
(2010) 08 MAD CK 0263

In the Madras High Court

Case No : Writ Petition No. 8210 of 2010 and M.P. No. 2 of 2010

R. Thiagarajan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0263

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant; S. Raghupati, for RR1 to 5, for the Respondent

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—On consent, this writ petition is taken up for final hearing.

2. The writ petition is filed against the order of the second respondent dated 01.03.2010 in his proceedings No. E. 38023/4, Bn. NDRF(A) Adm. I/2010/1693 and to quash the same in so far as the petitioner is concerned as illegal, arbitrary, against the principles of natural justice and unsustainable in law and to further direct the respondents to accept the petitioner's application dated 26.01.2010 and to permit the petitioner to participate in the physical efficiency test and written examination to be held in this regard.

3. The petitioner is presently working as Constable/GD in the Central Industrial Security Force (hereinafter, shortly referred to as CISF) at Arakkonam, under the control of the 4th respondent/the Deputy Inspector of General. The third respondent/the Deputy Inspector General(Personnel) CISF has by his notification dated 18.01.2010 invited applications from eligible departmental candidates for filling up 576 vacancies of Sub-Inspector(Executive) in CISF through Limited Department Competitive Examination during 2010. The notification was according to the petitioner, duly circulated to all Coy Commanders and is affixed on the notice board thereby the contents of the notification is brought to the

notice of all eligible personnel as required under Clause-10(a) of the recruitment notification dated 18.01.2010, so as to enable all the eligible personnel of the respective Units to apply for the post within the time specified therein. The petitioner has on coming to know of the notification and as one of the eligible personnel applied for the post in the prescribed form within the specified time in the application. The application is also along with other applications forwarded to the office of the Senior Commander for scrutiny and verification of the records. While the petitioner was waiting for the examination date to be intimated the petitioner received the order of the second respondent in his proceedings dated 01.03.2010, thereby the application of the petitioner and few other personnel of the battalion are rejected for the reasons noted against their names and the reasons set out against the petitioner is that he was awarded penalty of seven days pay fine on 26.09.2005. Aggrieved against the said order, the petitioner has come forward with this writ petition for the relief as stated above.

4. According to the learned Counsel for the petitioner, the ground on which the application rejected is arbitrary and is contrary to the guidelines and eligibility criteria set out in the recruitment notification dated 18.01.2010, whereas the impugned order is sought to be justified by the learned Counsel for the respondents by relying upon the letter dated 05.02.2010 as per which an amendment is brought into the original notification by introducing one more eligibility criteria to the effect that the candidates must have good ACRs for last four years and unblemished record till issue of offer of appointment. It is seriously argued by the learned Counsel for the respondents that as the petitioner has suffered award of fine in the past, he has no unblemished past record and he has not satisfied the second part of the eligibility criteria and is hence ineligible to apply for the post and his application is rightly rejected by the authority concerned.

5. Heard the rival submissions made on both sides and perused the entire records including the copy of the documents relied upon by the learned Counsel for the respondents.

6. As already referred to the recruitment notification issued on 18.01.2010 is admittedly made known to all eligible personnel by displaying the copy of it in the notice board of the concerned units. The notification calling for applications is enclosed at pages-1 to 6 of the typed set of papers. The reading of which would reveal that the same contains the details regarding service eligibility, upper age limit, educational qualification, physical standard selection procedure, last date of receipt of the application, tentative programme of recruitment, responsibility of the unit commanders including eligibility criteria, action to be taken by the Zonal DISG and special provision for personnel taking part in Republic Day Parade and CISF Raising Day Parade etc. The attention of this Court is drawn to clause-10(a) and foot note appended at the end of the notification, which is to the effect that copies of the notification be forwarded to the following officers with request to bring the contents of this letter to the notice of CISF personnel who are on

deputation in their organisation and forward applications of eligible personnel in the prescribed proforma directly to the concerned territorial Zonal DIG of CISF by 19.02.2010. So, the combining reading of Clause 10(a) and the foot note as above referred to would make it clear that the contents of notification are bound to be made known to all personnel who intend to apply for in their capacity as eligible candidates and is accordingly displayed in the notice board to enable all eligible personnel, to apply for it. The attention of this Court is also drawn to Clause 10(h) containing the eligibility criteria which runs as follows:

