



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Tuesday, the Fourteenth day of September Two Thousand and Twenty One
PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR

WMP(MD). No.17125 of 2019

in

WP(MD).No.12895 of 2018

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1.The Chairman,
Tamilnadu Uniformed Services Recruitment
Board Chennai-600 002

Now at
Old Commissioner of Police Campus,
Pantheon Road, Egmore,
Chennai-8

2.The Director of General of Police,
Kamarajar Salai, Chennai-4.

3.The Superintendent of Police, Thoothukudi District.

4.The Director General of Police (Fire),
Tamilnadu, Chennai-4 ... Petitioners/Respondents

Vs

K.Chernaperumal,
S/o.Kosal Raman,
No.10/167, Kilakulam,
Srivaikundam Taluk,
Thoothukudi District. ... Respondent/Petitioner

Prayer in WMP(MD). No.17125 of 2019:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to pass appropriate order in the writ petition by clarifying and modifying the observation made in WP(MD) No.12895 of 2018 dt.27/07/2018 on the file of this Court.

Prayer in WP(MD). 12895/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.No.A4/4615/2017 dated 01/05/2018 quash the same and consequently directing the Respondents to give order of appointment to the petitioner preference basis to the post of Grade-II Police Constable of Jail Warders or Fireman-2017 along with the persons appointed in the notification issued by the 1st Respondent for the year 2017 with pay all other monetary and service benefits.



ORDER: -

This Writ Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Veerakathiravan, Additional Advocate General Assisted by Mr.R.Suresh Kumar, Government Advocate for the Petitioner and of Mr.R.Singaravelan for Mr.D.Selvanayagam, Advocate for the respondent, this Court made the following order:

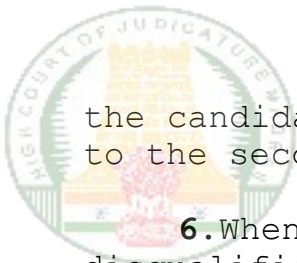
This clarification petition has been filed by the petitioners, who are the respondents in the main Writ Petition, that is in W.P. (MD) No.12895 of 2021, which was decided and disposed by this Court, by order dated 27.07.2018.

2.The respondent herein that is the writ petitioner, who moved the writ petition referred to above, seeking to quash the order passed by the petitioners herein, that is respondents in main writ petition, dated 01.05.2018, by which, the writ petitioner's application for selection to the post of Grade II Police Constable or Jail Warden or Fireman-2017 was rejected.

3.This Court, while deciding the said writ petition having taken note of two different service rules governing the services of Tamil Nadu Police Subordinate Service and Tamil Nadu Fire Service, have found that, if at all the candidate involved in any criminal case and the same has been suppressed in the application filed or at the time of verification, that can be the reason for disqualifying such person. This is on the basis of the specific rule, that is Rule 14(b) of Tamil Nadu Police Subordinate Service Rules and in this context, though a number of orders have been passed by this Court and some of the orders came from the Hon'ble Supreme Court, every time, when making such recruitment by the recruiting agency, this kind of litigation would be pouring in.

4.The main writ petition is also one of such case, where the writ petitioner challenged the rejection order on the ground that the writ petitioner has allegedly involved in a criminal case and is has subsequently been quashed ofcourse, based on the compromise between the parties. Therefore, that cannot be the impediment for the writ petitioner to seek for recruitment, as he would not be disqualified under the said Rule.

5.However, this Court not accepted the said stand taken by the writ petitioner. However, this Court found that, even though such disqualification is attached with Tamil Nadu Police Subordinate Service Rules, no such disqualification is provided for or available in the rule relating to Tamil Nadu Fire Service. Since it is a combined recruitment process for selection to the post of Grade II Police Constable, Jail Warden or Fireman, based on the option given by each of the candidates, of course, based on the marks obtained by



the candidates, selection can be made either to the first option, or to the second option or third option.

6. When that being so, though this writ petitioner can be disqualified for the reason that he had involved in criminal case and though it was ended by way of quashment due to compromise, that would not automatically make him eligible to get selected to the post of Grade II Police Constable under Rule 14(b) referred to above. However, such an impediment is not available in the Rules governing the Tamil Nadu Fire Service, under which the post of Fireman comes. Therefore, the Writ Court felt that, there could be no impediment for the respondents, that is, the recruiting agency to select the writ petitioner for the post of Fireman, as admittedly the writ petitioner has secured 65 marks, whereas the cut-off mark for the post of Fireman in such category was only 64. Only in this context, para 6, 7, 8 and 9 of the order made in the writ petition have been given, which are reproduced hereunder for easy reference:

