



WEB COPY

W.A.(MD)No.1706 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.A. (MD)No.1706 of 2021

and

C.M.P. (MD)No.7288 of 2021

1.The Director General of Police,
The Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai - 600 008.

2.The Member Secretary,
The Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai - 600 008.

.. Appellants/Respondents

Vs.

P.Jeyasundar

..Respondent/Petitioner

PRAYER: Appeal under Clause 15 of Letters Patent against the order dated 17.06.2021 passed by the this Court in W.P.(MD)No.19388 of 2020.

Prayer in WP(MD) . 19388/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-4. Pleased to issue a Writ or Direction or order or any other Writ in the nature of Writ of Mandamus directing the 1st Respondent to conduct the Physical examination and Physical test to the petitioner as per Notification No.2/2019 dated 08.03.2019 in the recruitment of Sub Inspector of Police (Taluk Armed Reserve and Tamil Nadu Special Police) 2019 as per Petitioners representation dated 23.11.2020.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.P.Thilakkumar
Govt. Pleader

For Respondent : Mr.T.Lajapathi Roy
for Mr.V.Angusamy

<https://hcservices.ecourts.gov.in/hcservices/>



JUDGMENT

**[Judgment of the Court was delivered by
The Hon'ble CHIEF JUSTICE.]**

The appeal is directed against an order dated June 17, 2021 passed on a writ petition by which the writ petitioner has been permitted to undergo a further physical examination to assess his physical ability despite the recruitment process having been completed, according to the appellants, in April, 2021 and the training camp for the recruited personnel having already commenced.

2. The case made out by the writ petitioner was that since the writ petitioner was engaged in COVID-19 protection duty and he had been infected, he had to take treatment from October 17, 2021 to October 23, 2021 in a Government Hospital. However, what is of relevance is that the indisposition of the petitioner did not lead to the petitioner missing the physical ability test. Indeed, the physical fitness test was convened on October 13, 2020, prior to the petitioner obtaining treatment for being infected with COVID. At such physical fitness test, the petitioner participated and obtained two stars in rope-climbing and long jump but obtained one star in the running race and was, thus, not selected.

3. Apart from the fact that the physical ability test was prior to the period when the petitioner was affected by the virus, the principle on which the order is founded cannot be accepted. Merely because a particular person feels to be under the weather or otherwise not upto the mark on a particular day when the test is scheduled, it does not imply that such person has to be afforded a further opportunity to take the test at his convenience. Recruitment processes will go completely awry if such a practice were to be encouraged.

4. The petitioner participated in the process without any reservation and failed to make the mark. The fact that four days later the petitioner was discovered to have contracted the disease is no ground for any discretion to be exercised in favour of the petitioner and a special test required to be conducted at a time when the recruitment process has already been concluded.

5. The writ petitioner submits that there are other instances where similar considerations had been shown to persons, who may not have fared well in the physical ability test. As a matter of principle, it cannot be accepted as a legal proposition that merely because a person was unable to perform upto his expectations on the date that the physical ability test was scheduled, such person has to be afforded a subsequent opportunity to demonstrate his physical ability or the extent of his fitness.



Further, since Article 14 of the Constitution does not operate in a negative sense, if a few persons have been erroneously conferred a benefit that they may not have been entitled to, the same cannot be cited as an instance to perpetuate the wrong.

6. For the reasons aforesaid, the judgment and order dated June 17, 2021 cannot be sustained and the same is set aside. W.P.(MD) No.19388 of 2020 is dismissed.

7. W.A.(MD)No.1706 of 2021 is allowed as above. However, there will be no order as to costs. Consequently, C.M.P.(MD)No.7288 of 2021 is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm/ps

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,
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+1 CC to M/s.SPL.GP (SR-32877[F] dated 27/10/2021)

W.A. (MD)No.1706 of 2021

26.10.2021