



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7651 of 2020

V.Karunanithi

... Petitioner

Vs.

1.The State of Tamil Nadu,

Rep. 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 -600 008

3. The Member Secretary,

Tamil Nadu Uniformed Services Recruitment Board,
Old commissioner of Police Office Campus,
Egmore, Chennai- 600 008

4. The Director General of Police,

O/o the Director General of Police,
Tamil Nadu, Chennai- 600 004

5. The Superintendent of Police,

Theni District, Theni

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 5th respondent in proceedings in Na.Ka.No.A3/5656/2020 dated 11.05.2020 and quash the same and consequently, to direct the respondents to consider the petitioner, for the post of Grade -II Police Constable.

For Petitioner: Mr.G.Rajan

For R1 to R5 : Mr.K.Chellapandian,

Additional Advocate General

Assisted by Mr.K.Mu.Muthu,

Additional Government Pleader.

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, seeking to call for the records pertaining to the impugned order passed by the 5th respondent in proceedings in Na.Ka.No.A3/5656/2020 dated 11.05.2020 and quash the same and consequently, to direct the respondents to consider the petitioner, for the post of Grade -II Police Constable.

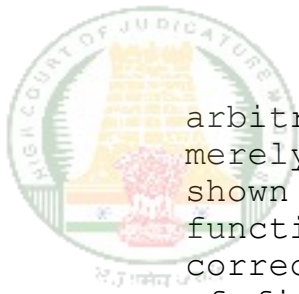


2. The case of the petitioner is that, the petitioner has appeared for police recruitment process for the selection to the post of Sub Inspector of Police. During the selection process, after written examination, physical fitness of the candidates would be examined. While examining so, the medical examination report of the Medical Board, Theni Medical College Hospital dated 21.02.2020 and the medical examination report of the Special Medical Board at Regional Institute of Ophthalmology, Egmore, Chennai dated 28.02.2020 have given negative reports about the visual fitness of the petitioner. Accordingly, the respondents, especially the fifth respondent, has issued a communication dated 11.05.2020, where the decision of the Medical Board has been stated and further directed the petitioner that, if the petitioner is willing to file an appeal to the second respondent, making a request to constitute a further special Medical Board to review the reports submitted by the Theni Medical College Hospital, Theni as well as the Regional Institute of Ophthalmology, Egmore, Chennai and accordingly, to decide the issue as to whether the petitioner is physically fit, especially, in the context of his eye power, for the purpose of the ongoing recruitment to the post of Sub Inspector of Police. Challenging the said communication of the fifth respondent, dated 11.05.2020, this writ petition has been filed.

3. Though in this context, Mr.G.Rajan, learned counsel appearing for the petitioner contended that, even though the two Medical Boards have given a negative reports against the petitioner, that may not be final and in this regard, Court has taken a view that, if a person is ensuring efficient discharge of his function, so long as the defect or deformity can be corrected and it has no effect on the efficiency and normal functioning of the person, the defect by itself cannot be a ground to disentitle him for being considered for that post.

4. The said stand taken by a learned Judge of this Court in a batch of writ petitions in W.P(MD)No.5441 of 2019...etc batch, dated 30.04.2019 in the matter of ***M.Salai Gayathiri vs. State of Tamil Nadu represented by its Secretary, Home Department and others***, it has been heavily relied upon by the learned counsel appearing for the petitioner, where he has relied upon paragraph no.16 of the said judgment and the same reads thus:-

"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."

5. However, Mr.K.Chellapandian, the learned Additional Advocate General assisted by Mr.K.Mu.Muthu, learned Additional Government Pleader appearing for the respondents, has submitted that, the two reports (i.e.) first Medical Board Report given by Theni Medical College Hospital, Theni dated 21.02.2020 and the second medical report given by Regional Institute of Ophthalmology, Egmore, Chennai, dated 28.02.2020 were uniformly of the opinion that, the petitioner is unfit to be considered for the said recruitment, since he is unable to have the full vision, that means, he is unfit on the ground of visual disability.

6. In this context, one more chance is given to the petitioner to make an appeal to the second respondent and the second respondent, on considering such appeal, if any, filed, may decide as to whether the case of the petitioner, as a special case, be referred to a further Medical Board to ascertain the visual ability of the petitioner and only that chance was given to the petitioner through the impugned order, dated 11.05.2020. Instead of accepting the same in a positive way and to respond to the same by making an appeal, if he decides to do so, the petitioner has chosen to challenge the said impugned order.

7. The learned Additional Advocate General has also relied upon paragraph no. 6 of the counter affidavit filed by the respondents in this regard and the same reads thus:-

"6) It is submitted that regarding Para 5, 158 candidates were provisionally selected for Grade-II constable in Theni district and placed for medical examination at the Medical College Hospital, Theni including the writ petitioner. The medical board has submitted medical examination reports, in which it has been stated as 'Temporarily unfit and referred to second medical board at Government Regional Institute of Ophthalmology, Egmore, Chennai for special board'. Accordingly the medical board referred the petitioner to Government Regional Institute of Ophthalmology, Egmore, Chennai where he attended the medical examination and they submitted their reports as 'Radial scar over the cornea at



1'0 clock position terminating just within the pupillary axis. IOL visualized in the pupillary area. (H/O Surgery done +ve)' and both eyes UNFIT."

8. I have considered the submissions made by the learned counsel appearing for the petitioner and learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

9. Now, two Medical Boards successively have held that, the petitioner is 'unfit' due to visual disability for the said recruitment for the post of Sub Inspector of Police, which is currently going on. The law is well settled, where an expert opinion is given the Court cannot subscribe its view against the expert opinion, since the Court is not expected to be an expert in every field.

10. In the case in hand, the petitioner has already been referred to a District Level Medical Board, where a negative report has been given and further, a second Medical Board at the State level also has been constituted as a Special Medical Board, where also, the petitioner's case has been referred and such second Medical Board has also given a negative report against the petitioner.

11. When that being the position, the Court cannot subscribe its view as projected by the learned counsel appearing for the petitioner. Therefore, this Court is of the considered view that, if at all the petitioner still got any grievance about the veracity of the medical report given by two Medical Boards, since a further chance has been given by the respondents through the impugned order to make an appeal to the second respondent, the right action to be taken by the petitioner is only to make such an appeal to the second respondent, if he decides to do so.

12. In that view of the matter, this Court is not inclined to interfere with the impugned order as has been sought for in this writ petition, and is inclined to dispose of the writ petition with the following order:

"(i) that the petitioner shall be at liberty to make an appeal pursuant to the impugned order, dated 11.05.2020 to the second respondent and in such case, an appeal can be filed by the petitioner within a period of one week from the date of receipt of a copy of this order; and

(ii) Once such an appeal is filed by the petitioner, the second respondent shall consider the same on merits and in accordance with law and if ultimately the second respondent decides to give one more chance to the petitioner by referring him to a further special Medical



petitioner with regard to the visual ability, such reference can be made by the second respondent."

13. With these observations and directions, the writ petition stands disposed of. However, there shall be no order as to costs.

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Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The 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- 600 008
3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old commissioner of Police Office Campus,
Egmore, Chennai- 600 008
4. The Director General of Police,
O/o the Director General of Police,
Tamil Nadu, Chennai- 600 004
5. The Superintendent of Police,
Theni District, Theni

+1 CC to Mr.G. RAJAN, Advocate (SR-13613[F] dated 05/08/2020)
+1 CC to SGP (SR-13637[F] dated 05/08/2020)

Order made in

W.P. (MD)No.7651 of 2020

Dated:

04.08.2020