

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 25.04.2019

Delivered on : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. [MD] Nos. 5441, 5467, 5468, 5469, 6218, 6219, 4758, 4759, 4760, 4929, 4930, 4931, 4932, 6087 and 6008 of 2019

and

W.M.P. (MD) Nos. 4324 to 4326, 4345, 4346, 4347, 4348, 4349, 4350, 4964, 4965, 4966, 4967, 3801, 3802, 3803, 3804, 3805, 3806, 3921, 3922, 3923, 3924, 3925, 3926, 3927, 3928, 4856, 4857, 4858, 4802, 4803 and 4804 of 2019

W.P. (MD) No. 5441/2019:

M. Salai Gayathri

: Petitioner

Vs.

1. The State of Tamil Nadu,

Represented by its Principal Secretary,
Home Department,
Secretariat,
Chennai-600 009.

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,

<https://hcservices.ecourts.gov.in/hcservices/>

Chennai-600 004.



5.The Deputy Inspector General of Police (Technical Services),
O/o.the Deputy Inspector General of Police,
Chennai-4. : Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fifth respondent in his proceedings Rc.No.A3/12200/2018, dated 22.02.2019 and quash the same as illegal and consequentially, to direct the respondents to consider the petitioner for appointment to the post of Sub-Inspector of Police (Technical).

W.P. (MD) Nos.5467 to 5469/2019:

V.Sathish : Petitioner in W.P.(MD)No.5467/2019
K.Peer Khader Mydeen : Petitioner in W.P.(MD)No.5468/2019
S.Vasim Hasina : Petitioner in W.P.(MD)No.5469/2019

Vs.

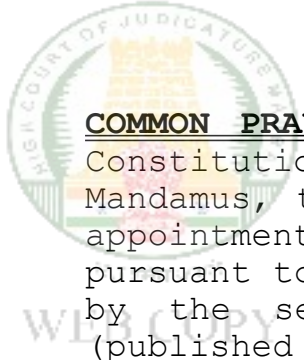
1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Home Department, Secretariat,
Chennai-600 009.

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,

<https://hcservices.ecourts.gov.in/hcservices/> Tamil Nadu, Chennai-600 004. : Respondents in all 3 W.Ps.



COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioners for appointment to the post of Sub-Inspector of Police (Technical) in pursuant to the publication of the provisional selection list issued by the second respondent vide his proceedings Nil dated Nil (published in the official website of the second respondent on 14.12.2018) without reference to the visual acuity (eye power) within the stipulated period.

W.P. (MD) Nos. 6218 and 6219/2019:

N.Sathish : Petitioner in W.P. (MD) No. 6218/2019

R.Babu : Petitioner in W.P. (MD) No. 6219/2019

Vs.

1. The State of Tamil Nadu,

Represented by its Principal Secretary,

Home Department, Secretariat, Chennai-600 009.

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-600 004. : Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioners for appointment to the post of Sub-Inspector of Police (Finger Print)-2018, in pursuant to the publication of the provisional selection list issued by the third respondent vide Advertisement No.2/2018, dated 29.08.2018 without reference to the low vision of the petitioners within the stipulated period.

**W.P. (MD) Nos.4758 to 4760/2019:**

R.Raja Durai : Petitioner in W.P. (MD) No.4758/2019
G.Kohila : Petitioner in W.P. (MD) No.4759/2019
J.Shyam Sundar Singh : Petitioner in W.P. (MD) No.4760/2019

Vs.

1.The State of Tamil Nadu,

Represented by its Principal Secretary,
Home Department,
Secretariat,
Chennai-600 009.

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-600 004.

: Respondents in all 3 W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioners for appointment to the post of Sub-Inspector of Police (Technical) in pursuant to the publication of the provisional selection list issued by the second respondent vide his proceedings Nil dated Nil (published in the official website of the second respondent on 14.12.2018) without reference to the visual acuity (eye power) services in the related period.

**W.P. (MD) Nos.4929 to 4932/2019:**

S.Ragul : Petitioner in W.P. (MD) No.4929/2019
Jairajesh : Petitioner in W.P. (MD) No.4930/2019
M.Saranya : Petitioner in W.P. (MD) No.4931/2019
I.Sorimuthu : Petitioner in W.P. (MD) No.4932/2019

Vs.

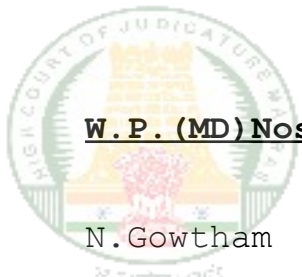
1.The State of Tamil Nadu,
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2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
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Egmore, Chennai-8.

4.The Director General of Police,
O/o. The Director General of Police,
Tamil Nadu,
Chennai-600 004. : Respondents in all W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioners for appointment to the post of Sub-Inspector of Police (Technical) in pursuant to the publication of the provisional selection list issued by the second respondent vide his proceedings Nil dated Nil (published in the official website of the second respondent on 14.12.2018) without reference to the visual acuity (eye power) within the stipulated period.

