



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.2026 of 2021

and

W.M.P (MD)No.1717 of 2021

WEB COPY

M.P.Siva

... Petitioner

vs.

1.The Director General of Police,
O/o.Director General of Police,
Beach Road,
Chennai.

2.The Commissioner of Police,
Madurai City,
Puthur Road,
Madurai.

3.The Deputy Commissioner of Police,
Madurai City,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 11.01.2021 passed in Na.Ka.No.P1(1)/26711/2019 on the file of the third respondent and quash the same as illegal and consequently direct the respondents to appoint the petitioner for the post of Grade-II-PC-VR-2019 with a stipulated period framed by this Court.

For Petitioner : Mr.N.Dilip Kumar
for Mr. J.Ashok
For Respondents : Mr.Veera.Kathiravan
Senior Standing Counsel
Assisted by
Mr.K.S.Selvaganesan
Government Advocate

ORDER

This Writ Petition is filed to quash impugned order, dated 11.01.2021, in Na.Ka.No.P1(1)/26711/2019, passed by the third respondent and consequently direct the respondents to appoint the petitioner for the post of Grade-II-PC-VR-2019.

2. The learned counsel appearing for the petitioner submitted that the petitioner participated in the selection for the post of Gr-II-PC-VR-2019. He was successful in the written examination and physical test. In the medical examination, the petitioner was



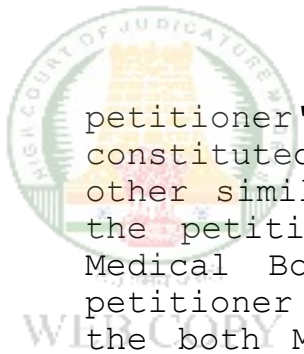
disqualified on the ground that his both eyes are unfit. In the said order, liberty was granted to the petitioner to take re-test and file appeal to the second respondent. The petitioner obtained certificate from a Senior Assistant Surgeon at Government Hospital, Paramakudi. The petitioner filed an appeal before the second respondent. The same was forwarded to the first respondent. There was no order passed, the petitioner filed writ petition in W.P(MD) No.13140 of 2020. This Court, after recording the submissions of the learned Government Advocate that the first respondent is awaiting orders from the Government for constituting a Medical Board for re-test of the petitioner and other similarly placed persons, disposed of the writ petition, directing the first respondent to get orders from the Government to constitute fresh Medical Board.

3. The learned counsel appearing for the petitioner submitted that pursuant to the order of this Court in the writ petition, the respondents constituted the Second Medical Council Board on 16.12.2020 and called the petitioner for conducting re-test before the Second Medical Council Board. After conducting re-medical test by the Second Medical Council Board, the third respondent by the impugned order rejected the candidature of the petitioner that " BOTH EYES UNFIT DUE TO EVIDENCE OF LASIK SURGERY BY CORNEAR TOPOGRAH". Challenging the said order, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner further submitted that the Medical Board gave report that " Both Eyes Unfit" and in the second report of the Medical Board, it is reported that "BOTH EYES UNFIT DUE TO EVIDENCE OF LASIK SURGERY BY CORNEAR TOPOGRAH". On an earlier occasion, the persons, similarly placed, like the petitioner approached this Court, this Court by order, dated 30.04.2019, in W.P(MD)Nos.5441 of 2019 etc. batch, allowed the writ petitions. Challenging the same, the Government preferred appeals in W.A(MD)Nos.941 to 953 of 2020. Relying on the judgment of this Court in W.P(MD)No.5441 of 2019 etc. batch and W.A(MD)Nos.941 to 953 of 2020, the learned counsel appearing for the petitioner submitted that the Division Bench of this Court accepting submission of the learned counsel for the respondents therein, held that disqualifying the candidature on the ground that the candidates wearing specs for insufficient eye sight and making them to undergo a test without wearing specs, has got no rationale and dismissed the writ appeals, confirming the order of the learned Single Judge.

The learned counsel for the petitioner relied on the aforesaid judgment of the Division Bench of this Court, wherein, the Division Bench of this Court directed the appellants to give appointment to the respondents therein and prayed for allowing the writ petition.

5. Mr.Veera.Kathiravan, learned Senior Standing Counsel appearing for the respondents submitted that the post of Gr.II-PC-VR-2019 is associating with physical activity. The petitioner did not possess required visual standard. The Medical Board is the competent authority to decide the physical fitness of the



petitioner's both eyes unfit and subsequently, the Government constituted the Medical Board for re-test of the petitioner and other similarly placed persons. Both the Medical Board found that the petitioner is unfit. In view of the report of the second Medical Board, the petitioner's candidature was rejected. The petitioner was clearly informed about of the examination report of the both Medical Boards. As per the prescribed definitions under Rule 14(b)(i) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, the petitioner is not eligible for appointment to the post of Gr.II-PC-VR-2019. The impugned order passed by the third respondent is not vitiated, as the petitioner was found both Eyes Unfit on both occasions by the report of the Medical Board.

