



WEB COPY



W.P.No.35420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35420 of 2023
and
W.M.P.No.35377 of 2023

S.Saravanan

...Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Home Department (Police XVII),
Fort St.George, Chennai – 600 009.
- 2.The Chairman,
Director General of Police,
Tamilnadu Uniformed Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore, Chennai – 600 008.
- 3.The Member Secretary,
Tamilnadu 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 Lakshmi pathi Road,
Egmore, Chennai – 600 008.

... Respondents



W.P.No.35420 of 2023

Prayer : Writ Petition filed under Article 226 of Constitution of India praying

for the issuance of 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 Tamilnadu 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 and amp; MET 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 Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by
Dr.T.Seenivasan
Special Government Pleader



W.P.No.35420 of 2023

WEB COPY

ORDER

This writ petition has been filed challenging the Amendment and also the order of the 4th respondent rejecting to appoint the petitioner on the ground that the petitioner is facing the criminal case or suppressing the pendency of the criminal case and on being dissatisfied with his previous conduct. Challenge has been made mainly on the ground that the Amendment has been brought subsequent to the Notification.

2. The learned counsel for the petitioner 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 this Court and the same has been challenged before the Division Bench in W.A.(MD).No.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 Rule 5 B(1) and take appropriate decision. Learned counsel for the petitioner seeks similar direction in this writ petition also.



W.P.No.35420 of 2023

3. Learned Additional Advocate General would submit that they have strictly followed the judgement of the Division Bench of the Madurai Bench of this Court and they have also followed the guidelines issued by the Hon'ble Apex Court in the case of **Satish Chandra Yadav vs Union of India & others** reported in **2022 Live Law (SC) 798**, wherein the Hon'ble 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 scrutinized 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).

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 completed 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



W.P.No.35420 of 2023

terminated from service.

d) The generalizations 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.

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 this Court by judgment dated 08.03.2023, directed the authority to consider suitability of the petitioner in terms of Rule 5 B(1) and take appropriate decision. The same direction follows in this case also.

5. The learned counsel for the petitioner submitted that the petitioner in this writ petition has 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 were closed.



W.P.No.35420 of 2023

WEB COPY

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 the suitability of the petitioner in terms of Rule 5 B(1) of Tamil Nadu Fire Subordinate Service Rules and take appropriate decision within a period of two months from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

03.01.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

gvn



WEB COPY



W.P.No.35420 of 2023

To

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

G.K.ILANTHIRAIYAN. J,



WEB COPY



W.P.No.35420 of 2023

gvn

W.P.No.35420 of 2023
and
W.M.P.No.35377 of 2023

03.01.2024