



W.P(MD)No.24786 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24786 of 2022

S.Tamilselvan

... Petitioner

Vs.

- 1.The Director,
Tamil Nadu Fire and Rescue Services,
Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.
 - 2.Tamilnadu Uniformed Services Recruitment Board,
Rep. by its Chairman,
Old Commissioner Office Campus,
Egmore, Chennai – 600 008.
 - 3.The Director General of Police,
O/o the Director General of Police,
Chennai - 4.
 - 4.The Superintendent of Police,
O/o.The Superintendent of Police Office,
Tenkasi District.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.10824/Aa1/2019 dated 24.08.2022 on the file of the respondent No.1 and quash the same as illegal and



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consequently for a direction, directing the respondent No.1 to appoint the petitioner in the post of Fireman within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman,
For Mr.T.Lajapathi Roy.

For Respondents : Mr.Veerakathiravan,
Additional Advocate General,
Assisted by Mr.A.K.Manikkam,
Spl. 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 respondents.

2.TNUSRB Chennai issued recruitment notification dated 17.09.2020 calling for applications from eligible candidates for the post of Grade-II Police Constable/Grade-II Jail Warden/Fireman for the year 2020. The petitioner applied in response thereto. The petitioner successfully cleared the written test. However, by the impugned communication dated 24.08.2022, he was disqualified on the ground that he was found to have been involved in a criminal case. It is true that the petitioner was shown as fourth accused in S.C.No.70 of 2017 on the file of the II Additional and District and Session



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Judge (PCR), Tirunelveli but it ended in acquittal on 12.12.2018. The disqualification order came to be made by virtue of the amendment made to the relevant recruitment rule vide G.O.(Ms) No.386, Home (Police-XVII) Department dated 14.09.2021. The question as to whether an amendment to the recruitment rule made subsequently can have an adverse impact on the petitioner was an issue that had already been decided. Vide order dated 13.10.2022 in W.P.(MD)No.21216 of 2022 etc batch, I had held as follows:-

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



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(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.”

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”.*

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 petitioners applied in response to the recruitment notification. As rightly pointed out by the learned counsel for the writ petitioners, their 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 operative retrospectively but only prospectively. The learned Additional Advocate General placed heavy reliance on the decision in **Tej Prakash Pathak's case supra**. Though the said decision is fairly supportive of the stand now taken by the respondents, 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 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.**



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*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.All the impugned orders are 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 petitioners cannot be prejudiced by the same. On this ground, the impugned orders are set aside and the writ petitions are allowed. The first respondent is directed to issue orders of appointment to the writ petitioners herein within a period of eight weeks from the date of receipt of a copy of this order.”

3.Adopting the very same approach, the impugned order is quashed and the writ petition is allowed. The first respondent is directed to appoint the petitioner in the post of Fireman forthwith and without any delay. No costs.

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Index : Yes / No
Internet : Yes/ No
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Egmore, Chennai - 600 008.
- 2.The Chairman,
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G.R.SWAMINATHAN, J.

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