



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.14280 of 2021

W.M.P(MD).Nos.11286 and 11289 of 2021

WEB COPY

M.Yamuna

... Petitioner

Vs.

The Member Secretary,
The Tamil Nadu Uniform Services Recruitment Board,
Chennai-8.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to include the name of the petitioner with Register No.7610121 by accepting 0.5 marks under the National Service Scheme (NSS) to the next stage of selection process (i.e) medical examination and certificate verification as per the total marks secured by the petitioner to the post of Sub Inspector of Police (Taluk Armed Reserved and Tamilnadu Special Police) 2019 as per the notification of the respondent in No.2/2019 dated 08.03.2019.

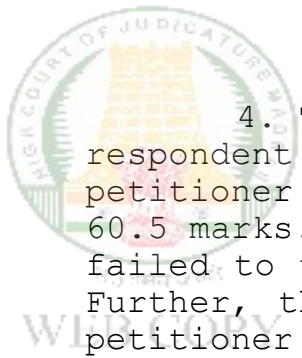
For Petitioner : Mr.G.Kannan
for Mr.S.Ramsundarvijayraj
For Respondent : Mr.Veera Kathiravan
assisted by Mr.A.K.Manikkam,
Special Government Pleader

O R D E R

The petitioner, pursuant to the recruitment notification issued by the respondent, participated in the process of selection for recruitment to the post of Sub-Inspector of Police [Taluk, Armed Reserve and Tamil Nadu Special Police].

2. The petitioner was successful in the written examination and physical verification test and viva voce. The grievance of the petitioner is that though she was successful in the process of selection, her case was not considered merely on the ground that the petitioner had failed to upload the NSS Certificate along with online application.

3. The learned counsel appearing for the petitioner reiterated that the petitioner secured 60.5 marks in total. Cut-off mark for selection was 61 marks for AR and 62.5 marks for Taluk Sub-Inspector of Police. In the event of taking into consideration the NSS Certificate, another 0.5 marks is to be added. If the said mark is added, the petitioner is within the cut-off mark and eligible for selection to the post of Sub-Inspector of Police [Taluk, Armed Reserve and Tamil Nadu Special Police].



4. The learned Additional Public Prosecutor appearing for the respondent objected the said contention by stating that the petitioner was not within the zone of consideration as she secured 60.5 marks. Adding NSS Certificate would not arise as the petitioner failed to upload the NSS Certificate along with online application. Further, the result for selection was published on 15.04.2021. The petitioner made a representation on 11.06.2021.

5. Therefore, the petitioner submitted a representation only after the publication of result for the purpose of adding NSS Certificate. Therefore, her case cannot be considered. The issue in this regard was already considered by this Court in W.P(MD).Nos.9490 of 2021 dated 22.03.2022. The relevant paragraphs are extracted hereunder:-

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, quasijudicial, 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.

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*.

5. In such view of the matter, this Writ Petition is dismissed. However, there shall be no order as to costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (PROTOCOL)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To
The Member Secretary,
The Tamil Nadu Uniform Services Recruitment Board,
Chennai-8.

+1 CC to M/s.SPL.GP. (SR-18362[F] dated 12/04/2022)

+1 CC to M/s.S. RAMSUNDARVIJAYARAJ, Advocate (SR-18513[F] dated 13/04/2022)

W.P.(MD) No.14280 of 2021

11.04.2022

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