



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD)No.13830 of 2020

G.Sajeev Sathiyan

...Petitioner

Vs.

- 1.The Director General of Police,
O/o.the Directorate General of Police,
Dr.Radhakrishnan Road, Mylapore,
Chennai - 4.
- 2.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai - 8.
- 3.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Pantheon Road, Chennai - 600 008.
- 4.The Superintendent of Police,
O/o.the Superintendent of Police,
Sivagangai,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed, under Under Article 226 of the Constitution of India, for issuance of writ of Mandamus, directing the respondents to permit the petitioner to participate in the second stage of physical examination viz., Physical Endurance Test and Physical Efficiency Test on an alternative date or on the date to be fixed by this Court and consequentially to direct the respondents to allow the petitioner for the next level of selection process in pursuant of Tamil Nadu Uniformed Services Recruitment Board, to the post of Sub Inspector of Police (Taluk, Armed Reserve (Men and Women/Transgender) and Tamil Nadu Special Police (Men))-2019 and by considering the petitioner's representation dated 26.09.2020 within the period that may be stipulated by this Court.

For Petitioner

: Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates

For Respondents

: Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.K.Mu.Muthu,
Government Advocate



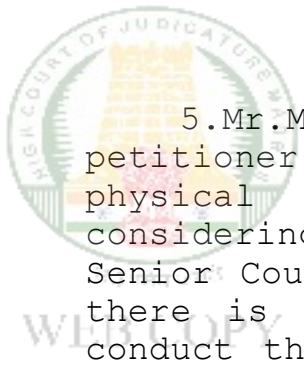
O R D E R

This writ petition has been filed by the petitioner for issuance of writ of Mandamus, directing the respondents to permit the petitioner to participate in the second stage of physical examination viz., Physical Endurance Test and Physical Efficiency Test on an alternative date or on the date to be fixed by this Court and consequentially to direct the respondents to allow the petitioner for the next level of selection process in pursuant of Tamil Nadu Uniformed Services Recruitment Board, to the post of Sub Inspector of Police (Taluk, Armed Reserve (Men and Women/Transgender) and Tamil Nadu Special Police (Men))-2019 and by considering the petitioner's representation dated 26.09.2020.

2.By consent of both the parties, the writ petition is taken up for final disposal.

3.The petitioner is a B.E., graduate in Automobile Engineering and he has applied for the post of Sub Inspector of Police on 20.03.2019 under MBC/DNC category. The petitioner participated in the written examination which was conducted on 12.01.2020 and thereafter, the result was declared and he had secured 52 marks out of 70 marks and stood in Serial No.933 in the turn of MBC and DNC. In the meantime, on 11.07.2020, the petitioner met with a road accident for no fault of him, whereby he sustained grievous injuries and two fractures in the left hand forearm and was admitted in Kaveri Hospital, Karaikudi and treated as inpatient for two days and subsequently he was discharged on 13.07.2020. Due to the multiple fractures, the petitioner was unable to perform his routine activities and therefore, the Doctor, who treated him, has advised him to avoid any strenuous physical activities.

4.When the matter stood thus, the petitioner received an E-mail communication dated 19.09.2020, calling upon the petitioner to attend the physical fitness test and physical ability test scheduled to be held on 06.10.2020 at Rajarathinam Stadium, Pudupet (Near Government Eye Hospital) Chennai. Since the petitioner sustained multiple fractures, the Doctor has advised and issued a certificate to the petitioner that he should avoid any competitive sports till 11.01.2021 and the same was produced before the respondents. Thereafter, on 26.09.2020, the petitioner made a representation to the respondents to consider his pathetic situation and his inability to attend the tests in a lenient manner and therefore, made a request to the respondents to postpone, as a special case, the physical endurance test and physical efficiency test which is scheduled to be held on 06.10.2020 but the respondents failed to pass any orders on the said representation even till date. Hence, the petitioner has filed the present writ petition for the relief stated above.

