

(2016) 07 MAD CK 0064

In the Madras High Court

Case No : W.A (MD)No. 792 of 2016 and C.M.P(MD)No. 4797 of 2016. (against the order of this Court dated 26.10.2015 passed in W.P(MD)No.19170 of 2015.)

K. Annapoornam

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CWC 282 : (2016) 3 LLN 724

Hon'ble Judges : Mr. Nooty Ramamohana Rao and Mr. S.S. Sundar, JJ.

Bench : Division Bench

Advocate : K. Annapoornam, Party in Person, for the Appellant; Mr. K. Chellapandian, Advocate, Additional Advocate General assisted by Mr. S. Chandrasekar, Government Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—;This appeal is preferred by the writ petitioner/appellant calling in question the correctness of the judgement and order dated 26.10.2015 passed in the writ petition instituted by her.

2. The writ petitioner/appellant is one of those otherwise talented candidates who could not end up in getting selected to the post of Sub Inspector of Police (Women). The State has taken out an advertisement on 08.02.2015, inviting applications for filling up of as many as 1,078 posts of Sub Inspector of Police. It is not in doubt that 30% of the posts are required to be filled in by women candidates. The selection process comprised of three stages. The first is a written test, followed by the second stage of selection process comprising of Physical Measurement Test/Physical Endurance Test/Physical Efficiency Test. The last and final stage of selection, comprised of viva-voce examination.

3. As can only be expected, more than 1.5 lakhs candidates who are desirous of getting selected, offered their candidature in response to the notification. After

the written test was conducted, successful candidates were subjected to next stage of process, in the ratio of 1:5. The writ petitioner/appellant who is stated to hold M.A., (English Literature), a Post-Graduate Degree, cleared the written test and then, she is one of those candidates, who has been made to go through the second stage of selection. She has cleared the Physical Standard Test. When it came to Physical Endurance Test, three different sporting events are chosen to measure the physical efficiency of the candidates. First is long jump. The next is shot-put and the third is a 100 metres race. The minimum standard to clear the said tests was prescribed. At the same time, those who have put in a better performance than the minimum required efficiency, are sought to be rewarded by grading their performance as "Two Star Performance". The writ petitioner/appellant has cleared the long jump and shot-put test by securing "Two Star Performance".

4. When it came to 100 metres running, the female candidates are required to complete the race in 17.50 seconds. Unfortunately for the writ petitioner/appellant, she completed the race in 18.09 seconds and thus, fell outside the limit by 0.59 seconds. As a consequence, she has been declared to have failed to clear the Physical Efficiency Test and hence, she has not been subjected to the last and final stage of selection process, namely, viva-voce examination. That is why the writ petitioner instituted the writ petition before the learned Single Judge, who, dismissed the same by order dated 26.10.2015. Challenging the same, the present writ appeal came to be filed.

5. We had the benefit of hearing the writ petitioner/appellant on the last occasion as well as today.

6. The writ petitioner/appellant has pointed out the following aspects :

6.1. When the writ petitioner/appellant has already secured "Two Star Performance" in two out of the Physical Efficiency Tests and consequently, secured 2+2 marks, declaring her to have failed the test on the ground that her performance in running, has fallen outside the bracket of the standard prescribed, is unjust.

6.2. It is also contended that ultimately the candidates who have secured lesser marks than her, have ended up and got selected and this has resulted, because some of the candidates who have been selected, have been more adept in sporting events. Whereas the writ petitioner/appellant was good at academics. The writ petitioner/appellant has also pointed out that when it came to the question of transgenders, a far liberal standard has been adopted as in one such case, a candidate who has fallen outside the standards prescribed by more than 1.1 seconds, in 100 metres running event, has been directed to be considered by this Court and such a person was ultimately considered for selection as well. Whereas when it came to the question of the writ petitioner/appellant, a lesser margin of 0.59 seconds, is being ignored.

7. A detailed counter affidavit has been filed in the matter by the Inspector

General of Police and the Member Secretary, Tamil Nadu Uniformed Service Recruitment Board, Chennai.

8. It is brought out in the counter affidavit that only 5,448 candidates were allowed to participate in the second stage of selection process, after the written test was conducted. It is further brought out that the physical efficiency test was conducted at eleven centres across the breadth and length of the State between 03.08.2015 and 05.08.2015. It was further pointed out that at each centre, a Sub Committee has been constituted to conduct the tests and the Sub Committee comprised of the Deputy Inspector General of Police as the Chairman and the Superintendent of Police, Additional Superintendent of Police and one of the Deputy Superintendents of Police, being the members of the Sub Committee.

9. Depending upon the proximity of the candidates to the centres concerned, the candidates in the range of 100 to 600 participated in the second stage of selection. It was further pointed out in paragraph 7 that the Physical Efficiency Test was conducted using the digital device and only those candidates, who have qualified in the said Physical Measurement Test, were made to participate in the Physical Endurance Test and only those who have qualified in the Physical Endurance Test, were subjected to Physical Efficiency Test. It was further brought out that the running of 100 metres is the last and final event, in the Physical Efficiency Test. All the candidates were prepared to run in a batch of eight and one Sports Officer, assisted by the Deputy Superintendent of Police/Assistant Commissioner of Police, helped in conducting the test at the starting point by using a whistle as well as a flag. Eight Sports Officers stationed at the finishing point, were given the charge of one candidate in each lane to record the timing. The timings of each and every candidate are recorded thus by a qualified Sports Officer from the Sports Development Authority of Tamil Nadu, using a stop-watch system and the Sports Officers are very well trained in conducting such running events at the State Level and National Level as well. To ensure transparency, the entire event was also videographed and the candidates, if so desirous, were also permitted to view their recorded performance.

