



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.13664 of 2021

and

W.M.P. (MD) Nos.10596, 10598 & 10601 of 2021

S.Ponpetchi

... Petitioner

-vs-

1.The Member Secretary

Tamilnadu Uniformed Services Recruitment Board
Old Commissioner of Police Office Campus
Pantheon Road, Egmore, Chennai-600 008

2.The Chairman / Sub Committee

Tamil Nadu Uniformed Services Recruitment Board
Egmore, Chennai-8

3.The Superintendent of Police

Thoothukudi District, Thoothukudi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the impugned disqualification slip passed by the second respondent against the petitioner vide his proceedings dated 26.07.2021 and to quash the same and further directing the respondent to permit the petitioner to participate in the physical endurance test and other recruitment process in the common recruitment to the post of Grade II Police Constable, Grade II Jail Warder, Fireman-2020.

For Petitioner : Mr.Maheswaran.R.

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the disqualification slip, dated 26.07.2021, issued by the second respondent and to direct the respondents to permit the petitioner to participate in the next level selection process.



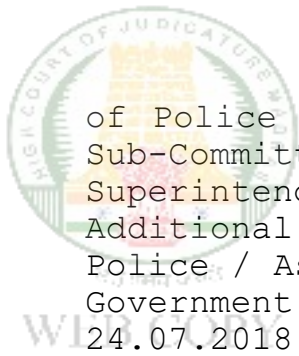
2. According to the petitioner, the respondent Tamil Nadu Uniformed Services Recruitment Board (TNUSRB) issued Notification No.1/2020, dated 17.09.2020, inviting applications through online mode from 26.09.2020 for the common recruitment to the posts of Grade-II Constable, Grade-II Jail Warder and Fireman. The petitioner applied for the said recruitment and he was assigned with Enrollment No.3403791. The petitioner participated in the written examination and successfully passed in the written examination. However, in the Physical Measurement Test, the petitioner was issued with the disqualification slip. Challenging the same, the petitioner has filed the present writ petition.

3. Further, according to the petitioner, he participated in 2019 selection process, in which, he passed in the chest measurement test and he was directed to appear for certificate verification. But, unfortunately, he could not be selected in 2019 selection process. Therefore, according to the petitioner, in the present selection process, the respondents have not properly measured his chest, which resulted in issuance of the impugned disqualification slip and therefore, prays for interference of this Court.

4. The first respondent has filed a counter affidavit stating that the candidates, who were qualified in the written test, were allowed to participate in the Physical Measurement Test / Endurance / Physical Efficiency Test / Certificate Verification. It is further stated in the counter affidavit that TNUSRB conducted Physical Measurement Test / Endurance Test / Physical Efficiency Test at 20 Centres from 26.07.2021 onwards and a Sub Committee comprising of the following officials was constituted at each Centre in order to ensure that the recruitment process is conducted in a fair and unbiased manner:

<i>Chairperson</i>	<i>SP/DC/Commandant</i>	
<i>Members (5)</i>	<i>ADSP</i>	<i>1</i>
	<i>DSP</i>	<i>2</i>
	<i>Jail Superintendent / Additional Superintendent / Jailor</i>	<i>1</i>
	<i>District Fire Officer / Deputy Director (Fire Department)</i>	<i>1</i>

5. Further, it is stated in the counter affidavit that during physical measurement test, chest measurement of the candidates would be measured by using inch tape. If a candidate does not possess the prescribed chest measurement and got disqualified, he can prefer appeal before the Appeal Committee consisting of a super check officer in the rank of Inspector General



of Police / Deputy Inspector General of Police, Chairperson of the Sub-Committee in the rank of Deputy Commissioner of Police / Superintendent of Police, Sub-Committee Member in the rank of Additional Superintendent of Police / Deputy Superintendent of Police / Assistant Commissioner of Police and Medical Officer as per Government Letter (D) No.866, Home (Police III) Department, dated 24.07.2018.

6. According to the respondents, the petitioner appeared for chest measurement test on 26.07.2021 and his chest measurement was 81 cms. in normal and 85 cms. in expansion. Since the petitioner's chest was expanded only 04 cms. as against the required expansion of 05 cms., he was not qualified and hence, prayed for dismissal of the writ petition.

7. Heard the learned counsel on either side and carefully perused the materials available on record.

8. Undoubtedly, the dispute raised by the petitioner is a disputed fact and such disputed facts cannot be decided in a writ petition filed under Article 226 of the Constitution of India and the petitioner has not made any other allegation that the respondents have intentionally or inimically disqualified him from participating in the recruitment process. That apart, it is seen that the petitioner has also not approached the Appellate Authority for his grievance and without resorting to such an appellate remedy, he has approached this Court on 03.08.2021 after one week from participating in the chest measurement test by filing this writ petition.

9. The Honourable Division Bench of this Court, by Judgment dated 03.06.2020 in W.A.No.285 of 2020, dismissed the identical relief, by holding as follows:

"4. Having considered the submissions raised, we are of the view that there is no such material so as to indicate either any malafides or any procedural flaw so as to establish that the measurement carried out at the time of chest measurement of the appellant was flawed in any way or was in violation of any rules. There cannot be an enquiry into this, inasmuch as this being a matter of exercise undertaken by the respondents and the absence of any mala fides or any violation of the rules or procedural flaw disentitles the appellant from approaching this Court under Article 226 of the Constitution of India."

10. In W.P.No.21337 of 2017, by order dated 16.08.2017, this Court has dismissed the writ petition as follows:

¹³ The learned Additional Advocate General
<https://hcservices.ecourts.gov.in/hcservices/>



urged this Court that the Hon'ble Supreme Court of India also considered these issues and the details of judgment are extracted hereunder:-

"20. It is submitted that, it has been observed by the Hon'ble Apex Court in State of Jammu and Kashmir & Anr. Vs. Ajay Dogra in SLP Civil Appeal No.3066/2011 arising out of SLP (c) No.23956 of 2002 dated 07.04.2011 has allowed the Writ Appeal filed by the State of Jammu & Kashmir & Anr and has held that

19. We may also appropriately refer to the decision of this Court in Sanjay Kumar Vs. Narinder Verma and Ors. Reported in (2006) 6 SCC 467, wherein also it was contended before this Court that in absence of any challenge to the relevant Rules, it was impermissible for the High Court to depart from such recruitment rules. It was also submitted that it is not open to the High Court to ignore the recruitment rules and to introduce a criterion which is not even contemplated by the applicable rules.

20. This Court, while upholding the aforesaid contentions held in paragraph 16 thus:- It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules.

21. This qualification to be possessed by the applicants have been prescribed in the Rules and also in the advertisement for the reason that some of them are required to be posted at high altitude and therefore they are required to have proper physique so as to be able to be posted to those places.

23. We, therefore, hold that the High Court was not justified to decide the validity of the aforesaid Rule and the advertisement without there being any challenge to the same. We also hold that it was not appropriate for the High Court to set aside the said conditions which are mandatory in nature."

11. Therefore, in such view of the matter, the contentions of the petitioner are unsustainable and the impugned order passed by the second respondent does not warrant any interference of this Court.



12. In the result, the writ petition fails and it is dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To:

- 1.The Member Secretary,
Tamilnadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai-600 008.
- 2.The Chairman / Sub Committee,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore, Chennai-8.
- 3.The Superintendent of Police,
Thoothukudi District, Thoothukudi.

+1 CC to M/s.SPL.GP (SR-32260[F] dated 22/10/2021)

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DKS (CO)
KB(10.11.2021) 5P 5C