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W.P.(MD) No.7574 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.7574 of 2022

and

W.M.P. (MD) No.5743 of 2022

J.Arunkumar

... Petitioner

vs.

1.State of Tamilnadu

rep.by its Principal Secretary

Home Department

Secretariat, Chennai-600 009

2.The Chairman

Tamilnadu Uniformed Services

Recruitment Board

Old Commissioner of Police Office Campus

Egmore, Chennai-600 008

3.The Member Secretary

Tamilnadu Uniformed Services Recruitment Board

Old Commissioner of Police Office Campus

Egmore, Chennai-600 008

4.The Director General of Police

O/o.The Director General of Police

Tamilnadu

Chennai-600 004

5.The Superintendent of Police

District Police Office

Madurai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the Impugned Order passed by the 5th respondent in his proceedings in C.No.B1/43472/2021-22, dated 16.03.2022 and quash the same as illegal and consequentially direct the respondents to consider the petitioner for appointment to the post of Grade II Police Constable for the year 2020.

For Petitioner : Mr.Velmurugan.R.

For Respondents : Mr.Veera Kathiravan

Additional Advocate General

assisted by Mr.A.K.Manikkam

Special Government Pleader



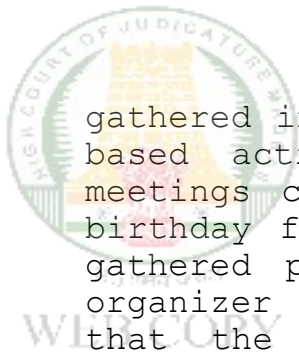
O R D E R

The order of rejection dated 16.03.2022, passed by the fifth respondent, rejecting the candidature of the petitioner for selection to the post of Grade-II Police Constable, is under challenge in this writ petition.

2. The petitioner participated in the process of selection to the post of Grade-II Police Constable pursuant to the recruitment notification issued by the second respondent - Recruitment Board. He was successful in the written examination and allowed to participate in the physical efficiency test and endurance test. The petitioner states that he is a law graduate and successfully underwent all the tests. The petitioner in the affidavit has stated that he is not involved in any political activities and does not belong to any political party. Further, in Paragraph No.6 of the affidavit, the petitioner has stated that he has given in writing to the Inspector of Police, Silaiman Police Station, Madurai District, that he does not belong to any political party and not involved in any political activities. He further stated that it is the fundamental right of every citizen to get involved in political activities or get membership card in the political party, which he likes. However, the same cannot be a ground to reject the candidature of the petitioner based on the selection.

3. The learned counsel for the petitioner reiterated that the petitioner is a law graduate and a practicing lawyer and he was successful in the written examination and physical efficiency test. He has given a letter in writing before the Inspector of Police, Silaiman Police Station, Madurai District that he does not belong to any political party or involve in any political activities and therefore, the petitioner ought to have been selected and appointed. Mere possessing a membership card of a particular political party cannot be a ground to reject the candidature of the petitioner. Thus, the impugned order is liable to be set aside.

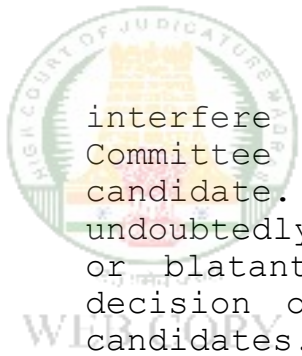
4. The learned Additional Advocate General appearing for the respondents objected the above contentions by stating that according to the petitioner, he is a lawyer and it is true that he has given an undertaking before the Inspector of Police, Silaiman Police Station, Madurai District, that he is not involved in any political party or religious organization and further, he has stated that there is no criminal case pending against him. With reference to the letter of declaration given by the petitioner, the Authorities Competent verified the character and antecedent of the petitioner and found that the petitioner is a member of a political party and as on the date of verification, he was holding the post of Joint Secretary of Advocates' Branch of a particular political party and functioning as such in Madurai East and further, the Authorities



gathered informations that the petitioner is interested in communal based activities. The petitioner has participated in public meetings conducted in the name of a particular community and the birthday functions of the leaders of the political party and also gathered people for the party meetings and he was appointed as organizer for that purpose. Further, the Police Authorities found that the petitioner is capable of participating in important functions in Kalimangalam Village. At the outset, the Police Authorities found that he is continuing as a leader in the particular locality and organizing people for many activities based on the community and further, he is a member of the political party and participating in such activities.

