



W.A.(MD)No.232 & 233 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
AND
THE HONOURABLE MRS.JUSTICE **L.VICTORIA GOWRI**

W.A.(MD)No.232 and 233 of 2023
and
CMP(MD)Nos.2824 and 2825 of 2023

W.A.(MD)No.232 of 2023

1.The Director

Tamil Nadu Fire & Resue Services,
No.17, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

2.The Tamil Nadu Uniformed Service Recruitment Board,

Rep. by its Chairman,
Old Commissioner Office Campus,
Pantheon Road, 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,
Theni District.

: Appellants/Respondents

Vs.

A.Muralitharan

: Respondents / Writ Petitioner



W.A.(MD)No.232 & 233 of 2023

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order passed in W.P(MD)No.21751 of 2022 dated 13.10.2022.

For Appellant : Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.S.P.Maharajan
Special Government Pleader

For Respondent : Mr.Aswin Rajasimman for
M/s Lajapathi Roy Associates

W.A.(MD)No.233 of 2023

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home Department,
Secretariat, Chennai – 600 009.
- 2.The Chairman
Tamil Nadu Uniformed Service Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai – 600 008.
- 3.The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai – 600 008.
- 4.The Director General of Police,
O/o the Director General of Police,
Chennai – 600 004.



W.A.(MD)No.232 & 233 of 2023

WEB C

5.The Director

Tamil Nadu Fire & Resue Services,
Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

6.The Superintendent of Police,
O/o the Superintendent of Police,
Thanjavur, Thanjavur District.

: Appellants/Respondents

Vs.

T.Vivek

: Respondents / Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order passed in W.P(MD)No.21216 of 2022 dated 13.10.2022.

For Appellant

: Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.S.P.Maharajan
Special Government Pleader

For Respondent

: Mr .Mohammed Imran for
M/s Ajmal Associates



W.A.(MD)No.232 & 233 of 2023

COMMON JUDGMENT

WEB COPY (Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The State is on appeal aggrieved by the order made in the batch of writ petitions, wherein, the Writ Court, after quashing the orders of the Director of Fire and Rescue Services disqualifying the respective petitioners in terms of Sub Rule 3 in Rule 5B of the Tamil Nadu Fire Subordinate Services, issued a positive direction directing issuance of appointment orders to all the petitioners. The process for recruitment of Constables Grade - II in the Tamil Nadu Uniformed Services began on 17.09.2020. Rule 5 B as it stood on the date of the issuance of the notification, is as follows:-

“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



W.A.(MD)No.232 & 233 of 2023

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

WEB COPY

(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.”

As the recruitment process was on a change in Sub Rule 3 introduced by way of an amendment on 14.09.2021, the said Sub Rule 3 Reads as follows:-

(3) No person shall be eligible for appointment to the Service by direct recruitment unless he satisfies the appointing authority that he was 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.A.(MD)No.232 & 233 of 2023

2.After the recruitment process was over, the Director of Tamil Nadu Fire and Rescue Services passed identical orders disqualifying the petitioners in this batch of writ petitions on the ground that they stood disqualified in terms of Sub-Rule 3 of Rule 5 B of the Tamil Nadu Fire Subordinate Service Rules. The petitioners in the writ petitions challenged the said orders.

3.The main basis of challenge was that Sub Rule 3, which was introduced after the selection had began, could not have been applied to the petitioners and such application would amount to changing rules of the games after the game had begun. The Writ Court accepted the said contention and while setting aside the order impugned in the writ petitions, a positive direction was issued by the Writ Court directing issuance of appointment orders to all the petitioners.

4.We have heard Mr.Veerakathiravan, learned Additional Advocate General appearing for the appellants and Mr.Aswin Raja Simman and Mr.Mohammed Imran learned counsels appearing for all the respondents.

5.While Mr.Veera kathiravan, learned Additional Advocate General would justify the orders passed by the authorities, contending that the Writ



W.A.(MD)No.232 & 233 of 2023

Court ought not to have issued a positive direction for issuing appointment orders, by pointing out that even if the Sub Rule 3 is not taken into account still the appointing authority had power to verify antecedents under Rule 5 B(1) as well as (2). Therefore, the Writ Court ought to have given an opportunity to the employer to consider the character of these persons, who are to be appointed to the Uniformed Services.

6.Both Mr.Aswin Raja Simman and Mr.Mohammed Imran appearing for the respondents would submit that the orders impugned in the writ petitions having been passed only based on Sub Rule 3, cannot be sustained. We are in agreement with the contention of the learned counsel for the respondents that the orders impugned in the writ petitions having been passed only based on Sub-Rule 3 cannot be sustained, since the Sub Rule 3 was introduced after the commencement of the selection process. However, we cannot, at the same time, preclude the employer from looking into antecedents of the persons, who are to be employed in the Uniformed Services in terms of Rule 5 B (1) and (2). Therefore, while affirming the orders in the writ petitions, we set aside the positive direction issued by the Writ Court to issue appointment orders to the petitioners. The Appointing Authority, namely, the Director of Fire and Rescue Services will consider the suitability of the petitioners in terms of Rule 5 B (1)



W.A.(MD)No.232 & 233 of 2023

(2) and take appropriate decision. Needless to state that the authority will examine the issue with an open mind and without being influenced by any of the observations made either by the Writ Court or by us in this Judgment. The authority will pass the orders within a period of 12 weeks from the date of receipt of a copy of this order.

7. These Writ Appeals are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M.,J] (L.V.G.,J]
08.03.2023

skn
NCC : Yes/No
Index : Yes / No
Internet : Yes



WEB COPY



W.A.(MD)No.232 & 233 of 2023

**R.SUBRAMANIAN.,J.
AND
L.VICTORIA GOWRI.,J.**
skn

**W.A.(MD)No.232 and 233 of 2023
and
CMP(MD)Nos.2824 and 2825 of 2023**

08.03.2023.