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W.P.No.23349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.23349 of 2023

S.Naveen Kumar
S/o.Subramani

... Petitioner

Vs

1. The Deputy Inspector General of Police
Coimbatore Range,
Coimbatore (I/C)
Salem Range, Salem.
 2. The Chairman
Tamil Nadu Uniformed Services Recruitment Board
Chennai.
 3. The Director General of Police and Head of Police Force
Tamil Nadu
Chennai-600 004.
 4. The Director General of Police
Tamil Nadu Police Academy
Chennai-600 127.
 5. The Director / Additional Director General of Police
Tamil Nadu Police Academy
Chennai-600 127.
 6. The Superintendent of Police
Dharmapuri District.
- ... Respondents



W.P.No.23349 of 2023

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 1st respondent having reference C.No.A2/2290/2023 and R.O.No.147/2023 dated 23.05.2023 and 5th respondent in his proceedings having reference No.C.No.T2/6654/2023 and A.O.No.147/2023 dated 26.05.2023 and quash the same as illegal, arbitrary and discriminatory in nature and consequentially, direct the 1st respondent to reinstate the petitioner herein forthwith with back wages and all other attendant benefits within the time period.

For Petitioner : Mr.R.Bharath Kumar
For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader
for R1, R3 to R6
Ms.D.Sowmi Dattan
Standing Counsel for R2

ORDER

The petitioner was appointed as a Sub-Inspector of Police by the first respondent herein on 04.02.2023. On such appointment, he was directed to undergo one year basic institutional training at Tamil Nadu Police Academy, Oonamanchery, Chennai. During the course of training, on 10.03.2023, at about 5.00 p.m., the petitioner had complained shortness / difficulty in breathing and after initial treatment at Academy Dispensary, he was admitted in the Rajiv Gandhi Government General Hospital, Chennai from 13.03.2023 to 22.03.2023. Thereafter, he was subjected to



W.P.No.23349 of 2023

medical examination before the Medical Board and by a report of the Medical Board dated 13.04.2023, it was opined as follows:

'As per the Cardiologist opinion (17490/3/4) - patient is not fit for jobs involving strenuous exercise either during training / induction or subsequently involving strenuous exercise during the discharge of duty because of risk of sudden cardiac death. Patient not fit for SI training.'

2. On the basis of the opinion of the Medical Board, the petitioner was issued with a show cause notice, to which, he had sought for another medical examination by different Board and also for alternate job. However, by taking into account the Medical Board's opinion that he is not fit for jobs involving strenuous exercise either during training or induction, he was terminated from service by the Deputy Inspector General of Police, Coimbatore on 23.05.2023. Challenging the order of termination, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that as per Section 20 of 'the Rights of Persons with Disabilities Act, 2016 (49 of 2016)' [hereinafter 'said Act'] the petitioner would be entitled for alternate



W.P.No.23349 of 2023

employment and therefore, the order of termination cannot be sustained in the eye of law.

4. Per contra, the learned Special Government Pleader placed reliance on the averments made in the counter affidavit and submitted that the decision of termination of service of the petitioner was only on the basis of the opinion of the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai, which had stated that the petitioner is not fit for jobs involving strenuous exercise during training or induction. Since the duties of the Sub-Inspector of Police requires strenuous physical training as well as tasks, the petitioner would not be in a position to undergo such duties and therefore, the order of termination was passed. Section 20 of said Act reads as follows:

'20. Non-discrimination in employment – (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide



W.P.No.23349 of 2023

WEB COPY

reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service;

provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.'

5. As per the aforesaid provision, when any employee, after acquiring disability is found to be not suitable for the post, he was holding, he shall be shifted to some other post with the same pay scale and service benefits and termination of such employee on medical grounds would be impermissible. In the instant case, after the petitioner has been regularly appointed through a recruitment process and has also been subjected for training, has developed medical ailment, owing to which, it is claimed that



W.P.No.23349 of 2023

he cannot perform any strenuous exercise either during training period or thereafter. If that be so, he would be entitled for protection under Section 20 of said Act. Thus, rather than terminating the service of petitioner, the respondents ought to have assigned him with lighter duty, to which, his medical condition may permit.

6. In view of Section 20 of the said Act, the order disregarding the petitioner's request made in the reply to the show cause notice seeking for alternate employment and termination of service cannot be legally sustained and hence, the impugned order dated 23.05.2023 bearing reference C.No.A2/2290/2023 and R.O.No.147/2023 on the file of the first respondent is quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass suitable orders reinstating the petitioner back into service, assign duties of alternate employment, to which, his medical condition may permit. Such orders of reinstatement shall be passed at least within a period of two weeks from the date of receipt of a copy of this order.



W.P.No.23349 of 2023

WEB COPY
costs.

The Writ Petition stands allowed. There shall be no order as to

07.12.2023

Index: Yes
Speaking order
Neutral Citation : Yes

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WEB COPY



W.P.No.23349 of 2023

M.S.RAMESH,J.

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W.P.No.23349 of 2023

07.12.2023