



W.A(MD)No.437 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM :

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

**W.A(MD)No.437 of 2023
and
C.M.P(MD)No.4664 of 2023**

1. The Member Secretary,
Tamilnadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai 600 008.

2. The Chairman / Sub Committee,
Tamilnadu Uniformed Services Recruitment Board,
Egmore, Chennai-8.

3. The Chief Director,
Directorate of Tamil Nadu Fire and
Rescue Service Department,
No.17, Rukmani Lakshmipathi Salai,
Egmore, Chennai-08.

... Appellants

vs.

C.Thirumavalavan

... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent,
against the order passed in W.P(MD)No.22667 of 2022 dated
13.10.2022.



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For Appellants : Mr.Veera Kathiravan
Additional Advocate General
For Respondent : Mr.M.Rajarajan

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JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The State is on appeal aggrieved by the order made in W.P(MD)No.22667 of 2022 dated 13.10.2022, wherein, the Writ Court, after quashing the order of the 1st appellant, disqualifying the petitioner in terms of Sub Rule 3 in Rule 5B of the Tamil Nadu Fire Subordinate Services, issued a positive direction directing issuance of appointment order to the petitioner. 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:-



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- (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
- (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."

2. 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



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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.”

3. After the recruitment process was over, the 1st appellant passed orders disqualifying the petitioner on the ground that he stood disqualified in terms of Sub-Rule 3 of Rule 5 B of the Tamil Nadu Fire Subordinate Service Rules. The petitioner in the writ petition challenged the said order.

4. 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 petitioner 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 petition, a positive direction was issued by the Writ Court directing issuance of appointment order to the petitioner.

5. We have heard Mr.Veerakathiravan, learned Additional Advocate General appearing for the appellants and Mr.M.Rajaraman, learned counsel appearing for all the respondent.



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6. While Mr.Veera kathiravan, learned Additional Advocate General would justify the orders passed by the authorities, contending that the Writ Court ought not to have issued a positive direction for issuing appointment order, 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 the person, who is to be appointed to the Uniformed Services.

7. Mr.Rajarajan, learned counsel appearing for the respondent would submit that the order impugned in the writ petition having been passed only based on Sub Rule 3, cannot be sustained.

8. We are in agreement with the contention of the learned counsel for the respondent that the order impugned in the writ petition 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



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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 order in the writ petition, we set aside the positive direction issued by the Writ Court to issue appointment order to the petitioner. The Appointing Authority, namely, the Director of Fire and Rescue Services will consider the suitability of the petitioner in terms of Rule 5 B (1) (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.

9. The Writ Appeal is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
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Index : Yes / No
Neutral Citation : Yes / No



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