**W.P. (MD) Nos. 6087 and 6008/2019:**

N. Gowtham : Petitioner in W.P. (MD) No. 6087/2019

P. Thirumavalaven : Petitioner in W.P. (MD) No. 6008/2019

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Vs.

1. The State of Tamil Nadu,

Represented by its Principal Secretary,

Home Department, Secretariat,

Chennai-600 009.

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-600 004.

5. The Deputy Inspector General of Police (Technical Services),

O/o. the Deputy Inspector General of Police,

Chennai-4.

: Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fifth respondent in his proceedings Rc.No.A3/12200/2018, dated 22.02.2019 and quash the same as illegal and consequentially, to direct the respondents to consider the petitioners for appointment to the post of Sub-Inspector of Police (Technical).



For Petitioner
in all W.Ps.

: Mr.M.Ajmal Khan,
Senior Counsel,
For Mr.C.Venkatesh Kumar

For Respondent No.1
in all W.Ps.

: Mr.B.Rajesh Saravanan

For other Respondents
in all W.Ps.

: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R2 to R5 in WP(MD)No.5441/19 and
WP(MD)Nos.6087 & 6008/19 and
RR2 to 4 in WP(MD)Nos.5467 to 5469,
6218,6219,4758 to 4760, 4929 to 4932/19

COMMON ORDER

Insofar as W.P.(MD)No.5441/2019 and W.P.(MD)Nos.6087 and 6008/2019 are concerned, the challenge made is to the orders dated 22.02.2019, whereby and whereunder, the names of the petitioners were deleted from the provisional list selected for the post of Sub-Inspector of Police (Technical) 2018, due to lack of eye vision. Insofar as the other Writ Petitions are concerned, the petitioners sought for a Writ in the nature of Mandamus to direct the respondents to consider their candidature for appointment to the post of Sub-Inspector of Police (Technical) and (Finger Print) 2018.

2. Since the issues involved in all the Writ Petitions are identical in nature, they have been taken up for hearing together and are being decided by means of this common order.

3. The case of the petitioners in W.P.(MD)No.5441/2019 and W.P.(MD)Nos.6087 and 6008/2019 is that the second respondent, vide Advertisement No.1/2018, dated 11.07.2018, invited applications for appointment to the post of Sub-Inspector of Police (Technical), 2018. The notified vacancies are 309. As the petitioners are eligible, they applied for the same and wrote the examination held on 30.09.2018. After having qualified in the written examination, they were called for physical measurement test and on successful completion of the same, they were called for viva voce held in the month of December, 2018, in which, they were declared to have been selected and their names were found place in the list of selected candidates published on 14.12.2018. The said list was published after completion of the entire selection process. However, the fifth respondent, vide impugned proceedings dated



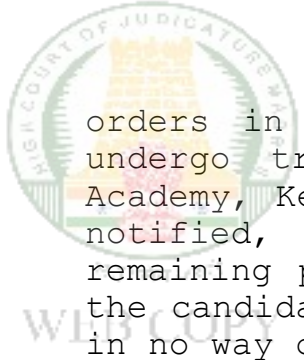
22.02.2019, rejected the candidature of the petitioners solely on the ground that their eye power is not fulfilling the required visual standard for the post in question. Challenging the same, the petitioners are before this Court. Insofar as the other petitioners are concerned, they sought a direction to the respondents to consider their candidature for appointment to the post of Sub-Inspector of Police (Technical) and (Finger Print) 2018.

4. The learned Senior Counsel for the petitioners submitted that after verification of genuineness of the certificates, the petitioners were subjected to medical examination and during such examination, a new criteria was introduced to the effect that a candidate should possess the eye power of 6/6, which means, any deviation with regard to the said visual standard may result in disqualification. According to the learned Senior Counsel, the notification does not refer to the Government Order in G.O.Ms.No.1221, Home (Police.9) Department, dated 10.11.2000, which was referred to only in the impugned orders, based on which, medical examination was conducted. Furthermore, the said Government Order pertains to the Tamil Nadu Police Subordinate Service, whereas, the post of Sub-Inspector of Police (Technical) and [Finger Print] 2018 is governed by adhoc Rules to the post of Technical categories.

5. It is also stated by the learned Senior Counsel for the petitioners that the notification does not prescribe any visual standards and hence, the eye power has no nexus with the work to be discharged by the Sub-Inspector of Police (Technical) and (Finger Print) 2018. According to the learned Senior Counsel, since there is only lack of power in eyes, it can easily be rectified, because of which, the petitioners cannot be deprived of getting employment, as they come within the zone of consideration by virtue of marks secured in the selection process.

