
(2010) 12 MAD CK 0250

In the Madras High Court

Case No : Writ Petition No. 15479 of 2006 and O.A. No. 6012 of 2000

V. Divakaran

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0250

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Sudha Ravi, for the Appellant; R. Murali, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner filed O.A. No. 6012 of 2000 before the Tamil Nadu Administrative Tribunal, seeking to challenge the order of the first Respondent, Director General of Police dated 12.05.2000 and the consequential promotion and posting orders issued by the third Respondent dated 01.08.2000 and after setting aside the same seeks for a direction to promote him to the post of Sub-Inspector of Police, Armed Reserve for the year 1999-2000.

2. The Tribunal ordered notice of motion and directed the matter to be posted along with O.A. No. 5102 of 2000. During the pendency of the Original Application, no interim relief was granted even though a prayer for interim relief was made. It is also not clear as to what is the fate of O.A. No. 5102 of 2000. But even when the case was pending before the Tribunal, the Petitioner filed W.P. No. 3848 of 2006 seeking for transfer of the Original Application to this Court. This Court, by an order dated 13.12.2006 issued a direction to the Tribunal to transfer the Original Application to this Court. On such transfer, the Original Application was renumbered as W.P. No. 15479 of 2006.

3. Even when the Original Application was pending before the Tribunal, the third Respondent has filed a counter affidavit dated 30.11.2000.

4. It is a very strange prayer made by the Petitioner. According to the Petitioner, for the preparation of "C" list, there is no necessity to conduct the test. Notwithstanding the same, a written test was conducted and out of 73 Head Constables attended, only 7 were passed. Therefore, on 11.07.2000, the first Respondent has issued a message that the marks need not be deducted for wrong answers. Accordingly, the written test may be valued without providing for any negative marks. On revaluation, 30 Head Constables were selected for attending the Drill test. The Petitioner was one among the person who was sent for the Drill Test. It is also admitted by the Petitioner that he had scored 25 out of 50 marks and hence he was selected for the Drill Test.

5. In paragraph 11 of the Original Application, the Petitioner made the following grievance:

11. The applicant states that had the Commissioner of Police not announced contrary to the instructions of the chief office, the applicant would have attended all the 50 questions and he would have got more than 25 marks. The applicant would have secured over 35 marks and thereby would have secured more than the required marks for being included in the "C" List. Due to the fault of the Respondents, the applicant should not be penalised.

6. Therefore, the contention of the Petitioner was that had he been informed about the system of valuation as directed by the Director General of Police dated 11.07.2000, he would have attended all the remaining questions and would have secured more marks and out of fear of negative marks, he did not answer all the questions. Hence, the system of written test was fraud and once the norms of valuation was changed they should have been notified and should not proceed to value on the basis of the revised circular.

7. The Petitioner also produced a copy of the order of the Tribunal in O.A. Nos. 7215 to 7217 of 2000 filed by three individuals M/s. K. Udhayakumar, I. Ayyappasamy and C. Ayyarsamy. The Tribunal by order dated 27.06.2002 allowed the OA and directed those Petitioners to be appointed against vacancies and if there no vacancies are available, they should be appointed in future vacancies. Even during the course of the order, the Tribunal found that one person out of three had already been selected and it was a direction in respect of other two. But in that case, the Tribunal also found that the Petitioners in that writ petition did not challenge the revised procedure adopted after the communication sent by the Director General of Police. The Tribunal also held that though the selection was based upon written test, Drill and viva voce, the marks of the Petitioners in that OA regarding Drill, Viva voce were not informed. The Tribunal also held that since neither the cut-off mark nor the marks scored by the Petitioners were set out, it was an unfortunate situation. At the same time, the Tribunal did not disturb the persons who are already selected and gave a direction on its own by stating that the two Petitioners M/s. K. Udhayakumar and C. Ayyarsamy one are to be selected and gave a direction. Now consequent upon the Tribunal's order, the Respondent have issued a consequential direction dated 07.10.2002

including the names of M/s. K. Udhayakumar and C. Ayyarsamy in the "C" list. The name of Ayyappasamy was already included. Revised list was issued pursuant to the direction issued by the Tribunal dated 27.06.2002 and the revised list contains 6 other names.

8. Therefore, the Petitioner filed an affidavit before this Court labelling it as a counter to the reply affidavit and wanted the Petitioner's name also to be considered for the post of Sub-Inspector of Police (Armed Reserve) for the year 1999-2000. This was on the specious plea that the Tribunal's order was implemented by the Government and the Petitioner also stands on the same boat.

