



W.P(MD)No.23858 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23858 of 2022

and

W.M.P(MD)No.17932 of 2022

M.Rajesh

... Petitioner

Vs

The Director General of Police/
Director of Fire & Rescue Services,
Office of the Director of Fire and Rescue Services,
No.17, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the respondent in Na.Ka.No. 10824/Aa1/2019 dated 24.08.2022 and quash the same as illegal and unconstitutional and consequently direct the respondent to appoint the petitioner as a Fireman on the basis of selection conducted by the respondent in connection the Common Recruitment for the year 2020.



W.P(MD)No.23858 of 2022

For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.S.P.Maharjan
Special Government Pleader

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader for the respondent.

2.TNUSRB Chennai issued notification dated 17.09.2020 calling for applications for the post of Grade-II Police Constable/Grade-II Jail Warden/Fireman. Common recruitment examination for the year 2020 was also conducted. The writ petitioner herein applied in response to the said notification and expressed his preference for being appointed as Fireman. The writ petitioner cleared the written test, physical endurance test and physical efficiency test. The name of the writ petitioner herein finds mention in the provisional selection list published by TNUSRB for the post of Fireman. The said list was sent to the Director of Fire Services for verification of character and antecedents. When the verification exercise was undertaken, it came to be



W.P(MD)No.23858 of 2022

known that the writ petitioner herein was involved in criminal cases. The cases had ended in favour of the writ petitioner. The name of the writ petitioner had been deleted, when the final report was filed. Notwithstanding the said fact, the respondent has passed the impugned order by invoking the provision under Sub Rule 3 of Rule 5 B of the Special Rule for Tamil Nadu Fire Subordinate Service. Challenging the same, this writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and submitted that the impugned order will be to be set aside and writ petition must be allowed and the respondent must be directed to issue order of appointment.

4.The respondent filed a detailed counter affidavit. The learned Additional Advocate General took me through its contents. The core arguments of the respondent is that the employer is entitled to verify the character and antecedents and if found unsuitable, the employer can always decline to appoint the candidate even if he had been provisionally selected for appointment. The learned Additional Advocate General relied on the un-amended rule in support of his contention. In the alternative, he pleaded that the introduction of Sub Rule 3 in Rule 5 B does not make any major departure. It does not restrict the



W.P(MD)No.23858 of 2022

field of competition. It only adds an extra filter which the employer is competent to do. In this regard, the learned Additional Advocate General placed heavy reliance on two decisions of the Hon'ble Supreme Court namely, reported in **(2013) 4 SCC 540 (Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others)** and **(2017) 1 SCC 322 (V.Lavanya and Others Vs. State of Tamil Nadu Rep. by its Principal Secretary and Others)**. He drew my attention to the relevant paragraphs set out in the two decisions. He would also point out that merely because a candidate has been included in the selection list, he does not acquire any vested right to be appointed. In this case, even before the conclusion of the verification process, Sub Rule 3 had been introduced in the statue book and therefore, the petitioner's case will have to tested only in the light of the amended provision. He strongly contended that in a recent decision the Hon'ble Supreme Court had authoritatively held that an act of suppression will have to be viewed seriously and the nature and gravity of the case in which the candidate was involved and which was suppressed is not relevant. He referred to the decision made in **S.L.P.No.20860 of 2019 dated 26.09.2022 (Sathish Chandra Yadav Vs. Union of India and Others)** and the decision reported in **2022 SCC Online SC 597 (State of Rajasthan and Others Vs. Chetan Jeff)**. He pressed for dismissal of the writ petition.



W.P(MD)No.23858 of 2022

5.I carefully considered the rival contentions and went through the materials on record. There is no doubt that the recruitment process commenced in the year 2020. When the recruitment process commenced, Rule 5 B of Special Rules for Tamil Nadu Fire Subordinate Service read as under:-

5 B. Verification of character and antecedents.._ (1) *The list of candidates who are declared fit during the medical examination shall be sent by the Tamil Nadu Uniformed Services Recruitment Board along with their temporary and permanent addresses to the Director General of Police, Tamil Nadu for verification of their character and antecedents. A police verification report in respect of each such candidate shall be sent to the Tamil Nadu Uniformed Services Recruitment Board, indicating therein the follows:-*

(i) whether he has more than one wife living.

(ii) whether his character and antecedents are such as to qualify him for the service; and

(iii) the details of criminal cases, if any, in which he is involved.

(2) A candidate who has more than one wife living or who has convicted in any criminal case or in respect of whom a charge sheet is pending in a Court of law or against whom a criminal case is pending investigation shall be liable for disqualification.”



W.P(MD)No.23858 of 2022

6.A careful reading of the aforesaid rule indicates that conviction in a criminal case or pendency of a criminal case alone operated as disqualification.

Vide G.O.(Ms) No.386, Home (Police-XVII) Department dated, 14.09.2021, the following Sub Rule was introduced:-

AMENDMENT.

In the said Special Rules, in rule 5B, after sub-rule (2), the following sub-rule shall be inserted, namely:-

(3) No person shall be eligible for appointment to the Service by direct recruitment unless he satisfies the appointing authority that he has not involved in any criminal case before police verification.

Explanation (1) .-- *A person who is acquitted or discharged on the benefit of doubt or due to the fact that the complainant turned hostile shall be treated as a person involved in a criminal case.*

Explanation (2).-- *A person involved in a criminal case at the time of police verification and the case is yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment”.*



W.P(MD)No.23858 of 2022

7. In my view, introduction of Sub Rule 3 added an additional ground of disqualification. This rule was not in the rule book, when the writ petitioner applied in response to the recruitment notification. As rightly pointed out by the learned counsel for the writ petitioner, his rights will have to be governed by the rule position that prevailed when the selection process commenced. The Hon'ble Supreme Court in the decision reported in **(2010) 13 SCC 467 (State of Bihar and Others Vs. Mithilesh Kumar)** held that the norms or rules that existed on the date when the process of selection begun will control such selection and any alteration to such norms would not affect the continuing process, unless the same was given retrospective effect. A careful reading of G.O(Ms)No.386, dated 14.09.2021 indicates that it was not meant to operate retrospectively but only prospectively. The learned Additional Advocate General placed heavy reliance on the decision reported **Tej Prakash Pathak's case supra**. Though the said decision is fairly supportive of the stand now taken by the respondent, the final paragraph indicates that no authoritative pronouncement was made. The said decision concludes as follows “whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement”. The matter was referred to a Larger Bench and



W.P(MD)No.23858 of 2022

the decision is still awaited. Therefore, I have to necessarily come to the conclusion that no definitive pronouncement was rendered in the said decision.

The subsequent decision of the Hon'ble Apex Court reported in **(2017) 1 SCC 322 (V.Lavanya and Others Vs. State of Tamil Nadu Rep. by its Principal Secretary and Others)** proceeds on the premise that an authoritative pronouncement had been rendered in **Tej Prakash Pathak's case** which is actually not the case. I am, therefore, inclined to follow **Mithilesh Kumar's case**.

8.The impugned order is anchored only on the amended rule namely, Sub Rule 3 of Rule 5 B. I have held that since it adds one more category of disqualification and it was introduced only after the commencement of the recruitment process, the petitioner cannot be prejudiced by the same. On this ground, the impugned order is set aside and the writ petition is allowed. The respondent is directed to issue order of appointment to the writ petitioner herein within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.23858 of 2022

To

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