



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.A(MD)No.437 of 2019
and
C.M.P. (MD)No.3609 of 2019**

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, P.D.V.Sengalvarayar Maligai,
Anna Salai, Chennai - 600 002.
 2. The Director General of Police,
Kamarajar Salai,
Chennai - 600 004.
 3. The Superintendent of Police,
Tuticorin District.
 4. The Director General of Police (Fire)
Tamil Nadu,
Chennai - 600 004.
- : Appellants/Respondents

.vs.

K.Chernaperumal : Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.12895 of 2018, dated 27.07.2018.

Prayer in WP(MD) . 12895/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.No.A4 / 4615 / 2017 dated 01/05/2018 quash the same and consequently directing the Respondents to give order of appointment to the petitioner preference basis to the post of Grade-II Police Constable of Jail Warden or Fireman-2017 along with the persons appointed in the notification issued by the 1st Respondent for the year 2017 with pay all other monetary and service benefits.



For Respondent

: Mr.R.Singaravelan
Senior Counsel**JUDGMENT**[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

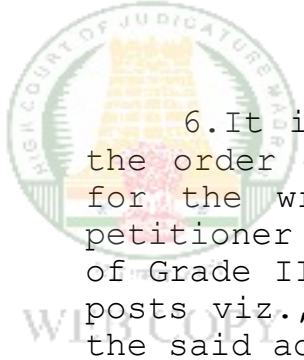
This writ appeal is directed against the order made in W.P.(MD) No.12895 of 2018, dated 27.07.2018. The appellants are the respondents before the Writ Court. The writ petition was filed challenging the order of the third respondent, dated 01.05.2018, wherein and whereby the petitioner's candidature for selection to the post of Grade II Police Constable was rejected on the ground that a criminal case was filed against him in Crime No.42/2014 for the offences punishable under Sections 323 and 324 of IPC and Section 3(1)(x) of SC/ST of (POA) Act. Consequentially, the writ petitioner sought for a direction to the respondents to give order of appointment to the petitioners to the post of Grade II Police Constable or Jail Warden or Fireman-2017.

2.The Writ Court by order dated 27.07.2018 directed the first respondent to pass necessary orders with regard to the selection of the writ petitioner for the post of Fireman at Tamil Nadu Fire Subordinate Service. Challenging the said order, the present writ appeal is filed.

3.The learned Additional Advocate General appearing for the appellants submitted that the impugned rejection order was passed by the third respondent by taking note of the order passed by the Hon'ble Apex Court in SLP (C) No.8905 of 2017, dated 08.01.2018, wherein the Hon'ble Apex Court has observed that the persons to be recruited to the Police Department should not have any criminal background. Therefore, the learned Additional Advocate General submitted that the impugned order was rightly passed by the third respondent rejecting the candidature. He further pointed out that the writ petitioner is not entitled to change the post preference from that of the Police Constable to the Fireman as the relevant Rule does not permit him to do so.

4.On the other hand, the learned Senior Counsel Mr.R.Singaravelan, appearing for the respondent/writ petitioner submitted that the order passed by the Writ Court was based on a consent given by the learned Additional Advocate General as found in paragraph No.8 and therefore, the present writ appeal itself is not maintainable as against the said consent order. He further submitted that even as per the Rule position, the above contention raised by the learned Additional Advocate General is not sustainable.

5.We heard both sides and perused the order passed by the Writ Court.



6. It is evident from the observation made at paragraph No.5 of the order of the Writ Court that the learned counsel, who appeared for the writ petitioner therein submitted that though the writ petitioner has not been considered as a fit candidature for the post of Grade II Police Constable, he can be considered for the other two posts viz., to the Fireman and Jail Warden. The Writ Court recorded the said admission at paragraph No.5 as follows:-

"When the case was taken up for hearing, the learned Counsel for the petitioner submitted that, even though the petitioner has not been considered as a fit candidature for the post of Grade II Police Constable, the petitioner can be considered for the other two posts, ie., to the post of Fireman at Tamilnadu Fire Subordinate Service, for which, there is no impediment to consider the candidature of the petitioner, since the rule pertaining to the said recruitment in Fire Service does not contemplate that if a person is acquitted in a criminal case, he shall be considered only for the next recruitment."

7. Thereafter, the Writ Court recorded the submissions made by the learned Additional Advocate General, who appeared for the respondents therein, at paragraph Nos.7 and 8 as follows:-

"7. In this regard, the learned Additional Advocate General would further submit that, the cut off mark for the petitioner's category in respect of Fireman is 64, however, the petitioner scored 65. Therefore, he is above the cut off mark and hence, on merits, he can be considered for the selection of appointment for the post of Fireman. The learned Additional Advocate General has also received a communication, dated 23.07.2018, from the Director General of Police, Tamil Nadu, which reads thus:

"As per the above said rule, the candidate will be selected to any one of the post in combined recruitment of Grade-II Police, Grade-II Jail Warders and Firemen by taking into account his preference and depending on his rank and the availability of vacancies in the particular post. Hence, once he has been provisionally selected to any one of the above said 3 posts, the concerned Department will appoint them subject to fulfilment of the conditions prescribed to that department. If he is not found fit with reference to the rules for the service concerned, he will not be selected for appointment to such post. The order of preference given by the candidate is taken as first criteria and hence it is not feasible to change once again the option regarding department preferred."

8. By relying upon this instruction, the learned Additional Advocate General would submit that, in view of the said facts, though the petitioner is not eligible to



consider for the post of Grade-II Police Constable, he is eligible to consider for the post of Fireman in the Fire Service Department and therefore, in that aspect, the respondents would consider his candidature for the said recruitment."

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8. Perusal of the above observations made by the Writ Court, more particularly, at paragraph No.8 therein, would clearly indicate that the then learned Additional Advocate General, who appeared before the Writ Court informed that though the writ petitioner was not eligible to be considered for the post of Grade II Police Constable, he is eligible to be considered for the post of Fireman in the Fire Service Department and therefore, in that aspect the respondents would consider his candidature for the said recruitment. Thus, by taking note of the said submissions made by the learned Additional Advocate General, the Writ Court issued a direction to the first respondent to pass necessary orders with regard to the selection of the writ petitioner for the post of Fireman at the Tamil Nadu Fire Subordinate Service.

9. When such being the decision rendered by the Writ Court based on the submissions made by the learned counsel appearing for the respective parties, we are not in a position to appreciate the justification in maintaining the writ appeal before this Court challenging the said order passed on consent. Therefore, we are not inclined to interfere with the order passed by the Writ Court.

10. If at all the appellants intend to seek for any clarification or modification of the said order touching upon the very consent given by the learned Additional Advocate General, it is for them to approach the writ Court by filing appropriate application and seek for any such clarification or modification. Without doing so, filing of the present writ appeal, as against the consent order, cannot be entertained.

11. Accordingly, this writ appeal is dismissed as not maintainable. We also make it clear that we are not expressing any view on the merits of the contentions raised by the learned Additional Advocate General appearing for the appellants as well as the learned Senior counsel appearing for the respondent/writ petitioner, as the dismissal of this writ appeal is only on the reason that order put to challenge before us is a consent order. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, P.D.V.Sengalvarayar Maligai,
Anna Salai, Chennai - 600 002.

2. The Director General of Police,
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3. The Superintendent of Police,
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4. The Director General of Police (Fire)
Tamil Nadu,
Chennai - 600 004.

+1 CC to SPL GP (SR-80254[F] dated 07/08/2019)

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