

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11664 of 2019

and

W.M.P.No.11895 & 11897 of 2019

T.Selvaraj

..Petitioner

- Vs. -

- 1.The Principle Chief Security
Commissioner,
6th floor, Moor Market Complex,
Park Town,
Chennai - 3.
- 2.The Senior Divisional Security
Commissioner,
Railway Protection Force,
Chennai Division, 5th Floor,
NGO Annexe, GM office,
Southern Railway, Park Town,
Chennai - 3.
- 3.The Additional Chief Health Director,
Department of Otolaryngology,
Southern Railway HQ Hospital,
Ayanavaram,
Chennai - 23.
- 4.The Additional Chief Medical Supernitendent,
Health Unit,
Palghat Division,
Southern Railway,
Palghat.
- 5.The Divisional Security Commissioner,
Railway Protection Force,
Palghat Division,
Southern Railway,
Palghat.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned order issued by the 4th respondent in No.J/MD.84/TS dated 28.03.2019 based on the medical report given by the 3rd respondent and quash the same and further direct the respondents 1 - 2 to send the petitioner for third medical board in any one of the government hospital at Chennai.

For Petitioner : Mr.R.Dhinesh Kumar

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways

O R D E R

The order dated 28.03.2019, issued by the Divisional Officer, Medical Branch, Palghat, is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the petitioner is now working as Inspector of Police and already declared as unfit for performing his duties and responsibilities on medical grounds.

3.The learned counsel for the writ petitioner states that the second medical examinations conducted at the instance of the officials are improper and therefore, the petitioner must be referred to the third Medical Board.

4.The preliminary objections raised by the learned counsel appearing on behalf of the respondents are that the writ petitioner was serving as Inspector and medically declared unfit for duty at Palghat.

5.Thus, this Court cannot entertain a writ petition as the territorial jurisdiction falls within the State of Kerala. This apart, an option was already provided to the writ petitioner to prefer an appeal before the Appellate Authority and the writ petitioner has not chosen to file an appeal. The writ petitioner was already declared unfit on medical grounds by Competent Authorities and therefore, if at all he is aggrieved, he has to approach the Appellate Authority for the redressal of his grievances.

6.The learned counsel for the writ petitioner states that now the writ petitioner is residing at Nagercoil within the State of Tamil Nadu and therefore, the writ petition can be entertained. This apart, the medical report was also from Chennai and the Southern Railway Headquarters is also at Chennai. Thus, the writ petition is maintainable.

7.This Court is of the considered opinion that High Court normally would not dismiss any writ petition, on the ground that the High Court has no jurisdiction. No writ petition can be dismissed merely on the ground that the High Court has no jurisdiction.

8.The High Court having plenary jurisdiction under Article 226 of the Constitution of India is bound to exercise the power of the judicial review whenever there is an injustice is identified. However, in the present case, the writ petitioner was already declared unfit on medical grounds by the Competent Authorities at Palghat and a right of appeal before the Appellate Authority is already available under the rules. The relevant rule is extracted hereunder:

"The Railway employee may himself, on receiving the notice of failure to pass the examination lodge an appeal within seven days from the date of adverse report, for reconsideration by the Chief Medical Director. This appeal will be directed through the Divisional Officer / District Officer of the employing Branch or the department concerned and CMS MS m charge of the Division, who will respectively attach a report of the examination."

9.In view of the fact that the appellate remedy is to be exhausted by the writ petitioner, this Court is of the considered opinion that the petitioner is at liberty to approach the Appellate Authority for the redressal of his grievances.

10.With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True copy//

Sub Assistant Registrar

Pns

To

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5.The Divisional Security Commissioner,
Railway Protection Force,
Palghat Division,
Southern Railway,
Palghat.

+1cc to Mr.R.Dhinesh Kumar, Advocate SR.No.40387

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.39446

W.P.No.11664 of 2019
and

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LN(CO)
GMY(27/05/2019)

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