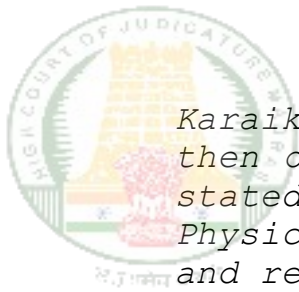


5.Mr.M.Ajmal khan, learned Senior Counsel appearing for the petitioner would submit that the respondents can postpone the physical endurance test and physical efficiency test by considering the pathetic situation of the petitioner. The learned Senior Counsel also brought into the knowledge of the Court that there is no complications for the respondents to postpone and conduct the physical endurance test and physical efficiency test for the petitioner as per G.O(Ms) No.682, Home (Police-III) Department, dated 28.11.2019, wherein the respondents required to conduct the similar test for the female candidates, who are unable to attend the physical test due to the reason of their pregnancy , can opt either in the First week of February or in the first week of August every year, which case, the respondents are bound to conduct the physical test at the option of the candidate. Hence, the learned senior counsel would submit that the petitioner's request can also be considered to conduct the physical endurance and physical efficiency tests in the first week of February along with other female candidates, which case, there is no need for the respondents to organise separate physical test for the petitioner alone. Further, he would submit that in a similar case in W.P. (MD)No.13883 of 2020, this Court has passed an order to postpone and conduct these tests to a woman candidate either in the first week of February or in the first week of August, thus, there is no impediment for the respondents to conduct the tests for the petitioner along with other candidates, which is scheduled to be held either in the first week of February 2020 or in the first week of August 2020.

6.Per contra, Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents would submit that if the petitioner's case is considered as a special case, then other candidates will also come for the similar relief, where it is not practically feasible to conduct these physical tests for a single candidate alone providing all necessary infrastructures and man power and as such, there is no existing Rules or Regulations providing for an alternative date to provide PMT, ET and PET.

7.It is relevant to extract the paragraph Nos.6 and 7 of the counter affidavit filed by the second respondent, which reads as under:-

"6.It is submitted that the petitioner was successful in the written examination and was issued with a call letter by TNUSRB to attend the physical test on 06.10.2020 at Raja Rathina Stadium, Pudupet, Chennai. Meanwhile the petitioner in his writ petition has stated that on 11.07.2020 the petitioner met with a road accident and sustained grievous injury of two fractures in the left forearm and was admitted at Kaveri Hospital,



Karaikudi and was treated as inpatient for two days and then discharged on 13.07.2020. Further the petitioner has stated that he is not in a position to attend the Physical test till 11.01.2021 as per the Doctor's advice and requested to postpone as a special case.

7.It is further submitted that there is no provision under the existing rules to provide an alternate date to conduct PMT, ET and PET for any particular candidate for any reason whatsoever. Further it is also not practically feasible to conduct these physical tests for a single candidate alone providing all necessary infrastructure and man power. Further allowing such a candidate will open a flood gates to similar other candidates who will approach the Hon'ble High Court seeking alternate date for physical tests citing similar other reasons which will be a never ending process and eventually hamper the entire recruitment process."

8.By referring the above paragraphs, once again, the learned Additional Advocate General reiterated that there is no Rules to provide an alternative date to the petitioner and also it is not practically feasible to conduct these physical tests for a single candidate alone providing all necessary infrastructure and man power. Hence, he prayed for dismissal of this writ petition.

9.I have given due attention to the submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

10.This court is now called upon to decide as to whether a second chance can be granted for a physical test in a recruitment process in the event the candidates who has applied for the recruitment process has met with an unforeseen and unfortunate accident.

11.The petitioner was unable to participate in the physical test viz., Physical Endurance Test and Physical Efficiency Test which was scheduled to be held on 06.10.2020, due to the reason that he met with an accident on 11.07.2020, whereby, he sustained multiple fractures, which made him to avoid competitive sports till 11.01.2021. The Kavery Hospital, Karaikudi issued a certificate which is extracted hereunder:-

"This is to certify that **Mr.Sajeev Sathiyam** 28 yrs/Male, (**IP No:9788**) underwent surgery for fracture **left forearm** on 11.07.2020 at out hospital. His fracture is uniting well but he should avoid competitive sports till 11.01.2021."