6. It is further submitted by the learned Senior Counsel for the petitioners that even the candidates, who had undergone the basic surgery, were selected and were also issued with the appointment orders in the month of February 2019, but, the petitioners alone were discriminated citing the reason of eye vision. That apart, he submitted that it appears that there is no medical expert or examination available to assess the candidates, who had undergone basic surgery, at the time of selection and when the Government is taking steps for visually impaired candidates, in the matter of appointment, the petitioners cannot be deprived from the opportunity of getting employment, as they are suffering with eye power.

7. Lastly, it is contended by the learned Senior Counsel for the petitioners that pursuant to the publication of the provisional selection list, the candidates were issued with the appointment



orders in the month of February 2019 and they were directed to undergo training from 01.03.2019 onwards at Tamil Nadu Police Academy, Kellambakkam High Road, Oonamanchery. Out of 309 vacancies notified, 243 candidates alone were given appointment and the remaining posts are kept vacant as-on-date. Thus, the rejection of the candidature of the petitioners based on the eye power, which is in no way connected with the official duty going to be discharged by them, is illegal and the same warrants interference by this Court.

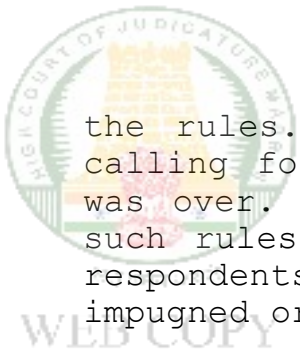
8. Per contra, the learned Additional Advocate General appearing on behalf of the official respondents submitted that the visual standard of the candidates to be selected for the post included in the recruitment of Tamil Nadu Uniformed Services Recruitment Board, was approved by the Government of Tamil Nadu vide letter No.58334/Pol.III/2004-13, dated 12.08.2004, taking into consideration the format of certificate of physical fitness. Based on the above, the petitioners were medically examined and the Medical Board certified that the petitioners are not having the required visual standards as specified in the above Government Letter and as stipulated in the Adhoc Rules applicable to such posts. Thus, the petitioners were not given appointment to the posts of Sub-Inspector (Technical) and (Finger Print) 2018.

9. Adding further, the learned Additional Advocate General appearing for the respondents contended that the relaxation of the said condition would have an adverse effect on the functional efficiency of the candidates and it would become a bad precedent and pave way for all the candidates to seek similar relaxation and the same would lead to dilution of the requisite standards. Hence, he submitted that the petitioners are not entitled to any relief and the Writ Petitions are liable to be dismissed.

10. I have considered the rival submissions and perused the materials available on record.

11. It is no doubt true that in public service or private employment, medical fitness of selected candidates is generally insisted upon. The candidates are subjected to medical examination to find out whether they are physically fit and mentally alert to discharge the duties of the posts to which they are selected. In the disciplined force like military service or police force, physical fitness is simply insisted upon, without regard being had to the nature of the duties to be performed by the selected candidates.

12. According to the petitioners, they successfully underwent all the tests for appointment to the post in question and came off with flying colours, but their dreams came to be shattered on the ground that they do not have the required eye vision as per



the rules. However, the rules did not find place at the time of calling for the application. It came to light after the interview was over. This is not the way in which the respondents introduced such rules to thwart the attempt of the petitioners. Further, the respondents have not put forth any valid point to sustain the impugned orders.

13. On the contrary, the learned Additional Advocate General appearing for the respondents pointed out that as per G.O.Ms.No.1221, Home (Police.9) Department, dated 10.11.2000, the prescribed conditions came to be introduced for the police force. If that is so, nothing prevented the respondents from including such conditions even at the time of calling for the applications, so as to give opportunity to the applicants to equip themselves to be fit for the post in question. More than one decade has passed by and no efforts have been taken by the respondents to include this G.O.Ms.No.1221, Home (Police.9) Department, dated 10.11.2000, particularly, the eye vision prescribed thereunder as one of the factors to decide the candidature for the post in question. More importantly, the respondents sail in paragraph Nos.11 and 12 of the counter-affidavit filed in W.P.(MD)No.4758 of 2019 to sustain their point. However, there is not even a word uttered with regard to the eye vision pointed out by the respondents.

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 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 terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar (CS-II)



To

1.The Principal Secretary,
State of Tamil Nadu,
Home Department,
Secretariat,
Chennai-600 009.

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-600 004.

5.The Deputy Inspector General of Police (Technical Services),
O/o.the Deputy Inspector General of Police,
Chennai-4.

+24 CC to M/s.AJMAL ASSOCIATES, Advocate
(SR Nos: 64452, 64456, 64457, 64458,
64459, 64463, 64471[F])

Common Order made in

**W.P. [MD]Nos.5441, 5467, 5468, 5469, 6218, 6219, 4758, 4759, 4760,
4929, 4930, 4931, 4932, 6087 and 6008 of 2019**

30.04.2019

(1/2)