



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2018

CORAM:

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.12895 of 2018

and

W.M.P.(MD)No.11788 of 2018

K.Chermaperumal

...Petitioner

Vs.

1.The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
No.807, P.D.V. Sengalvarayar Maligai,
Anna Salali, Chennai - 600 002.

2.The Director General of Police,
Kamarajar Salail,
Chennai - 600 004.

3.The Superintendent of Police,
Tuticorin District.

4.The Director General of Police (Fire),
Tamil Nadu,
Chennai - 600 004.

.. Respondents

(R4 has been impleaded as party vide order of this Court, dated 27.07.2018 in W.P.(MD)No.12895 of 2018)

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the third respondent in his proceedings in Na.Ka.No.A4/4615/2017, dated 01.05.2018, quash the same and consequently to direct the respondents to give order of appointment to the petitioner preference basis to the post of Grade-II Police Constable or Jail Warden or Fireman-2017 along with the persons appointed in the notification issued by the first respondent for the year 2017 with pay all other monetary and service benefits.

For Petitioner

: Mr.D.Selvanayagam



For Respondents : Mr.B.Pugazhenthithi,
Additional Advocate General
Assisted by Mr.D.Muruganandam,
Special Government Pleader

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O R D E R

The prayer sought for in the Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the third respondent in his proceedings in Na.Ka.No.A4/4615/2017, dated 01.05.2018, quash the same and consequently to direct the respondents to give order of appointment to the petitioner to the post of Grade-II Police Constable or Jail Warden or Fireman-2017 along with the persons appointed in the notification issued by the first respondent for the year 2017 with pay and all other monetary and service benefits.

2.Heard, Mr.D.Selvanayagam, learned Counsel for the petitioner and Mr.B.Pugazhenthithi, learned Additional Advocate General, Assisted by Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents.

3.The petitioner applied for the post of Grade-II Police Constable or Jail Warden or Fireman-2017 in pursuant to the common recruitment notification issued by the first respondent in the year 2017. After making application, the selection process went on. After having completed the selection process, the first respondent had rejected the candidature of the petitioner by order dated 26.10.2017. Challenging the same, the petitioner filed a Writ Petition in W.P.(MD)No.20405 of 2017, wherein, this Court by order dated 11.01.2018, set aside the said impugned order and remitted the matter back to the respondents for reconsideration.

4.After reconsideration, the third respondent passed the impugned order, whereby, once again the candidature of the petitioner has been rejected on the ground that there is a criminal case against the petitioner in Cr.No.42 of 2014 at Palayamkottai Police Station, Tirunelveli District for the offence punishable under Sections 323, 324 of IPC and Section 3(1)(x) of SC/ST of (POA) Act, where, the petitioner was arrayed as second accused. Though the said case had been, subsequently, quashed on compromise, the involvement of the petitioner in the said criminal case has been shown as a reason for rejection of the petitioner for the recruitment to the post of Grade-II Police Constable or Jail Warden or Fireman-2017.

5.When the case was taken up for hearing, the learned Counsel for the petitioner submitted that, even though the petitioner has not been considered as a fit candidature for the post of Grade II Police Constable, the petitioner can be considered for the other two



posts, i.e., to the post of Fireman at Tamilnadu Fire Subordinate Service, for which, there is no impediment to consider the candidature of the petitioner, since the rule pertaining to the said recruitment in Fire Service does not contemplate that if a person is acquitted in a criminal case, he shall be considered only for the next recruitment.

6. In that suggestion, the learned Additional Advocate General appearing for the official respondents would submit that, the said recruitment was a combined recruitment for the post of Grade-II Police Constable or Jail Warden or Fireman-2017. The petitioner is not entitled to be appointed as a Grade-II Police Constable, because of the earlier criminal case, even though the said case was ended in acquittal or compromised or quashed, there is a stigma on the petitioner for the current recruitment and therefore, his candidature was rightly rejected. However, there is no such rule in the Tamil Nadu Fire Service Subordinate rules to make a candidate ineligible, because he has involved in a criminal case and subsequently the case is ended in acquittal or quashed out of compromise. In view of such rule, the candidature of the petitioner, if at all to be considered, can be considered for the selection or appointment to the post of Fire Man.

7. In this regard, the learned Additional Advocate General would further submit that, the cut off mark for the petitioner's category in respect of Fireman is 64, however, the petitioner scored 65. Therefore, he is above the cut off mark and hence, on merits, he can be considered for the selection of appointment for the post of Fireman. The learned Additional Advocate General has also received a communication, dated 23.07.2018, from the Director General of Police, Tamil Nadu, which reads thus:

"As per the above said rule, the candidate will be selected to any one of the post in combined recruitment of Grade-II Police, Grade-II Jail Warders and Firemen by taking into account his preference and depending on his rank and the availability of vacancies in the particular post. Hence, once he has been provisionally selected to any one of the above said 3 posts, the concerned Department will appoint them subject to fulfilment of the conditions prescribed to that department. If he is not found fit with reference to the rules for the service concerned, he will not be selected for appointment to such post. The order of preference given by the candidate is taken as first criteria and hence it is not feasible to change once again the option regarding department preferred".

8. By relying upon this instruction, the learned Additional Advocate General would submit that, in view of the said facts, though the petitioner is not eligible to consider for the post of Grade-II Police Constable, he is eligible to consider for the post



of Fireman in the Fire Service Department and therefore, in that aspect, the respondents would consider his candidature for the said recruitment.

9. I have considered the said submission made by the learned Counsel for the petitioner and the learned Additional Advocate General and perused the materials placed before this Court including the written instructions of the Director General of Police, Tamil Nadu, addressed to the learned Additional Advocate General, by his communication dated 23.07.2018.

10. Since, admittedly, the petitioner has scored higher marks for consideration to the post of Fire Man and there is no scope under the relevant rule to reject his candidature, merely because he was involved in a criminal case, which also later compounded or acquitted by Courts of law, by way of compromise, this Court is inclined to pass the following order:

"Since the Director General of Police (Firemen), Tamil Nadu, who is a necessary party and to whom a direction is going to be issued by this Court, is not a party herein, the said Director General of Police- (Fireman), Tamil Nadu is impleaded as one of the party respondent, suo motu, by this Court and accordingly, he is arrayed as fourth respondent in this writ petition.

that the first respondent is directed to pass necessary orders with regard to the selection of the petitioner for the post of Fireman at Tamil Nadu Fire Subordinate Service. On receipt of such communication from the first respondent, the fourth respondent is directed to pass necessary orders, giving necessary appointment orders to the petitioner as Fireman and the aforesaid exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

11. It is made clear that suppose if all the vacancies in the Fireman posts, for which the said recruitment was notified, is filed up, the candidature of the petitioner shall be kept in waiting list and any of the selected or appointed candidates relieved from service by way of either resignation or for better option, if any, and because of such revilement, if a vacancy arises, the petitioner's name shall be considered as first choice for appointment.



12. With the above directions, the Writ Petition is disposed of.
No Costs. Consequently, connected miscellaneous petition is closed.

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ASSISTANT REGISTRAR (CO)

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SUB ASSISTANT REGISTRAR (CS II)

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To

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3. The Superintendent of Police,
Tuticorin District.

4. The Director General of Police (Fire),
Tamil Nadu,
Chennai - 600 004.

1CC TO THE SPL GOVT PLEADER SR 75929
1CC TO MR. D. SELVANAYAGAM, ADVOCATE SR 75438

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Order made in
W.P. (MD) No.12895 of 2018

27.07.2018