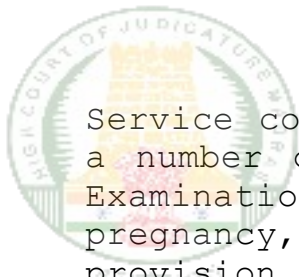
12.A perusal of the Doctor certificate would show that the petitioner was advised to avoid participation of any competitive sports till 11.01.2021 and the same was communicated to the respondents through his representation dated 26.09.2020, wherein, he has requested the respondents to postpone the physical tests after 11.01.2021 as per the advise of the Doctor.

13.An analysis of the case in hand would clearly show that the petitioner is injured because of an unforeseen and unexpected accident thereby making him unable to take part in the physical test.

14.While, so, the stand of the respondents was that there is no Rule which would provide an alternative date to conduct PMT, ET and PET considering the request of the petitioner as a special case and postpone the physical tests, however, the learned Additional Advocate General has failed to impress this Court by showing any Rules and Regulations, which would equally empower the respondents to deny the request of the petitioner.

15.Turning to the final submission made by the learned Additional Advocate General, the practical inability to conduct the physical tests for a single candidate alone providing all infrastructures and man power and allowing such a candidate will open a flood gates to similar other candidates who will approach the Hon'ble High Court seeking alternate date for physical tests citing similar other reasons which will be a never ending process and eventually hamper the entire recruitment process is concerned, this court equally aware of the fact that if every candidate seeks similar kind of indulgence, in every selection then the entire process itself would be affected. However, the candidates who meet with unfortunate accident and seeking relief hardly in a few cases, in such cases the authorities will not become powerless to refer the candidates to Medical Board and verify the authenticity of the such request and grant in genuine and true cases.

16.An analysis of the conditions in the recruitment notification would reveal that the contingency of an accident and consequent non participation has not been foreseen or visualised by the respondents, as the notification is clearly silent and does not have any clause or provision to deal with the situation like in the present case. The same situation happened in the case of pregnant women and in many cases they were not permitted to take part in the physical test because of their inability. This court in R.Devika V. Chairman and others, TNUSRB 2019(2) MLJ 109, came the rescue of a pregnant woman who missed her qualifying in the physical test by a fraction of second. Likewise , the Hon'ble Supreme Court in Khushbhu Sharma Vs. Bihar Police Subordinate



Service commission, 2019 SCC online SC 1323 had come to rescue of a number of woman who were unable to take part in the physical Examination test because of their pregnancy. Anticipating that pregnancy, the legislators/Authorities thought it fit to include a provision for accommodating pregnant woman which could be seen from cursory perusal of the notification and it is relevant to extract the para No.4 of G.O(Ms) No.682, Home (Police-III) Department, dated 28.11.2019, which is states as follows:-

4.The Government have carefully examined the proposal of the Additional Director General of Police / Member, Tamil Nadu Uniformed Services Recruitment Board in light of the orders of the Hon'ble High Court of Madras in W.P.No.30538/2018 dated 07.01.2019 and issues the following guidelines with regard to the recruitment of women police personnel to the posts of Sub Inspector of Police, Grade-II Police Constables, Grade-II Jail Warder and Firemen:-

(a) While applying for the recruitment, the women candidate should declare about her pregnancy in her application form.

(b) During the Physical Test, the women candidates should declare about the pregnancy before the Sub-committee and the pregnant candidates will be allowed for the physical test only if they are declared fit by the Government Doctor.

(c) The pregnant candidates declared unfit by the Government Doctor will be allowed to participate in Physical Test and further procees of selection proposed to be conducted once in every six months, say, February 1st week and August 1st week for such candidates at Chennai Centre.

(d) The women candidates who are at difficult circumstances to participate in the Physical Test on account of women related natural causes will be allowed to participate in the Physical Test on another date by the Sub-Committee after submitting the fitness certificate by the candidate from the Government Doctor.