10(h). It will be responsibility of the Unit Commander not to forward any application of such candidate who has been awarded any major or minor punishment during the last 4 years of his/her service. Further, in case, a candidate is awarded any major or minor punishment after submission of his/her application, it will be the responsibility of the concerned Unit Commander to inform the facts to the application receiving Zonal DISGs as well as this Directorate and not to relieve such candidate for attending the tests whenever he is called for the same.

7. Accordingly, the petitioner has applied for the post and his unit commander has duly received it and has duly verified the eligibility criteria as per Clause 10(h) as to whether he is awarded any punishment within last four years and after satisfying with the eligibility criteria as per Clause 10(h), the petitioner's unit commander forwarded the same to the concerned territorial Zonal DIG. However, the application is rejected on some new ground by the impugned order. Though, admittedly, the petitioner suffered punishment of seven days pay fine on 26.09.2005 and the same is beyond last four years and is not covered under Clause 10(h) and though the application was duly received and was verified and was forwarded further, the application is rejected on the basis of amended eligibility criteria which is admittedly not incorporated in the notification dated 18.01.2010 and which is admittedly not brought to the notice of CISF personnel individually by displaying it in the notice board. The letter of the second respondent through which the amendment is intimated to the unit commanders is dated 05.02.2010 and is though before the last date for receiving application but much after the publication of the recruitment notification on 18.01.2010. Though, the learned Counsel for the respondents would attempt to convince this Court the same is forwarded to all the unit heads, the learned Counsel for the respondents is not able to further definitely say as to whether contents of the letter are made known to CISF personnel.

8. Even otherwise, the reading of the letter dated 05.02.2010 reveals that the amendment is introduced by the second respondent and the competency of the second respondent to bring in such amendment is not satisfactorily explained before this Court. As a matter of fact, the letter dated 05.02.2010 is not referred to in the impugned order and what is referred to therein is, the message dated 24.02.2010 issued by the fourth respondent herein, in and under which, the individuals are directed to be informed about the rejection and the grounds on

which their applications are rejected. As rightly argued by the learned Counsel for the petitioner, the amended eligibility criteria clause having not been found in the original notification and the contents of the same having not been intimated to the CISF personnel in the manner as prescribed in the original notification and the competency of the second respondent in issuing it having not been made out the same cannot form the basis for rejecting the application filed in the prescribed form after satisfying all the formalities on 26.01.2010 much prior to the amendment dated 05.02.2010. It is well settled law that the eligibility clause as on the date of the notification shall be the criteria and the subsequent amendment will have only prospective effect and not any retrospective effect unless it is specifically mentioned so in the original notification.

9. That being the legal and factual position, the impugned order cannot be sustained on the basis of this amendment, which is subsequently introduced, as such the order of rejection of the petitioner's application is invalid in law and is liable to be set aside with consequential direction issued to the respondents to legitimately accept the petitioner's application. It cannot be disputed that mere acceptance of the application and mere permission granted to the applicant to participate in the competitive examination at stage wise cannot clothe the petitioner with any right for selection to the post and the petitioner's selection for the post concerned is always subject to the outcome of his performance in the departmental tests comprising of various physical, written and medical test at stage wise. As a matter of fact, the relief sought for in this application is also only to accept the petitioner's application and to permit him to participate in the departmental test stage wise which is to be commenced from 09.08.2010 for the selection to the post concerned.

10. In the result, the writ petition is allowed by setting aside the impugned order of the second respondent in his proceedings No. E.38023/4, Bn. NDRF(A) Adm. I/2010/1693 dated 01.03.2010 and the second respondent is directed to accept the petitioner's application dated 26.01.2010 and to issue appropriate orders to the petitioner to participate in the stage wise departmental competitive examination to be commenced on 09.08.2010. The connected miscellaneous petition is closed. No costs.