm. However, it is made clear if it is ultimately found that the claim of either party is without any substance, an exemplary cost shall be imposed on the party concerned. □

4. As per the interim order, the measurement was taken before the Registrar General by one Mr.I.T.Irudayaraj, Inspector of Police, Gudiyatham Town, Vellore District, in the presence of learned counsel on either side and also in the presence of officials of the respondents and Joint Registrar (Writs) and recorded the measurement as 83 cms (normal) and 88 cms (expansion). A report to that effect has also been filed before this Court and the matter has been listed today.

5. Today when the matter is taken up with the report of the Registrar General, the learned Additional Advocate General submits that inspite of the aforesaid measurement taken before the Registrar General still the petitioner is unqualified inasmuch as the same cannot enure to the benefit to the petitioner. According to her, no doubt in the measurement taken before the Additional Advocate General as revealed in the report, the petitioner chest measurement is within the norms to get him qualified as besides the minimum measurement he had passed the expansion test, still the test having been taken after three weeks from the date he was rejected on physical measurement such variation is likely to appear inasmuch as chances of the petitioner within this period getting him physically fit by doing exercises was not ruled out. Therefore, the physical measurement test taken to make him disqualified in no circumstances can be said to be incorrect and as such the petitioner being not qualified on the date of physical measurement, he cannot be made qualified by this Court taking the aforesaid measurement into consideration. Reliance in the regard has been placed on a decision rendered by the Hon'ble Division Bench of this Court in W.P.No.24602 of 2015 in the case of A.K.Alikhan Vs. The Chairman, T.N. Uniformed Services Board, Chennai -8, disposed of on 10.09.2015, wherein when there was dispute with regard to measurement of chest as in this case, this Court had directed the same to be measured in front of the Registrar General wherein the petitioner was stated to have qualified parameters. Still the Court did not allow the prayer taking note of the fact that the differential value in normal case measurement was within 1 cm as in this case and rejected the prayer with the observation as follows:

□5. We find that the difference in measurements in normal chest between 92.5 and 91.5 cm is not such difference in value that it can be said to be extraordinary, causing any doubt on the measurements carried out on that date.□

6. Placing heaving reliance on the same it is submitted by the learned Additional Advocate General that the writ petition is liable to be dismissed.

7. Controverting the same, the counsel for the petitioner submits that it was emphatically contented by the State that the petitioner has no required expansion of 5 cm from the normal chest measurement and at their instance the re-measurement being taken up immediately to obviate the chance of reaching the expansion by an exercise and when in such re-measurement made before the Registrar General at their instance the petitioner came out successful they could not take advantage of the decision which was rendered in different facts and situations. Hence, it is submitted that the disqualification be quashed and the petitioner be considered for the next test.

8. It is true that this Court while dealing with such matter is not sitting on appeal as stated in the decision cited supra on which reliance has been placed by the counsel for the respondent. However, when the petitioner made specific allegations that he was improperly made disqualified and there was no transparency in the selection process, the respondent readily agreed to take remeasurement knowing well the fact that in the meanwhile 18 days has expired but immediately with condition to make the same subject to heavy cost though it was known to the respondent that such minor variation may likely to occur in such remeasurement which was likely to qualify the petitioner. Hence, it is at their instance, the physical remeasurement was taken immediately on the next date. When at their instance, on such physical remeasurement the petitioner came out successful with regard to expansion now the petitioner cannot be heard of placing reliance on the said decision to frustrate the claim of the petitioner that the physical measurement was not properly taken and he was made disqualified. Allowing such concession to the respondent placing reliance on the said decision which was rendered in a different facts and situations, would tantamount to allow the respondent to blow hot and cold simultaneously. In such premises, in spite of the aforesaid decision of this Court, wherein this Court taking note of the minor variation in the differential value of the remeasurement, rejected the prayer made in the writ petition, is of no assistance to the respondent. The respondent having themselves made a prayer to take out the re-measurement before the Registrar General, the order of aforesaid was passed therefore the prayer made objecting acceptance of the same placing reliance on the decision cited supra is of no assistance. Therefore, the writ petition stands allowed. Consequently, the rejection slip stands quashed. The petitioner be allowed to participate in the recruitment process in the next round of litigation. Though in normal course of things, I would have imposed heavy cost on the respondent in view of the observation of this Court in the miscellaneous case, but in the peculiar facts and circumstances, especially considering the nature of the dispute and also the variation, I refrain myself from imposing any cost on the respondent. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.09.2018

arr/lok

Index : yes/no

Internet: Yes/no

Satrughana Pujahari, J.,

arr/lok

To

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