(e) A pregnant applicant for the post shall not lose her seniority only because she is unable to participate in the physical test in view of her pregnancy (I.e.,) if a pregnant woman is selected on the basis of the physical test in the next process of selection, her seniority should be determined with reference to the earlier

recruitment.



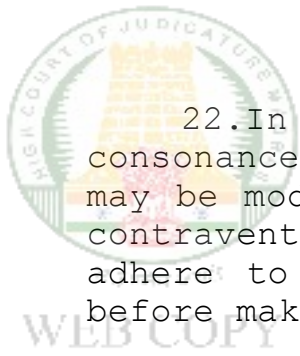
17.At the outset, it has to be pointed out that it is quite well settled that the exercise of power under Article 226 of the Constitution, the High Court shall be loathe in interfering with the recruitment process and several discussions of the Apex Court and this Court reiterate the same aspect. This has also been the main plank of submission raised by the Additional Advocate General whereby it was contended that if the Court permits the petitioner, then it would open the flood gates and numerous petitions would get filed seeking the same indulgence.

18.It has to be understood that the exercise of jurisdiction under Article 226 is a blend of discretion and equity to grant relief within the permissible limits of the Constitution. If the Court finds infraction of a fundamental right, then it shall very well step into the rescue of the affected party. The Court need not get caught up in technicalities and confine itself once when the petitioner is entitled for a relief.

19.At any cost, the respondents are going to conduct the same tests, in the case of pregnant woman, either in the first week of February, 2020 or in the first week of August, 2020 as such this Court, in few matters, has passed a direction to the respondents therein to conduct separate physical tests for the female candidates, who participated in the same selection process, which case the the respondents may consider the request of the petitioner without any additional burden. Hence, this Court is unable to trace any material to justify the contention of the learned Additional Advocate General and thus I find that there is no substance in his submission.

20.Thus, the case of an accident and consequent temporary inability to take part in the Physical Evaluation Test has not at all taken into account by the respondents and this cannot operate to the disadvantage of an injured candidate, who had met with the accident. At this juncture, it is pertinent to point out that Article 14 of the Constitution in clear and lucid terms emphasises that there shall be equal protection of law and equality before law. The equality is only where equals compete with equals. An unequal cannot be treated on par with an equal and such treatment would be clearly against the spirit of Article 14.

21.The mere fact of not providing of a provision or contingency clause in the notification to permit for physical test to be conducted again on a later date cannot work out to the disadvantage of the writ petitioner. For no fault of the writ petitioner, he cannot be deprived of his right to take part in the physical test on a later date.



22.In case, if there is no rule or rules are not in consonance with the philosophy of our Constitution and the same may be modified or new rules may be framed and no appointment in contravention thereof should be made, the employer is bound to adhere to the norms of Articles 14 and 16 of the Constitution before making any recruitment.

23.In view of the reasons sated above, I propose to allow this writ petition with some directions.

24.In view of the above discussions, this writ petition is allowed with the following directions:-

(i).The respondents are directed to permit the petitioner to participate in the second stage of physical examination viz., Physical Endurance Test and Physical Efficiency Test in an alternative date or at the option of the petitioner preferably in the first week of February, 2020, along with the other female candidate, who claimed exemption in the present recruitment for physical test in W.P.(MD)No.13883 of 2020.

(ii).The respondents shall intimate the alternative date on which the physical efficiency tests scheduled to be conducted, to the petitioner, in advance.

(iii).This order has been passed in the facts and circumstances of this case and it cannot be treated as a precedent for other cases.

No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RJ2

To

1.The Director General of Police,
O/o.the Directorate General of Police,
Dr.Radhakrishnan Road, Mylapore,
Chennai - 4.

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



3.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Pantheon Road, Chennai - 600 008.

4.The Superintendent of Police,
O/o.the Superintendent of Police,
Sivagangai,
Sivagangai District.

**Order made in
W.P. (MD)No.13830 of 2020
05.11.2020**

PU (CO)
KM (23.11.2020) 9P 5C