



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
W.P.(MD) No.18364 of 2018
and
W.M.P.(MD) No.16246 of 2018

Arunkumar

... Petitioner

vs.

1.The Chairman

Tamil Nadu Uniformed Services
Recruitment Board,
Pantheon Road, Egmore,
Chennai-8

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

3.The Superintendent of Police,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order of the third respondent made in his proceedings made in Na.Ka.No.A9/9034/2017, dated 04.06.2018 and quash the same and further direct the respondents to provide the order of appointment to the petitioner for the post of Tamil Nadu Special Police - Police Constable (TSP-PC) in Centre Code-26 Dindigul as per the notification issued by the first respondent for the year 2017.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.P.Pugalendhi

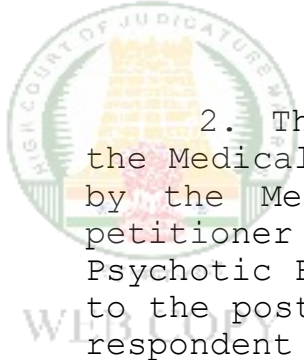
Additional Advocate General

Assisted by Mr.M.Pandiarajan

Additional Government Pleader

O R D E R

The case of the petitioner is that a Notification was issued by the first respondent for the year 2017 for the recruitment to the post of Grade-II Police Constable. The petitioner had responded to the Notification and he was called for the selection. He attended the written examination conducted by the first respondent on 27.07.2018 and on conclusion of the written examination, a provisional selection list was published, in which the enrollment number allotted to the petitioner did find a place.



2. Thereafter, the petitioner was directed to appear before the Medical Board to ascertain his physical fitness. On examination by the Medical Board, a report was submitted stating that the petitioner suffered from Bipolar Affective Disorder, Mania without Psychotic Features and therefore, he was found unfit for appointment to the post of Grade-II Police Constable. In this regard, the third respondent issued a proceedings, on 27.11.2017, on the basis of Rule 14(b) (1) of the Tamil Nadu Police Subordinate Service Rules.

3. While rejecting the candidature of the petitioner, the third respondent, by the same proceedings dated 27.11.2017, had directed the petitioner to apply for second medical opinion by way of appeal within a period of three months, in terms of Para 576 of Madras Medical Code, in order to give further opportunity to the petitioner to prove his physical fitness for the subject appointment. On the basis of the said advice, the petitioner appears to have submitted an application on 02.05.2018 before the third respondent seeking for second medical opinion. In the meanwhile, the petitioner had also obtained a report, dated 13.02.2018, from by the Institute for Community Development Service, Dindigul, stating that the petitioner was under their medical care between 28.11.2017 and 13.02.2018 and the disorder pointed out by the Medical Board was cured due to the medical care.

4. However, the third respondent rejected the request of the petitioner seeking second medical opinion vide proceedings dated 04.06.2018, on the ground that the petitioner ought to have applied for second medical opinion within a period of three months i.e. on or before 20.02.2018, but he had made a request only on 02.05.2018. Having aggrieved by the rejection of his request for second medical opinion on the ground of delay alone, the petitioner is before this Court challenging the proceedings of the third respondent, dated 04.06.2018.

5. The learned counsel appearing for the petitioner would submit that the petitioner was unduly denied proper opportunity to prove his physical fitness by rejecting his claim seeking second medical opinion on a technical ground. The three months period stipulated, according to the learned counsel for the petitioner, was not authorized by any regulation or statute. Therefore, the third respondent ought to have entertained the petitioner's request for second medical opinion, since his valuable right to seek appointment to the post of Grade-II Police Constable has been lost on the first medical opinion.

6. Mr.B.Pugalendhi, learned Additional Advocate General, appeared for the respondents and resisted the claim of the petitioner stating that the petitioner ought to have complied with the advise given by the third respondent on 27.11.2017. But, for no valid reason, the petitioner had requested for second medical opinion belatedly during May, 2018. Therefore, the Authority concerned has rightly rejected the request of the petitioner.



7. Considering the facts and the submissions made by the learned counsel for the petitioner and the learned Additional Advocate General, this Court is of the view that the valuable right to seek employment in Government service cannot stand negated merely on the basis of hyper technicality, namely, stipulating three months period of limitation as mentioned by the third respondent in his proceedings dated 04.06.2018. Even though there was some delay on the part of the petitioner in approaching the third respondent for constitution of second Medical Board, the short delay cannot be fatal to the valuable claim of the petitioner for being considered for appointment to the post of Grade-II Police Constable. In any event, this Court is of the view that no prejudice would be caused to the respondents, if the Medical Board is constituted in order to obtain second medical opinion in regard to the physical fitness of the petitioner.

8. This is more so, when the petitioner appeared to have taken some treatment in order to cure the so-called disorder, pointed out in the first medical opinion, during the interregnum, such factor was very important and crucial for the claim of the petitioner. Therefore, it becomes imperative on the part of the respondents to constitute a Medical Board in terms of the Madras Medical Code for giving second opportunity to the petitioner to prove his physical ability and suitability for the post of Grade-II Police Constable.

9. For the above stated reasons, this Court is unable to countenance the rejection of the petitioner's claim on the technical ground by the third respondent. Hence, the impugned proceedings of the third respondent, in Na.Ka.No.A9/9034/2017, dated 04.06.2018, is hereby set aside and there shall be a consequential direction to the respondents to entertain the appeal preferred by the petitioner on 02.05.2018 and constitute an Appellate Medical Board in order to ascertain the physical fitness of the petitioner and act on the basis of the opinion to be rendered by the said Medical Board. The respondents are directed to initiate and complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall also be given due notice by the Appellate Medical Board and he shall be examined by the Medical Board and a report shall be submitted on such examination. The petitioner is also directed to co-operative with the medical examination in his own interest.

10. With the above directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AS)

/True copy/



To:

1.The Chairman,
Tamil Nadu Uniformed Services,
Recruitment Board,
Pantheon Road, Egmore,
Chennai-8.

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

3.The Superintendent of Police,
Dindigul District.

+1cc to Mr.D.Venkatesh, Advocate, SR.No.79928

+1cc to M/s.Special Government Pleader,SR.No. 80019

W.P. (MD) No.18364 of 2018
and

W.M.P. (MD) No.16246 of 2018
23.08.2018

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KK/SKN/SAR-1/25.09.2018/4P-6C