"6. In that suggestion, the learned Additional Advocate General appearing for the official respondents would submit that, the said recruitment was a combined recruitment for the post of Grade-II Police Constable or Jail Warden or Fireman-2017. The petitioner is not entitled to be appointed as a Grade-II Police Constable, because of the earlier criminal case, even though the said case was ended in acquittal or compromised or quashed, there is a stigma on the petitioner for the current recruitment and therefore, his candidature was rightly rejected. However, there is no such rule in the Tamil Nadu Fire Service Subordinate rules to make a candidate ineligible, because he has involved in a criminal case and subsequently the case is ended in acquittal or quashed out of compromise. In view of such rule, the candidature of the petitioner, if at all to be considered, can be considered for the selection or appointment to the post of Fire Man.

7. In this regard, the learned Additional Advocate General would further submit that, the cut off mark for the petitioner's category in respect of Fireman is 64, however, the petitioner scored 65. Therefore, he is above the cut off mark and hence, on merits, he can be considered for the selection of appointment for the post of Fireman. The learned Additional Advocate General has also received a communication, dated 23/09/2018, from the Director General of Police,



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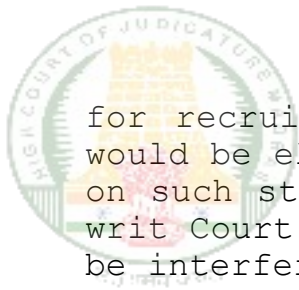
Tamil Nadu, which reads thus:

"As per the above said rule, the candidate will be selected to any one of the post in combined recruitment of Grade-II Police, Grade-II Jail Warders and Firemen by taking into account his preference and depending on his rank and the availability of vacancies in the particular post. Hence, once he has been provisionally selected to any one of the above said 3 posts, the concerned Department will appoint them subject to fulfilment of the conditions prescribed to that department. If he is not found fit with reference to the rules for the service concerned, he will not be selected for appointment to such post. The order of preference given by the candidate is taken as first criteria and hence it is not feasible to change once again the option regarding department preferred".

8.By relying upon this instruction, the learned Additional Advocate General would submit that, in view of the said facts, though the petitioner is not eligible to consider for the post of Grade-II Police Constable, he is eligible to consider for the post of Fireman in the Fire Service Department and therefore, in that aspect, the respondents would consider his candidature for the said recruitment.

9.I have considered the said submission made by the learned Counsel for the petitioner and the learned Additional Advocate General and perused the materials placed before this Court including the written instructions of the Director General of Police, Tamil Nadu, addressed to the learned Additional Advocate General, by his communication dated 23.07.2018."

7.As against the said order passed by this Court, in fact, the respondents in the writ petition preferred an intra-Court appeal in W.A.(MD)No.437 of 2019, which came to be dismissed by the Division Bench of this Court on 05.08.2019, wherein the Division Bench, among other things, primarily considered that the writ Court allowed the writ petition on the basis of the consent given by then Additional Advocate General, who appeared on behalf of the recruiting agency, that the writ petitioner, if at all not eligible to be considered



for recruitment to the post of Grade II Police Constable, however would be eligible to be considered for the post of Fireman and based on such stand taken by the learned Additional Advocate General, the writ Court primarily allowed the writ petition, therefore, it cannot be interfered with.

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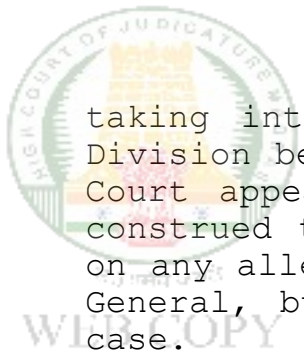
8.In this context, at para 10, the Division Bench has stated that, if at all the appellants, that is present petitioners intent to seek for any clarification or modification of the said order touching upon the very consent given by the learned Additional Advocate General, it is for them to approach the Writ Court by filing appropriate application and seek for any such clarification or modification. Taking clue from the observations made in para 10 of the Division bench order referred to above, the present application for clarification has been filed.

9.In the prayer, they sought for clarification only in respect of para 7 & 8 of the order passed by the writ Court dated 27.07.2018. The para 7 & 8 of the order has already been extracted hereinabove. In para 7, the higher marks obtained by the writ petitioner has been noted and also written instructions given by the Director General of Police dated 23.07.2018 has been quoted and in para 8, the submissions made by then learned Additional Advocate General has been taken into account.