9. The counter affidavit filed by the Respondents clearly shows the facts otherwise. In the counter affidavit, in paragraphs 19, 23 and 25, it was averred as follows:

19. With reference to the averments made in Para No. 6(15 & 16) it is submitted that as the applicant has got 25 marks and above in the written test he was called upon to attend the subsequent tests namely drill and viva-voce test on 18.07.2000 and 19.07.2000. On conclusion of all these tests the total marks obtained by the candidate in the Promotion Test and their past performance and Spl. qualification, the gradation list was prepared by the Deputy Inspector General of Police Coimbatore Range and for the 19 vacancies the Deputy Inspector General of Police Coimbatore Range has published the "C" list who came within the first 19 in the gradation list. Though the applicant has participated in all these tests, he failed to secure enough marks and come within the first 19 in the gradation list. Hence it is submitted that the applicant was not included in the "C" list.

23. It is submitted that H Cs who are approved probationers as on the crucial date of the panel are eligible to participate in the promotion test irrespective of their total service. Further for the length of service put in by the applicant appropriate marks were awarded to him. It is respectfully submitted that the applicant has a chance to prove his mettle than his juniors as the applicant has more experience in all the fields of the selection process than his juniors. As per the rules, mere seniority alone is not the criteria for inclusion in the promotion tests.

25.... By adhering to this instructions out of 87 H Cs who participated in the promotion test as many as 7 have secured 25 marks and above in the written test and qualified themselves for the drill and Viva - voce test. It is submitted that nothing prevented the applicant as done by the others to answer maximum number of questions if he is sure about the correct answer. In this connection it is submitted that the applicant had already been informed about the syllabus from which the questions will be asked. If he attended the written test with good preparation he could have attended all the questions which relates to official routine and general nature. It is submitted that the applicant himself has admitted his ignorance and lack of knowledge by answering only 27 questions at

his own choice. Even if he answered the 27 questions correctly he would have been eligible to attend the drill and Viva-voce test by securing 27 marks. In this aspect also, he failed to prove his ability. In other words, out of 50 questions, he had proved that he is capable of answering only 26 questions correctly.

10. The stand of the Respondent clearly shows that the Petitioner cannot compare himself with any other person. Because of the oral instruction issued by the Respondent, the Petitioner apprehending about the negative marks restricted answering only 26 questions and that will not improve his case. His fear or apprehension cannot change the result. It is not the case of the Petitioner that he had been wrongly denied marks; on the other hand as seen from the counter, he was given the full marks for the questions attended by him except for one question. On the strength of his marks, he was also invited for other tests. Therefore, there is no discrimination shown to the Petitioner either as per the original system of valuation or on the revised system. The Respondents have categorically stated in paragraph 19 set out above that on the basis of the marks "C" list was prepared and the first 19 in the gradation list were given the posting.

11. The Petitioner then contended if that was the truth then as to how the other persons were accommodated. This Court is not inclined to go into any speculative exercise. Suffice to state that the Tribunal itself gave liberty to the Government in case they are not accommodated in the original vacancies, in the future vacancies they should be accommodated. Of the three persons who went to the Tribunal, one had secured higher marks even by the negative marking. The fate of the other two are not made clear. But nevertheless, the Tribunal categorically recorded that there was no attack against the change adopted. That finding will apply to the Petitioner's case herein. In the affidavit, there is no attempt to challenge such selection. The Tribunal also in the same order has upheld the insisting selection and therefore, merely because the Petitioner has impleaded some of the Petitioners, it cannot invalidate those selection. In essence, the Petitioner cannot blow hot and cold by using the Tribunal's order.

12. It is also made clear that the Supreme Court in K.A. Nagamani Vs. Indian Airlines and Others, has held that a person who goes through the selection process and after participation in the same, cannot turn back and challenge the very same selection. Perhaps keeping the legal position, the Tribunal recorded that there was no challenge to selection process and granted some relief on its own. Merely because the Respondents have implemented the order that does not give a cause of action to the Petitioner and the Petitioner's case cannot be solely placed upon the Tribunal's order concerning 3 individuals. The facts and circumstances of the case set out by the Tribunal do not show that the Petitioner's case stand on the same footing; on the other hand, the grievance of the Petitioner was that had he been aware about there being no negative marking, he would have answered more questions. Such an assertion cannot help the case of the Petitioner in assailing the selection made by the Respondents.

13. The Supreme Court in Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, has held that the Court cannot issue a Writ of mandamus to give relief to one individual on the basis of an order passed by the Government in respect of some other persons unless the case stand on the same footing and there is a real case of discrimination.

14. Hence, there is no the case writ made out petition by the stands Petitioner. Accordingly, dismissed. No costs.