6. The learned Senior Standing Counsel appearing for the respondents also submitted that the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case, as in the said case, the recruitment to the post of Finger Print expert was challenged, which is a technical post. The present case relates to the post of Gr-II Police Constable, which is in connection with physical activity. The petitioner without any valid ground and reason, filed the present writ petition and prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

8. From the materials on record, it is seen that the petitioner, who participated in the selection process, was successful in the written and physical examinations. He was disqualified after medical examination on the ground that his Both Eyes are Unfit. In the rejection order itself, the petitioner was given an opportunity to file an appeal along with medical certificate. The first respondent, on receipt of the appeal, did not constitute the Medical Board. Subsequently, after the orders of this Court in the writ petition filed by the petitioner in W.P(MD) No.13140 of 2020, the first respondent constituted the Medical Board for conducting re-test to the petitioner and other similarly placed persons. The petitioner appeared before the Medical Board and again, the Medical Board gave a report that "BOTH EYES UNFIT DUE TO EVIDENCE OF LASIK SURGERY BY CORNEAR TOPOGRAH". The Medical Board has not given any reason as to how both eyes are unfit due to evidence of Lasik Surgery by Cornear Topograh. The Division Bench of this Court, by judgment dated 29.10.2015 in W.A(MD)No.875 of 2015, set aside the order of rejection of the respondents therein. The relevant portion of the said judgment reads as follows:-

"14. Originally, the appellant's name was not included in the selection list due to error in the Community Certificate. After the same was rectified, as per the orders of this Court, the appellant's name



was included in the selection list and he was subjected to medical examination. According to the report of the Medical Board, the eyes of the appellant are unfit due to defective distant vision. On that ground, the appellant was not selected for the post of Grade II Police Constable. It is seen from the records that the appellant had undergone a surgery known as "Photo Refractive Keratectomy" and the defect in his eye sight was rectified. In spite of the same, the appellant was not issued with the appointment order. In the Contempt Petition filed by the appellant, the respondents submitted that the appellant would be subjected to second medical examination. The appellant was subjected to second medical examination and again the Medical Board declared that both eyes of the appellant are unfit due to corneal scar.

15. We have carefully considered the certificate issued by the Aravind Eye Hospital, dated 18.06.2014, as well as the report of the Medical Board, dated 19.08.2014. As per the report of the Aravind Eye Hospital, there is no defect in the appellant's vision. The Medical Board has also not stated that there is defect in the appellant's vision, either in distant vision or near vision. On the other hand, the Medical Board has given a report that the vision of the appellant both distant and near visions are normal.

16. By order dated 10.06.2014 passed in Contempt Petition (MD) No.85 of 2014, the learned Single Judge directed the respondents in the Contempt Petition to comply with the order dated 29.11.2012 passed in W.P.No.13727 of 2012 in letter and spirit and report the matter to this Court on 24.06.2014. In spite of the order of this Court, the Medical Board has not stated how the corneal scar on both eyes will make the appellant unfit for appointment as Grade II Police Constable."

9. In the present case also, the Medical Board has not stated how both eyes are unfit due to Lasik Surgery. In view of the above facts, the ratio in the judgment of Division Bench of this Court, dated 29.10.2015 in W.A(MD)No.875 of 2015 is squarely applicable to the facts of the present case. Further, another Division Bench of this Court in W.A(MD)Nos.941 to 953 of 2020, vide Judgment dated 15.02.2021, considered the issue whether a person wearing specs is unfit for the post of Special Sub-Inspector of Police. The Division Bench held that when a person can carry out physical activity with specs, he cannot be disqualified for wearing specs for correction of his eye vision. Paragraphs 7 & 8 are the relevant portion and the

<https://hcservices.ecourts.gov.in/hcservices/> same are enclosed hereunder:-



7. We do not find any merit in these Writ Appeals, as rightly submitted by the learned Senior Counsel appearing for the respondents that it is not a case, the respondents cannot function by wearing glasses. The Notification does not specify the extent of visual standards, even otherwise, it is clear, as the respondents can perform by wearing glasses, their candidature cannot be rejected by making them to undergo a test without wearing glasses. The question is the suitability to the job and not otherwise. The classification sought to be made is certainly violative of Article 14 of the Constitution of India. If it is approved, a candidate, who is wearing specs would become disentitled for being considered to the post. It is an indirect way of fixing qualification on the sole premise that a candidate wearing glasses cannot be considered. One has to see the eligibility and suitability of the candidate to the post, but such eligibility cannot be fixed on the basis of a candidate without specs, vis-a-vis, a candidate with specs. Thus, looking from any perspective, we do not find any reason to interfere with the order passed by the learned Single Judge, as we are in respectful agreement with the submission made by the learned Senior Counsel appearing for the respondents that the Government Order relied upon is outdated, opaque and contrary to the wisdoms expressed by the Hon'ble Apex Court. It is the insufficient/inadequate eyesight that makes a person to wear a glass. Once such glass is worn, then, that deficiency goes. Therefore, such person becomes eligible on par with the other person, who performs without glasses.

8. In such view of the matter, the classification sought to be made has got no rationale, as the job is sought to be undertaken as a whole. Accordingly, these Writ Appeals stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

10. In the present case also, the respondents have not stated due to Lasik Surgery by Corneal Topograph, the petitioner cannot do the physical activities. Once the petitioner underwent Lasik Surgery by Corneal Topograph surgery, the defect in the eye sight is corrected and therefore, the respondents cannot reject the candidature of the petitioner on the ground that both eyes unfit due to Lasik Surgery.

11. In view of the above, the impugned order of the third respondent, dated 11.01.2021, is set aside and the respondents are directed to appoint the petitioner for the post of Grade-II-PC-VR-



2019. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-III)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

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 Director General of Police,
O/o.Director General of Police,
Beach Road,
Chennai.
- 2.The Commissioner of Police,
Madurai City,
Puthur Road,Madurai.
- 3.The Deputy Commissioner of Police,
Madurai City, Madurai.

+1 CC to M/s.SELVENDRAN, Advocate (SR-20071[F] dated 24/06/2021)

+1 CC to M/s.SPL GP (SR-20165[F] dated 24/06/2021)

W.P (MD) No.2026 of 2021

23.06.2021

CN (01.07.2021) 6P 6C