



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19372 of 2020

and

W.M.P. (MD) Nos.16166, 16168 & 16170 of 2020

WEB COPY

S.Beautlin Steffy

... Petitioner

vs.

1.The Chairman

Tamilnadu Uniformed Services
Recruitment Board
Chennai-8

2.The Member Secretary

Tamilnadu Uniformed Services
Recruitment Board
Chennai-8

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned provisional Viva Voce list for direct recruitment of Sub-Inspector of Police (Taluk, Armed reserved (Men and Woman/Transgender)) and Tamilnadu Special Police-2019 issued by the 2nd respondent by his proceeding dated 01.12.2020 in RC.No.860/R2/TNUSRB/2019 as illegal, arbitrary and quash the same and consequently direct the respondent to publish the physical efficiency test marks secured by the petitioner and to issue fresh provisional Viva Voce list for direct recruitment of Sub-Inspector of Police (Taluk, Armed reserved (Men and woman/Transgender)) and Tamilnadu Special Police-2019.

For Petitioner : Mr.Sasi Kumar.V.

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 quash the provisional viva voce list issued for the direct recruitment to the post of Sub Inspector of Police and to direct the respondents to publish the marks secured by the petitioner in the physical efficiency test and issue a fresh provisional viva voce list.



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 under sports quota BC category and participated in the selection process. She was successful in the written examination and allowed to participate in the physical verification test and endurance test.

3. However, the petitioner secured 45 marks in the selection process and the cut off marks for the sports quota BC category is 47.50 marks. Therefore, as the petitioner did not come within the zone of consideration, her candidature was not considered by the Authority Competent during selection process.

4. A question arises whether High Court can interfere with the selection process, more specifically awarding marks by the Authorities Competent.

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.

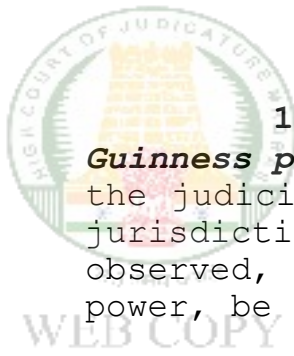
8. In the case of **Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141, 154]**, Lord Brightman said that judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, 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.

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.

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

Sd/-

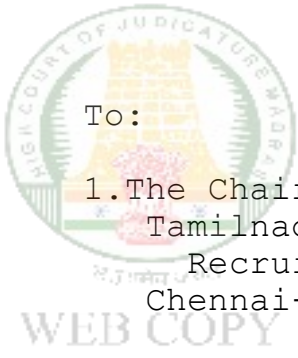
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To:

1.The Chairman,
Tamilnadu Uniformed Services
Recruitment Board,
Chennai-8.

2.The Member Secretary,
Tamilnadu Uniformed Services
Recruitment Board,
Chennai-8.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-13806[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-14270[F] dated 24/03/2022)

W.P. (MD) No.19372 of 2020
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W.M.P. (MD) Nos.16166, 16168 & 16170 of
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RD(31.03.2022) 5P 5C