10. It is brought out that out of eight candidates, amongst the writ petitioner/appellant is one, only two candidates could complete the race within the prescribed time limit of 17.5 seconds. The remaining six candidates have completed beyond the standard time of 17.5 seconds and insofar as the writ petitioner/appellant is concerned, she completed the race in 18.09 seconds. In view of her performance in running event, fell outside the standard prescribed, she was declared to have failed in the Physical Efficiency Test and consequently, was not subjected to the next and final round of test of viva-voce.

11. In this context, it is relevant to point out that the Physical Measurement Test followed by Physical Endurance Test and the Physical Efficiency Test are conducted as they have a direct nexus and bearing upon the functions and responsibilities that are liable to be discharged by the selected candidates upon being appointed as Sub Inspector of Police. Therefore, apart from their

meritorious performance in the written examination, their performance in the Physical Efficiency Test, is also gauged carefully and the more efficient amongst them has been assigned more marks. It is for this purpose, the performance at each of the sporting events, is rated as "One Star Performance" and "Two Star Performance". The minimum standard is rated around "One Star Performance", while the better performance is treated as "Two Star Performance".

12. It is brought out in the written instructions furnished to the learned Additional Advocate General that as many as 444 women candidates who have secured 44.5 marks and above in the written test were disqualified at the Physical Efficiency Test stage. In fact, the overall percentage of disqualification of the candidates at the Physical Efficiency Test was around 46.35%.

13. Even amongst the Most Backward Class women candidates, as many as 145 candidates who secured 44.5 marks and above in the written test, got disqualified, in the Physical Efficiency Test. It is, thus, sought to be brought out that the writ petitioner/appellant is not the only one amongst Most Backward Class candidates. There are 144 other women, who have secured the same marks, namely, 44.5 marks or more than the marks secured by the writ petitioner/appellant, who could not clear the Physical Efficiency Test.

14. Having given our thoughtful consideration to the fact that the Physical Efficiency Test is having a direct bearing upon the job content for the post of Sub Inspector of Police and when there are several equally suitable candidates, the State has a right to choose the very best amongst them and hence, we feel, the selection of candidates, with better performance in the Physical Efficiency Test, cannot per se be described as arbitrary.

15. In that view of the matter, we cannot consider that non-selection of the writ petitioner/appellant, as her performance in 100 metres running event, fell outside the prescribed standard by 0.59 seconds, is any bad.

16. However, the writ petitioner/appellant has pointed out that in the case of a transgender, even though her performance at the 100 metres running event, fell by 1.11 seconds outside the standard limit prescribed, the Honourable First Bench of this Court, by its judgement rendered in K. Prithika Yashini (Transgender) v. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai - 600 002, W.P.No. 15046 of 2015, decided on 03.11.2015, directed her candidature to be considered and hence, a similar direction should be issued even in the present case.

17. It was also urged by the writ petitioner/appellant that in comparison to women, the transgenders are having better physical power and hence, women candidates deserve better consideration than the transgenders.

18. We have gone through the judgement rendered by the Honourable First Bench of this Court, in K. Prithika Yashini (Transgender) v. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai - 600 002, W.P.No. 15046

of 2015, decided on 03.11.2015 carefully.

19. The grievance espoused in that case related to the failure of the State Government to realise the necessity to protect the interests of the transgenders, even after the Honourable Supreme Court has ruled about their rights earlier. While examining the matter in that backdrop and since the State Government has failed to protect the interests of the transgenders by prescribing appropriate standards, this Court has noticed that for a variety of reasons, the transgenders have suffered discrimination including lacking any parental support and hence, different set of standards should have been fixed for measuring their performance and the failure to do so by the State, is wrongful.

20. We are, therefore, of the view that the judgement of the Honourable First Bench of this Court in K. Prithika Yashini (Transgender) v. The Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai - 600 002, W.P.No. 15046 of 2015, decided on 03.11.2015, is of no help to the case of the writ petitioner/appellant.

21. The question as to whether women, per se, deserve more compassion and sympathy than transgenders, is a question which is not capable of being answered by this Court, in the present backdrop of this case. There could be variety of reasons, as to why the Courts are required to swing in favour of transgenders and also do calling for the attention of the State for providing a "level playing field" for such persons, to compete and get selected to public service. Therefore, the contention urged by the writ petitioner/appellant that it is the women who deserve a liberal approach than a transgender, is an issue which cannot be either debated or resolved in the present writ petition.

22. As is too well known, an advertisement is a mere invitation to all candidates, who possessed necessary qualifications to respond and offer their candidature. All candidates who have so responded to a public employment notification, need not get selected and given the level of unemployment prevailing in the country, it may not even be possible to recruit them all. Only the best amongst the respective categories of candidates, can get eventually selected.

23. We only hope that the writ petitioner/appellant, who presented her case in the absence of assistance from her well-trained counsel, will not lose her heart and would continue her future pursuits with the same spirit as any other sports person would have, by learning appropriate lessons from their failures. After all, failures are construed to be the stepping stones for the future success.

24. We, accordingly, dismiss this writ appeal, however, without costs. Consequently, the connected civil miscellaneous petition is dismissed.