

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12527 of 2021

Padmanathan

... Petitioner

Vs.

1.The Chief Director,
Directorate of Tamil Nadu Fire and
Rescue Services Department,
No.2, Rukmani Lakshmipathi Salai,
Egmore, Chennai – 08.

2.The Additional Chief Director,
Directorate of Tamil Nadu Fire and
Rescue Services Department,
No.2, Rukmani Lakshmipathi Salai,
Egmore, Chennai – 08.

3.The District Officer,
Tirunelveli Division,
Tamil Nadu Fire and Rescue Services Department,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to conduct 2nd medical test for the petitioner and consequently issue appointment order on successful completion of the medical test on the basis of the petitioner's representation dated 20-03-2019 within the time frame stipulated by this Court.

For Petitioner : Mr.J.C.Rathnavel Pandian

For Respondents : Mr.R.Suresh Kumar,
Addl. Government Pleader.

ORDER

The writ petitioner participated in the selection process conducted by the Tamil Nadu Uniform Services Recruitment Board for the post of Fireman in the year 2017. He secured 55 marks in the written test. He cleared physical test and also the physical endurance test. Medical test was conducted on 13.10.2017. When the selection list was announced, the petitioner's name did not find place therein. The petitioner was also not informed as to why he was not selected. He invoked the provisions of Right to Information Act and came to know that the Medical Board had certified that his eyes are unfit due to High Myopia (defective Dochart Vision). Challenging the stand of the respondents, the present writ petition has been filed.

2.The learned counsel for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He placed particular reliance on the order dated 29.10.2015 passed by the Hon'ble Division Bench in W.A.(MD)No.875 of 2015. He submitted that the petitioner

may be permitted to appear before the Medical Board and his fate can be decided based on the said result.

3.Per contra, the learned Additional Government Pleader for the respondents submitted that the petitioner cannot insist that he should be once again referred to Medical Board. He drew my attention to the decision of the Hon'ble Division Bench made in W.A(MD)No.75 of 2020 dated 23.01.2020, in which the Hon'ble Division Bench had held that when the candidate was found unfit during medical examination due to eye and ortho defect, it is not open to the Writ Court to interfere with the findings of Medical Officers in the absence of any incriminating evidence that such opinion is basically erroneous or otherwise. He also placed before me the certificate issued by the Medical Board on 20.10.2017. He called for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through materials on record. There is no dispute that the petitioner was not selected for the sole reason that he was found to be having defective vision. The learned counsel for the petitioner drew my attention to Rule 5A of Tamil Nadu Fire Sub-ordinate Service Rules. It is as follows:-

“Rule 5A. Medical Examination:

Every candidate selected for appointment to Class II category 3 by direct recruitment shall appear before the Medical Board constituted for the purpose. The Medical Board on examination of the candidate shall certify his fitness in the form specified in Annexure III. In case a candidate is certified to be temporarily unfit, he shall reappear before the Medical Board within a period of three months from the date on which he is so certified. On re-examination, if he is again found to be unfit, he shall be disqualified.”

5.The aforesaid Rule states that if the candidate was found to be temporarily unfit, he will be given a chance to reappear before the Medical Board within a period of three months from the date on which he was so certified. The petitioner's counsel would contend that such a second chance was not given to the petitioner. He also would point out that the certificate issued by the Medical Board does not indicate whether the petitioner was permanently unfit or temporarily unfit.

6.It is submitted by the petitioner that the case of the writ petitioner would fall only under the category of temporary unfitness. He seeks to make good the said submission by pointing out that the petitioner subsequently

underwent surgery in Aravind Eye Hospital and that his vision has now been certified to be free of any defect. It is well settled that ophthalmology has now advanced so much that several corrections are possible even if the eye is defective. Looked at from that perspective, it appears *prima facie* that the petitioner was suffering from a temporary defect. In other words, the defect with which his vision suffered could be remedied. The Medical Board ought to have approached the issue from this perspective. It ought to have taken a stand as to whether the petitioner's condition was permanent or temporary. Such a distinction was not made. If such a distinction had been made, the petitioner would have definitely been entitled to a second chance.

7.Taking note of the fact that the petitioner had cleared the written test, the physical test and also the physical endurance test and since the petitioner's case falls within the scope of Rule 5A, I direct the first respondent to let the petitioner undergo a second medical test before the Medical Board. If the Medical Board certifies that the petitioner's vision is free from any defect, the petitioner will be issued with an appointment order. The petitioner will be referred to Medical Board within a period of two months from the date of receipt of a copy of this order.

8.The writ petition is allowed on these terms. No costs.

09.09.2022

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.12527 of 20216.

G.R.SWAMINATHAN, J.

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W.P(MD)No.12527 of 2021

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