



W.P(MD)No.1271 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1271 of 2023

M.Ashok Kumar

... Petitioner

Vs.

1.The Director General of Police,
State Head Quarters Office,
Chennai-600 004.

2.The Superintendent of Police,
Dindigul District,
Dindigul.

3.The Inspector of Police,
Nilakottai Police Station,
Dindigul District.

4.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai-600 008.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned proceedings in C.No.A9/22211/344/2020, dated 10.06.2022 by the second respondent and to quash the same as illegal and consequently, directing the respondents 1 to 3 herein to issue appointment order to the petitioner to the post of Grade-II Police Constable for the year 2020.



W.P(MD)No.1271 of 2023

For Petitioner : Mr.P.Kalaiyarasi Bharathi

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader

ORDER

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

2. The petitioner is an aspirant for the post of Police Constable Grade-II. He took part in the recruitment process held in the year 2020. The recruitment notification was issued on 07.10.2020. The police verification was held on 04.12.2021. During the intervening period, the petitioner came to be implicated in Crime No.618 of 2021 on the file of the Nilakkottai Police Station. The case of the petitioner was that he never took part in the crime but only endeavoured to separate warring factions and to pacify the situation. Final report was filed on 05.01.2022 and the petitioner came to be deleted from the array of the accused. He was shown as witness. The petitioner is figuring as P.W.10. He has been described as eye witness to the incident. The petitioner was



W.P(MD)No.1271 of 2023

successful in the written examination. He also cleared the physical efficiency and endurance test. By the impugned order dated 09.01.2022, the second respondent had disqualified the petitioner. Challenging the same, this writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Additional Advocate General submitted that the impugned order does not warrant interference in view of Rule 14(b) of Tamil Nadu Special Police Subordinate Service Rules. He drew my attention to Explanation II which states that even if the criminal case has been closed as 'Mistake of Fact', the candidate can participate only in the next recruitment. He emphasized that the validity of the Rule was upheld by the Larger Bench in the decision reported in **2014 (2) CTC 337 (J.Alex Ponseelan Vs. Director General of Police)**. He called upon this Court to go by the Full Bench and the Larger Bench and ignore the



W.P.(MD)No.1271 of 2023

decision rendered by the Benches of lesser strength. He pointed out that the order in W.P.(MD)No.7773 of 2021, dated 21.04.2021 has been put to challenge in W.A.(MD)No.42 of 2022. He also would point out that in the order dated 05.06.2023 in W.A.(MD)Nos.938 of 2020 etc batch relied on by the petitioner's counsel, there is no reference to the discussion in *Alex Ponseelan* Judgement. As regards Explanation-II, in any event, when the validity of the Rule has been upheld as such, it is not for this Court to ignore the same. He called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions. The learned Additional Advocate General is right in his contention that where there is a conflict between a decision of the Larger Bench and a Bench of lesser strength, this Court ought to go by the Larger Bench decision. But where the Bench comprising lesser strength had rendered its decision after referring to the decision of the Larger Bench, the subsequent Benches either will have to follow it or to make reference once again. I am sitting singly and not in a Division Bench, I am fully bound by the order dated 05.06.2023 made in W.A.(MD)No.938 of 2020 etc., batch. The Hon'ble



W.P(MD)No.1271 of 2023

Division Bench had made a specific reference to ***J.Alex Ponseelan*** Judgment as well as the relevant Rule. The ***Alex Ponseelan*** Judgment was rendered in the year 2014. Subsequently, there was a communication from the office of the DGP. Taking into account the various aspects, the Hon'ble Division Bench held as follows:-

“(c). Therefore, it is clear that if a candidate has been discharged or the case has been closed as mistake of fact or if the F.I.R or charge sheet have been quashed on merits, this will lead to only one conclusion that the candidate was not at all involved in the said criminal case. His candidature should be considered in the said selection itself without relegating him to the next selection process.”

6. The case on hand falls within the scope of the aforesaid ratio. In this view of the matter, the order impugned in the writ petition is set aside. The respondents are directed to appoint the petitioner as Police Constable Grade-II. The petitioner of-course will be entitled to monetary benefits only from the date when he joins the duty. However, his seniority will be placed on par with this batchmates within a period of eight weeks. The Writ Petition is allowed. No costs.

23.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
rmi



WEB COPY



W.P(MD)No.1271 of 2023

G.R.SWAMINATHAN, J.

rmi

To

- 1.The Director General of Police,
State Head Quarters Office,
Chennai-600 004.
- 2.The Superintendent of Police,
Dindigul District,
Dindigul.
- 3.The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
- 4.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai-600 008.

W.P(MD)No.1271 of 2023

23.06.2023