



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.1810 of 2022

and

W.M.P. (MD) Nos.1602 & 1603 of 2022

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Ananthakumar

... Petitioner

vs.

1.The Secretary to
the Government of Tamil Nadu
Home (Police) Department
Fort St.George, Chennai

2.The Chairman
Tamil Nadu Uniformed
Services Recruitment Board
Old Commissioner of Police Office Campus
Pantheon Road
Egmore, Chennai

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order / mark statement dated NIL, issued by the 2nd respondent and quash the same and consequently direct the 2nd and 3rd respondents to recruit the petitioner in the common recruitment for the posts of Gr.II Police Constable, Gr.II Jail Warden and Fireman 2020.

For Petitioner : Mr.Navaneetharaja.K.

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.S.Saji Bino
Special Government Pleader

O R D E R

The order of rejection, dated Nil, passed by the second respondent, rejecting the candidature of the petitioner for recruitment to the post of Grade-II Police Constable, is under challenge in this writ petition.



2. The petitioner participated in the process of selection for recruitment to the post of Grade-II Police Constable and he was successful in the written examination and allowed to participate in the physical verification test and endurance test.

3. The petitioner secured 74.00 marks. However, the candidature of the petitioner was rejected on the ground that he was not within the zone of consideration. The learned Additional Advocate General submitted that when two candidates secured same marks, then the decision is taken based on the date of birth of the candidates. In the present case, the petitioner became junior and therefore, the other candidate, who is senior than the petitioner, was selected. Regarding details of marks and other particulars, the third respondent, in paragraph No.5 of the counter affidavit, has stated as follows:

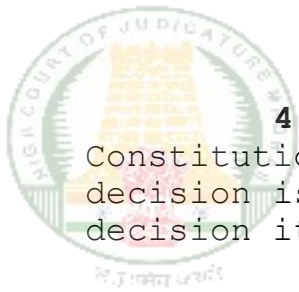
"It is submitted that the petitioner was provisionally allowed to appear for the written examination. He secured 59 marks in written test and subsequently 15 marks in the physical efficiency test and in total had 74.00 marks. Complying with the roster system of the Government, by following the communal rotation, the petitioner 74.00 marks, was not provisionally selected in the final provisional selection list. The marks and date of birth of the last candidates who got selected for AR, TSP, Jail Warder and Firemen are as below:

SC PSTM Category

Category	Marks	Date of Birth
Armed Reserve (AR)	80.50	09.04.1997
Tamil Nadu Special Police (TSP)	74.50	21.06.2001
Jail Warder (JW)	80.00	26.03.1996
Fireman (FM)	79.00	20.06.1995

SC NPSTM Category

Category	Marks	Date of Birth
Armed Reserve (AR)	80.00	18.03.1992
Tamil Nadu Special Police (TSP)	74.00	29.11.1991
Jail Warder (JW)	80.00	26.03.1998
Fireman (FM)	79.00	07.04.1996



4. The power of judicial review under Article 226 of the Constitution of India is to ensure the process during which a decision is taken in consonance with the rules in force, but not the decision itself.

5. Regarding the scope of judicial review in the matter of selection, the Full Bench of Madhya Pradesh formulated questions of laws in respect of such selections in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and others**, reported in **2018 (1) CTC 353** and question Nos.2 and 3 are relevant, which are extracted hereunder:

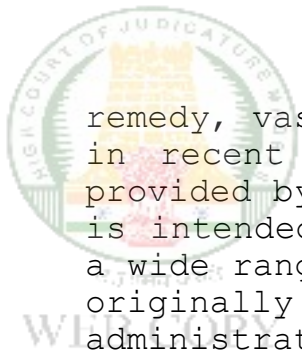
"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?"

3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

6. The Full Bench further considered the scope of judicial review under Article 226 of the Constitution of India by the High Courts.

7. In the case of **Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141, 154]**, Lord Brightman said that judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

8. In the same case, Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 that this



remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner.

9. In *R. v. Panel on Takeovers and Mergers, exp Datafin plc* (1987) 1 All ER 564, Sir John Donaldson, M.R. Commented that an application for judicial review is not an appeal.

10. In *Lonrho plc v. Secretary of State for Trade and Industry* [(1989) 2 All ER 609] Lord Keith said that judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal.

11. In *Amin v. Entry Clearance Officer* [(1983) 2 All ER 864], Re, Lord Fraser observed that judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.

12. In *R. v. Panel on Take-overs and Mergers, exp in Guinness plc* [(1989) 1 All ER 509], Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

13. The duty of the Court is to confine itself to the question of legality. It's concern should be:

- (i) Whether a decision-making authority exceeded its powers?
- (ii) Committed an error of law,
- (iii) Committed a breach of the rules of natural justice,



- (iv) Reached a decision which no reasonable tribunal would have reached or,
- (v) Abused its powers.

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14. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality,** namely, **Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

15. In such view of the matter, the petitioner was not within the zone of consideration for the purpose of selection and hence, there is no infirmity as such in the impugned order passed by the second respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar (CS)

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To:

- 1.The Secretary to the Government of Tamil Nadu,
Home(Police) Department,
Fort St.George,
Chennai.
- 2.The Chairman,
Tamilnadu Uniform Service Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai.



3.The Member Secretary,
Tamilnadu Uniform Service Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai.

+1 CC to M/s.SPL GP (SR-14869[F] dated 28/03/2022)

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