



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.18830 of 2020

R.Karthik

... Petitioner

vs.

1.The Director General of Police
Mylapore

2.The Superintendent of Police
Ramanathapuram

3.Tamil Nadu Uniformed Services Recruitment Board
rep.by its Member Secretary
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 3rd respondent to give another chance for Rope Climbing in physical examination selection for Sub- Inspector of Police (Taluk AR and TSP) (Men and Transgender) 2019 within the period stipulated by this Court.

For Petitioner : Mr.S.Balasubramanian
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 is to direct the third respondent to give another chance to the petitioner for rope climbing in physical examination selection for Sub- Inspector of Police.

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. The petitioner was successful in the written examination and allowed to participate in the physical verification test and endurance test, however, he failed in the rope climbing.

3. A question arises whether High Court can interfere with the selection process, more specifically regarding rope climbing.

4. 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.

5. 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?

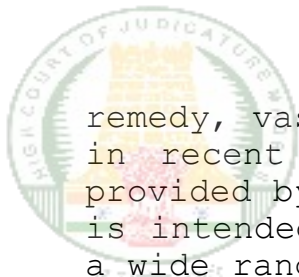
3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority 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?"

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

7. 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.

8. In the same case, Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 that this

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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.

9. 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.

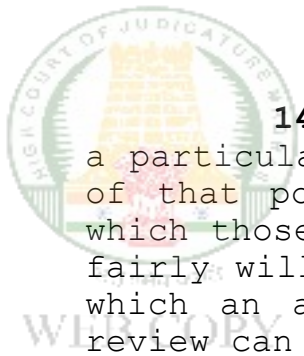
10. In *Lonrho plc v. Secretary of State for Trade and Industry* [(1989) 2 All ER 609] Lord Keith said that judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal.

11. 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.

12. 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.

13. 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.



14. 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.

15. Even though the petitioner was successful in the written examination and allowed to participate in the physical verification test and endurance test, however, he failed in the rope climbing. Therefore, the request of the petitioner cannot be considered by this Court.

16. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To:

1.The Director General of Police, Mylapore.

2.The Superintendent of Police,
Ramanathapuram.

3.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore, Chennai-600 008.

+1 CC to M/s.SPL GP (SR-14216[F] dated 24/03/2022)

W.P. (MD) No.18830 of 2020

22.03.2022