10.In this context, it is to be noted that, the learned Additional Advocate General has not given any blanket concession for considering the candidature of the writ petitioner. In fact, he, after having gone through the relevant rules, that is Tamil Nadu Police Subordinate Service Rules as well as Tamil Nadu Fire Service Rules, has reiterated the legal position as an Officer of the Court in order to assist the Court that the writ petitioner though shall be disqualified under the Tamil Nadu Police Subordinate Service, but the same time, since there is no such Rule on par with rule 14(b) of Tamil Nadu Police Subordinate Service Rules available in Tamil Nadu Fire Service Rules, his candidature might not be disqualified and therefore there could be no impediment for considering his candidature under the said Rule and accordingly, since he has obtained higher marks that is 65, whereas the cut-off mark for the post of Fireman in such category was only 64, he can be considered for selection to the post of Fireman.

11.This submission made by then learned Additional Advocate General, only reiterating the rule position, has never been taken as blanket concession of the Additional Advocate General by this Court.

12.May be before the Division bench of this Court, when intra-Court appeal was heard, it was one of the prime point canvassed by the learned counsel appearing for the writ petitioner that, such a stand has been taken by the learned Additional Advocate General



taking into account the rule position. Considering the same, the Division bench might have given the reason for rejecting the intra-Court appeal on such prime ground alone. Therefore, it cannot be construed that the writ Court allowed the writ petition only based on any alleged concession given by then learned Additional Advocate General, but based on the rule position as well as merits of the case.

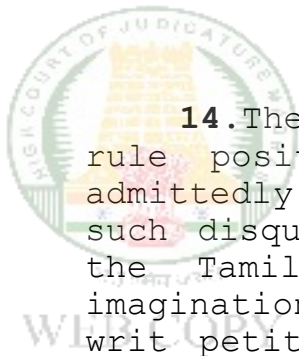
13. In order to reiterate this position, para 10 of the writ Court Order is extracted hereunder, which reads thus:

"10. Since, admittedly, the petitioner has scored higher marks for consideration to the post of Fire Man and there is no scope under the relevant rule to reject his candidature, merely because he was involved in a criminal case, which also later compounded or acquitted by Courts of law, by way of compromise, this Court is inclined to pass the following order:

"Since the Director General of Police (Firemen), Tamil Nadu, who is a necessary party and to whom a direction is going to be issued by this Court, is not a party herein, the said Director General of Police- (Fireman), Tamil Nadu is impleaded as one of the party respondent, suo motu, by this Court and accordingly, he is arrayed as fourth respondent in this writ petition.

that the first respondent is directed to pass necessary orders with regard to the selection of the petitioner for the post of Fireman at Tamil Nadu Fire Subordinate Service. On receipt of such communication from the first respondent, the fourth respondent is directed to pass necessary orders, giving necessary appointment orders to the petitioner as Fireman and the aforesaid exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order."

The writ Court has made it clear that, since the writ petitioner has secured higher marks for consideration to the post of Fireman and there is no scope under the relevant rules, that is rules governing the Tamil Nadu Fire Service, to reject his candidature, merely because he has involved in criminal case, which was later compounded by Court of law by way of compromise, the writ Court was inclined to pass order allowing the writ petition.



14.Therefore, the writ Court, after having taken note of the rule position as well as the merit of writ petitioner, who admittedly secured higher marks, allowed the writ petition as no such disqualification is available in the relevant rule governing the Tamil Nadu Fire Service. Therefore, at no stretch of imagination, it can be stated that the writ Court has allowed the writ petition only on the basis of the concession given by then learned Additional Advocate General and the fact remains that the then learned Additional Advocate General has not given any blanket concession, he has only assisted the Court by giving his views on the rule position, which is apparent.

15.Therefore, this Court feels that no clarification whatsoever is required, other than what has been observed in this Order, in response to the prayer sought for in this clarification petition.

16.With these observations, this Clarification Petition is disposed of.

Sd/-

Assistant Registrar (CS III)

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/ /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.

To

1.The Chairman,
Tamilnadu Uniformed Services Recruitment
Board Chennai-600 002

Now at
Old Commissioner of Police Campus,
Pantheon Road, Egmore,
Chennai-8

2.The Director of General of Police,
Kamarajar Salai, Chennai-4.

3.The Superintendent of Police,
Thoothukudi District.



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4.The Director General of Police (Fire),
Tamilnadu, Chennai-4.

ORDER DATED : 14/09/2021

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ORDER

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WMP(MD) . No.17125 of 2019

in

WP(MD) .No.12895 of 2018

Giving direction and etc.
as stated within.

SE(CO)/RS (25.10.2021) 8P 5C