



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.9370 of 2021
and
W.M.P.(MD) No.7078 of 2021

Ganesan

... Petitioner

vs.

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

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the 1st respondent to provide 20% reservation on PSTM basis in the Departmental Quota for the post of Sub-Inspector of Police-2019 recruitment to the petitioner by considering his representation dated 29.04.2021 within a time frame stipulated by this Court.

For Petitioner : Mr.Udhayakumar.R.
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The relief sought for in this writ petition to direct the first respondent to provide 20% reservation on Person Studied in Tamil Medium (PSTM) basis in the departmental quota for the recruitment to the post of Sub Inspector of Police, by considering his representation dated 29.04.2021.



2. Admittedly, the petitioner is an in-service candidate and working as Head Constable in Nerkuppai Police Station, Sivagangai District. He claims that the benefit of PSTM quota for recruitment to the post of Sub Inspector of Police.

3. The learned Additional Advocate General appearing for the respondents clarified the position by stating that PSTM quota is not available for the in-service candidates, who all are already in service and submitted application for recruitment to the post of Sub Inspector of Police. In this regard, Paragraph Nos.6 and 7 of the counter affidavit filed by the sixth respondent read as under:

"6. ... the petitioner in para no.4 of his writ petition has stated he is eligible to be selected and appointed under PSTM to the said post. Para 4 of the Notification and Para 21(f) of the Information Brochure explicitly states the application of PSTM (Person Studied in Tamil Medium) to candidates which is as below:

Para 4 of Notification:

"PSTM Preference : During the final provisional selection, 20% of vacancies shall be set apart on preferential basis for the open candidates who studied the Bachelor's degree in Tamil Medium."

Para 21(f) of Information Brochure:

"20% preference for having studied in Tamil Medium in Degree will not be considered for departmental quota candidates."

7. ... that G.O.Ms.No.145, Personnel & Administrative Reforms (S) Department dated 30.09.2010, Tamil Nadu Ordinance No.3 of 2010, the Tamil Nadu appointment on preferential basis in the Services under the State of Persons Studied in Tamil Medium Rules, 2010 clearly defines in Rule 2 (a) & (b) and is produced hereunder:-

Rule 2. In these rules, unless the context otherwise requires:-

(a) "direct recruitment" means first appointment of a person to any service under the State in accordance with the rules or regulations or orders in force.

(b) "Persons studied in Tamil Medium" means persons who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil medium of instructions."



4. A question arises whether High Court can interfere with the selection process, more specifically regarding grant of reservations to the candidates.

5. 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.

6. 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?"

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

8. 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.

9. 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.

10. 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.

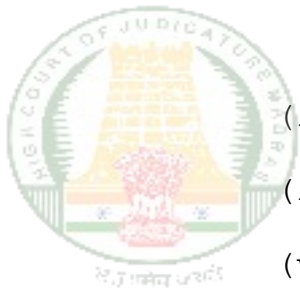
11. In *Lonrho plc v. Secretary of State for Trade and Industry* [(1989) 2 All ER 609] Lord Keith said that judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal.

12. 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.

13. 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.

14. 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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15. 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.

16. In view of the fact that the in-service candidates are not eligible to avail the benefit of PSTM quota, the relief as such sought for in this writ petition deserves no merit consideration.

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

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To:

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

+1 CC to M/s.SPL GP (SR-14241[F] dated 24/03/2022)

W.P.(MD) No.9370 of 2021 and
W.M.P.(MD) No.7078 of 2021
22.03.2022

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