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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.05.2019**

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.11915 of 2019

and

W.M.P(MD)Nos.9011 and 9012 of 2019

M.E.Mohamed Musaf Raseen .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary,
Home Department, Secretariat,
Chennai-9.

2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-8.

3.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-8.

4.The Director General of Police,
O/o. The Director General of Police,
Tamil Nadu, Chennai-4.

5.The Additional Director General of Police,
State Crime Records Bureau,
O/o.Additional Director General of Police,
Chennai-4. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in Rc.No.A1/46/617/SCRB/2019 dated 14.03.2019 passed by the fifth respondent and quash the same and consequently direct the respondents to consider the petitioner for appointment to the post of Sub Inspector of Police (Finger Print).

For Petitioner : Mr.P.R.Prithiviraj

For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader.

ORDER

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The petitioner challenges the order dated 14.03.2019 passed by the fifth respondent, whereby and whereunder, the name of the

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petitioner was deleted from the provisional list selected for the post of Sub-Inspector of Police (Finger Print) 2018, due to lack of eye vision.

2.The case of the petitioner is that the second respondent, vide Advertisement No.2/2018, dated 29.08.2018, invited applications for appointment to the post of Sub-Inspector of Police (Finger Print), 2018. The notified vacancies are 202. As the petitioner is eligible, he applied for the same and wrote the examination held on 23.12.2018. After having qualified in the written examination, he was called for physical measurement test and on successful completion of the same, he was called for viva voce held on 13.02.2019, in which, he was declared to have been selected and his name was found place in the list of provisionally selected candidates published on 14.02.2019. The said list was published after completion of the entire selection process. However, the fifth respondent, vide impugned proceedings dated 14.03.2019, rejected the candidature of the petitioner solely on the ground that his eye power is not fulfilling the required visual standard for the post in question. Challenging the same, the petitioner is before this Court.

3.Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader, takes notice for the respondents.

4.Heard both sides.

5.In similar circumstances, the learned Single Judge of this Court in a batch of writ petitions in W.P(MD)No.5441 of 2019, etc. batch, dated 30.04.2019, after having elaborate discussion, has held as follows:

> "... ... ... 14.It is a settled law that a physical defect or deformity, which in no way interfere with the normal or efficient functioning, should not be considered as an absolute bar to public employment in regard to the posts not associated with physical activity.
>
> 15.As far as the petitioners herein are concerned, they were disqualified for appointment to the post in question, even though they successfully passed in the tests conducted by the respondents, on the ground that they do not possess the required visual standard. This Court is of the view that if such defect does not come in the way of their normal functioning and can be corrected, the petitioners should not be treated as medically unfit for the post in question. Now-a-days, the technology has developed well and gone beyond our imagination. Time is not far off to see the planets and Mars through lens from this World. The eye vision pointed out by the respondents can easily be cured by the petitioners by various scientific methods. Hence, denying the employment

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opportunity to the petitioners on the ground of deviation in the visual standard, citing a new rule, which is not at all referred to in the notification, is arbitrary and illegal.

16.It is to be pointed out at this juncture that either to formulate or enforce a policy not to consider any candidate for employment irrespective of the fact whether he is medically unfit or fit, is nothing but short of arbitrariness and shows a baseless prejudice against such candidate. No authority can formulate a policy relating to appointment with such arbitrariness. Normally, the Courts will not interfere with the standards fixed by an authority to ascertain medical fitness of a person for employment. But the Courts will interfere with an arbitrary prohibition to appointment in absolute terms merely on a physical defect or deformity, which is not shown to have any effect on the normal and efficient functioning of the person in the post and it can be corrected. There can be no doubt that different standards of fitness may be required for different types of posts. But what is required is mental alertness and mental capability and physical fitness, which will ensure efficient discharge of his functions. So long as the defect or deformity can be corrected and it has no effect on the efficient and normal functioning of the person, the defect by itself cannot be a ground to disentitle him for being considered for that post.

17.In view of the foregoing reasons as well as taking into consideration the pitiable situation of the petitioners, whose candidatures were rejected due to lack of eye-vision, which can be rectified owing to technology as-on-today, and they are functioning like any other person normally, this Court deems it fit to set aside the impugned orders, as it cannot be sustained in the eye of law. Accordingly, the impugned orders are set aside. The respondents are directed to consider the candidatures of the petitioners for appointment to the post of Sub-Inspector of Police (Technical) and (Finger Print) 2018, if they are otherwise found eligible.

18.While parting with the cases at hand, this Court hereby directs the respondents to include any such conditions as prescribed under the relevant Rules and the Government orders at the time of issuing notification itself in future, so that, this type of causing hurdles to the candidates, who applied on the fond hope that they will get appointment, may not arise.

19.The Writ Petitions are allowed in the above

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6.The above decision is squarely applicable to the facts of

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the present case. Therefore, following the abovesaid common order, this writ petition is allowed on the same lines. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (vo)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat,
Chennai-9.

2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-8.

3.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-8.

4.The Director General of Police,
O/o. The Director General of Police,
Tamil Nadu, Chennai-4.

5.The Additional Director General of Police,
State Crime Records Bureau,
O/o.Additional Director General of Police,
Chennai-4.

+1 CC to M/s.P.R.PRITHIVIRAJ, Advocate (SR-65857[F] dated 15/05/2019)

+1 CC to M/s.SPL GP (SR-65959[F] dated 16/05/2019)

smn/tsg

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