5. The learned Additional Advocate General further contended that the petitioner has given a letter stating that he does not belong to any political party or communal or religious party. However, on verification, the Authorities founds that the statement of the petitioner is incorrect and under those circumstances, the Authorities formed an opinion that the petitioner is not suitable and eligible for selection to the post of Grade-II Police Constable. The Authorities further arrived at a conclusion that the petitioner has suppressed the true facts and mentioned in the statement that he is not involved in the political activities. In addition to the letter given by the petitioner before the Inspector of Police, Silaiman Police Station, Madurai District, he gave an undertaking on 30.12.2021 stating that *"I J.Arunkumar S/o.K.Jothimani aged 24/2021 residing in 2/86 South Street, Kalimangalam, Madurai-20 hereby certify that the certificates and details furnished by me are correct (Genuine) and in any case it was found that the same was not genuine, then my selection to the post of Gr.II PC (AR, TSP, JAIL WARDER & FIREMEN) for the year 2020 will be cancelled at any time and will be liable for criminal proceedings and cancellation of my selection to the above post."* Further, the Authorities found that the said statement is not only incorrect, but the petitioner has also suppressed the facts regarding his involvement in the particular political party and in connection with the particular community and more specifically, in communal activities. Therefore, the Authorities have invoked Rule 14(b) of TNSPSS Rules and accordingly, held that the petitioner is not eligible for the post of Grade-II Police Constable.

6. This Court is of the considered opinion that the Selection Authorities are empowered to verify the character and antecedent of the candidates. The selection is for the uniformed services. Thus, verification of character and antecedent of the candidates are of paramount important. When the Authorities found that the petitioner has suppressed certain material facts and formed an opinion that the petitioner is not suitable and eligible for appointment to the post of Grade-II Police Constable, there is no reason whatsoever to interfere with such a decision. Court cannot



interfere with the opinion formed by the competent Selection Committee regarding suitability and eligibility of a particular candidate. The scope of judicial review in this aspect is undoubtedly limited. Unless the decision is tainted with *mala fides* or blatantly illegal, High Court would not interfere with the decision of the Selection Committee regarding assessment of the candidates.

7. The Honourable Supreme Court of India in the case of ***Commissioner of Police vs. Raj Kumar***, by Judgment dated 25.08.2021, passed in C.A.No.4960 of 2021, has held as follows:-

"26. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasized by this court, in *M.V.Thimmaiah v. Union Public Service Commission* [(2008) 2 SCC 119] held as follows:

"21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of *mala fides* or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal



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and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection."

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29. Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.

30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided.



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Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."

8. In view of the above facts and circumstances, this Court is of the considered opinion that the petitioner has not established any acceptable ground for the purpose of interfering with the impugned order passed by the fifth respondent.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Principal Secretary,
Home Department,
State of Tamilnadu,
Secretariat, Chennai-600 009.

2.The Chairman,
Tamilnadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-600 008.

3.The Member Secretary,
Tamilnadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-600 008.



4.The Director General of Police,
O/o.The Director General of Police,
Tamilnadu,
Chennai-600 004.

5.The Superintendent of Police,
District Police Office,
Madurai District.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.R. VELMURUGAN, Advocate (SR-21537[F] dated 27/04/2022)

ORDER MADE IN
W.P. (MD) No.7574 of 2022
and
W.M.P. (MD) No.5743 of 2022
26.04.2022

PKP/16.05.2022/7P/8C