

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.A. No. 1985 of 2011
and
M.P. No. 1 of 2011

The Director General of Police and Chairman
Tamil Nadu Uniformed Services
Recruitment Board
Anna Salai, Chennai - 600 002. Appellant

Vs.

K.Asaithambi
Candidature No.18/0383
No.35 D, Second Street
Railway Quarters
Ayanavaram, Chennai - 23. Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent, praying to set aside the order dated 25.10.2010 made in W.P. No. 40719 of 2006, filed for issuance of Writ of Certiorarified Mandamus, to call for the records in connection with the proceedings issued by the Director of Police and Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai issued in Endt. No.D1/1394/2000 dated 25.05.2000 and set-aside the same and to direct the respondent to appoint the petitioner as Sub-Inspector for the year 1994-95.

For Appellant : Ms.Narmatha Sampath
Additional Advocate General
Assisted by
Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : M/s.S.Ilamvaludhi

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The learned Single Judge without any reference to the medical invalidation of the respondent, which was confirmed in the earlier round of litigation in O.A. No.6431 of 1997, issued a direction to the appellant to refer him to the

Special Medical Board for re-examination. Feeling aggrieved, the Director General of Police has come up with this intra court appeal.

The facts:-

2.The respondent submitted application for appointment to the post of Sub-Inspector of Police. He was found unfit in the medical examination and therefore he was disqualified. The respondent filed original application in O.A. No. 6431 of 1997 before the Tamilnadu Administrative Tribunal challenging his non-appointment. The Tribunal dismissed the said application along with other original applications, by way of common order dated 10.09.1998. The Tribunal made it very clear that the State was correct in rejecting the application of those who have failed to clear the medical test.

3.The Tribunal directed consideration of the case of others who, even after securing the cut-off marks, were not selected only on the ground that their dates of birth being later than that of those who were selected.

4.The respondent took advantage of the observation made in the case of others and filed an original application in O.A. No. 4650 of 2000. The original application was transferred to this court and it was re-numbered as W.P. No. 40719 of 2006.

5.The learned Single Judge considered the order passed by the appellant dated 25.05.2000 negating the claim made by the respondent for appointment on the basis of the direction given by the Tribunal in the related original applications. The learned Single Judge was under the impression that the respondent is also entitled to the benefit of the earlier order to the effect that non-selection is not due to failure to meet the medical fitness but due to the date of birth being lower than the case of whose date of birth is earlier. The learned Single Judge directed the appellant to constitute a Special Medical Board for re-examination of the respondent. Since the order passed by the writ court has not taken note of in the earlier round of proceedings initiated by the respondent, the appellant has filed this appeal.

Submissions:-

6.The learned Additional Advocate General appearing on behalf of the appellant contended that the subsequent original application in O.A. No. 4650 of 2000 is nothing but an abuse of process of law. According to the learned Additional Advocate General, the respondent was disqualified medically and the decision was upheld by the Tamilnadu Administrative Tribunal. The learned Additional Advocate General contended that there is no question of

entertaining a second writ petition on the basis of an observation made by the Tribunal in the case of others, who were not similarly situated.

7.The learned counsel for the respondent on the other hand contended that under similar circumstances a Division Bench in W.A. No. 339 of 2008 directed the State to constitute a medical board for examination of the candidate after making a deposit of Rs.20,000/-. According to the learned counsel, pursuant to the direction issued by the learned Single Judge, the respondent deposited a sum of Rs.20,000/- before the Registry and as such, further action for constitution of medical board should be undertaken by the State.

Discussions:-

8.The respondent was a candidate for appointment to the post of Sub-Inspector of Police for the year 1994-95. The respondent was medically declared unfit. The non-selection was challenged by the respondent in O.A. No. 6431 of 1997. There were other candidates whose applications were either dismissed on the ground of their medical invalidity or on the ground of date of birth, consequent to securing equal marks. The Tribunal took up all the applications together and by way of a common order dated 10.09.1998 directed the State to consider the case of those candidates who were denied appointment only on the ground of date of birth, afresh.

9.The Tribunal upheld the decision of the Selection Committee which was on the basis of the medical examination. The Tribunal made it very clear that the candidates were examined by the duly constituted medical board, which has declared them unfit. The opinion of the medical board is binding on the selection committee. The Tribunal therefore agreed with the State that the post of Sub-Inspector requires a very high degree of physical fitness and insistence on the candidates to conform to the physical standards and medical fitness would be necessary. The Tribunal accepted the findings given by the medical board and made it very clear that such candidates have no legal right to claim appointment. The respondent was a party to the order dated 10.09.1998. His original application in O.A. No. 6431 of 1997 was also tagged along with the pending original applications.

10.The respondent initiated fresh proceedings by submitting a representation as if his case was rejected only on account of the date of birth. The respondent projected a false case as if he has also secured equal marks and the other candidates were selected on the basis of the date of birth. The representation was rightly

rejected by the Tamil Nadu Uniformed Services Recruitment Board.

11.The learned Judge appears to have proceeded on the basis that the respondent is entitled to the benefit of the earlier order dated 10.09.1998. The said order would come to the rescue of only those who were denied appointment on the ground of their date of birth, taking into account the equal marks secured by more candidates. The non-selection of the respondent was not on the said ground. His non-selection was only on the ground of declaration of his negative medical status.

12.The learned Judge directed the appellant to constitute a Special Medical Board to examine the respondent medically only on the ground that in the earlier round of litigation the issue was non-selection, based on the date of birth, and not due to medical unfitness. The said finding is factually incorrect. We are therefore of the view that the appellant must succeed.

13.The order dated 25.10.2010.2010 is set aside. The writ petition in W.P. No. 40719 of 2006 is dismissed.

14.In the upshot, we allow the intra court appeal. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

may
To

The Director General of Police and Chairman
Tamil Nadu Uniformed Services Recruitment Board
Anna Salai, Chennai - 600 002.

+1cc to M/s.S.Ilamvaludhi , Advocate SR.No. 11109
+1 CC TO GOVERNMENT PLEADER SR.NO. 12333

W.A. No. 1985 of 2011
and
M.P. No. 1 of 2011

A.SK(21/03/2019)