



W.P.(MD) No.9490 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.9490 of 2021

and

W.M.P. (MD) Nos.7226, 7229 & 7230 of 2021

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S.Chozhapoopathiraja

... Petitioner

vs.

The Tamil Nadu Uniformed Services Recruitment Board
rep.by its Member Secretary
Having Office at
Old Commissioner of Police Office Campus
Pantheon, Egmore, Chennai-600 008

... Respondent

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 his Impugned Mark Statement and Provisional Selection List published in the Respondent Website dated 15.04.2021 in respect of the selection process based on the Notification issued by the Respondent vide Advertisement No.02 dated 08.03.2019 calling for the application for direct recruitment for the Posts of Sub inspector Police (Talu, Armed Reserve and Tamilnadu Special Police) 2019 and quash the same as illegal and consequently to appoint the Petitioner as a Sub Inspector of Police in Tamilnadu Special Police by providing 0.50 Special Mark for his N.S.S.Certificate.

For Petitioner : Mr.Lawrance.J.

For Respondent : 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 is to quash the provisional selection list and to award 0.50 special mark to the petitioner for his N.S.S.Certificate.

2. The Tamil Nadu Uniformed Services Recruitment Board issued a notification for direct recruitment to the post of Sub Inspector of Police (Taluk Armed Reserve and Tamilnadu Special Police) (Men, Women and Transgender)-2019, on 08.03.2019. The petitioner submitted application and participated in the selection



process. He was successful in the written examination and allowed to participate in the physical verification test and endurance test.

3. However, during verification of certificates, it was found that the petitioner is not eligible for recruitment as he secured less marks. The petitioner claims that 0.50 marks is to be awarded for N.S.S.Certificate possessed by him. The Authorities verified the claim of the petitioner and found that he had neither uploaded any N.S.S.Certificate nor had claimed for marks while applying through online for the post of Sub Inspector of Police.

4. Though the petitioner states that due to technical snag in the website, he could not upload the N.S.S.Certificate. However, according to the respondent, such belated submission of certificates cannot be accepted as per the information brochure and in the event of such acceptance, it will create many issues in the selection process. In this regard, Paragraph No.9 of the counter affidavit filed by the respondent is extracted hereunder:

"9. It is further submitted that, the petitioner in para 7 of his writ petition has also stated that he had produced his NSS certificate before the Sub Committee during Certificate Verification. The Board had categorically mentioned the following in para 18 of the Information Brochure:

18.CERTIFICATE VERIFICATION:

i.The open candidates who qualify in Physical Measurement Test, Endurance Test and Physical Efficiency Test will be called for original certificate verification.

ii.The Departmental candidates who qualify in Endurance Test will be called for original certificate verification.

iii.The candidates who are called for Certificate Verification will have to produce their original certificate which they had uploaded during submission of the online application. Candidate, who fails to produce the Original Certificates will lose his/her claims with regard to communal reservation, age relaxation and special quota. New certificates/claim other than uploaded certificates will not be entertained.

Further, Certificates Verification is only the process of verification of Original Certificates uploaded by the candidates during online application and no fresh/new certificates were accepted during Certificate Verification."



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

6. 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.

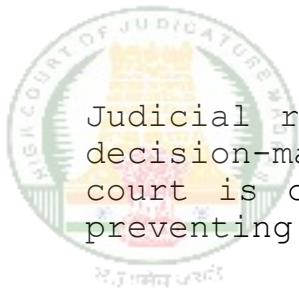
7. Regarding the scope of judicial review in the matter of selection, the Full Bench of Madhya Pradesh formulated questions of laws in respect of such selections in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and others**, reported in **2018 (1) CTC 353** and question Nos.2 and 3 are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

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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



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- (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.

16. 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.

17. In such view of the matter, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To:

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

+1 CC to M/s.J.LAWRANCE, Advocate (SR-13692[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-14220[F] dated 24/03/2022)

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and

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MGJ(01.04.2022) 5P 4C

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