



W.P.No.30114 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30114 of 2023
and W.M.P.Nos.29741 & 29742 of 2023

B. Santhosh

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Department (Police XVII),
Fort St. George, Chennai – 600 009.

2.The Chairman,
Director General of Police,
Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai – 600 008.

3.The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai – 600 008.

4.The Director of Fire & Rescue Services,
Director General of Police,
No.17, Rukmani Lakshmipathi Road,
Egmore, Chennai – 600 008.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 24.08.2022 in Na.Ka.No.10824/Aa1/2019 issued by the 4th respondent rejecting appointment to the petitioner as Firemen, citing G.O.Ms.No.386 dated 14.09.2021 amending the Rule 5(B) of the Tamil Nadu Fire Subordinate Service Rules and quash the same as issued without application of mind and contrary to settled proposition of law and further direct the respondents to appoint the petitioner as Fireman in the Tamil Nadu Fires Subordinate Service based on the provisional selection list dated 25.11.2021 in pursuant to the Notification vide Advertisement No.1/2020 dated 17.09.2020 for the recruitment of Grade II Police Constable, Grade II Jail Warder & Fireman, taking into account of the police verification report with all the consequential benefits in par with the other selected candidates.

For Petitioner : Mr.S. Indrajith

For R1 & R4 : Mr.P. Ganesan,
Government Advocate

For R3 & R4 : Mr.P. Kumaresan,
Additional Advocate General VII
assisted by Ms.Sowmi Dattan,
Standing Counsel for TNUSRB



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ORDER

Heard the learned counsel for the petitioner, learned Government Advocate for the first and fourth respondents, as well as the learned Additional Advocate General appearing for the second and third respondents.

2. Pursuant to the notification relating to the Advertisement No.1/2020 dated 17.09.2020, issued for the recruitment of Grade-II Police Constable etc., the petitioner's candidature was rejected by placing reliance on Rule 5(B) of the Tamil Nadu Fire Subordinate Service Rules, which places an embargo on the candidates who have more than one wife living or his character and antecedents to qualify or his involvement in the criminal case.

3. Rule 5(B) was introduced to G.O.Ms.No.386 dated 14.09.2021. Apparently, the Government Order had come into force only after the notification for selection dated 17.09.2020, was issued and thus, rejecting



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the petitioner's candidature by placing reliance on the subsequent Government Order, is impermissible in law.

4. This issue has come up for consideration in the case of '**S. Karthi Vs. The State of Tamil Nadu, Home Department & others**' passed in **WP.No.25020 of 2022 etc. batch, on 05.07.2023** and a learned Single Judge of this Court had referred to the order passed by the Hon'ble Division Bench of this Court in **WA.MD.Nos.232 & 233 of 2023**, whereby, the notification therein, was struck down through a judgment **dated 08.03.2023** and had directed the Recruitment Agency to consider the candidates therein for appointment. The relevant portion of the order in **S. Karthi's case (supra)** reads as follows:-

.... “2. Learned counsel for the petitioners as well as the learned Additional Advocate General brought to the notice of this Court that the Amendment brought in Sub Rule 3 on 14.09.2021 was struck down by the Madurai Bench of Madras High Court and the same has been challenged before the Division Bench in **W.A (MD)Nos.232 and 233 of 2023** and the Division Bench by judgment dated 08.03.2023 directed the authority to consider suitability of the petitioners in terms of



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Rule 5 B(1) and take appropriate decision. Learned counsel for the petitioners seek similar direction in these writ petitions also.

3. Learned Additional Advocate General would submit that they have strictly followed the judgment of the Division Bench of the Madurai Bench of Madras High Court and they have also followed the guidelines issued by the Apex Court in the case of Satish Chandra Yadav vs Union of India & Others reported in 2022 Live Law (SC) 798, wherein the Apex Court has held as follows:-

“ 69. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:-

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials-more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society.(See Commissioner of Police vs Raj Kumar (2021) 8 SCC 347).



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b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.



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e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?

4. However, the very notification bringing the amendment was struck down by this Court and the Division Bench of Madurai Bench of Madras High Court by judgment dated 08.03.2023 directed the authority to consider suitability of the petitioners in terms of Rule 5 B(1) and take appropriate decision. The same direction follows in this case also.

5. Learned counsel for the petitioners submit that the petitioners in all these writ petitions have not suppressed the pendency of the criminal case and the same has been disclosed in the application. That apart it is also brought to the knowledge of this Court that some of the candidates are also appointed despite the fact that they were having criminal case and subsequently the same was closed.



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6. This Court expect that the authorities should act fairly in all cases. Accordingly, the appointing authority viz., The Director of Fire & Rescue Services is directed to consider suitability of the petitioners in terms of Rule 5 B(1) and take appropriate decision within a period of two months from the date of receipt of a copy of this order.....”

5. Thus, when the amendment to Rule 5(B) brought in through G.O.Ms.No.386 dated 14.09.2021, can only have a prospective effect, placing reliance on the same for the notification that was issued much earlier on 17.09.2020, is not permissible in law.

6. Accordingly, the action of the respondents in disqualifying the petitioner's candidature, by placing reliance on Rule 5(B) of the Tamil Nadu Fire Subordinate Service Rules, is held as illegal and invalid. Consequently, there shall be a direction to the third respondent herein, to subject the petitioner to further selection process and if found otherwise eligible, shall provisionally declare him as a candidate, who has qualified in the recruitment process. Such action shall be taken at least within a period of one (1) week from the date of receipt of a copy of this order.



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7. With the above direction, the Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.

20.12.2023

Index:Yes

Speaking order

Neutral Citation: Yes

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Issue on 04.01.2024.

To

- 1.The Secretary to Government of Tamil Nadu,
Home Department (Police XVII),
Fort St. George, Chennai – 600 009.
- 2.The Chairman,
Director General of Police,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai – 600 008.
- 3.The Member Secretary,
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M.S.RAMESH,J.

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