
(2011) 02 MAD CK 0450

In the Madras High Court

Case No : Writ Petition (MD) No. 15076 of 2010

V. Marimuthu

APPELLANT

Vs

The Chairman Tamil Nadu Uniformed Services Recruitment
Board

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0450

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

**Advocate : R. Venkateswaran, for the Appellant; R. Manoharan, Government
Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—By consent, the Writ Petition is taken up for disposal. Heard Mr. R. Venkateswaran, counsel for the Petitioner and Mr. R. Manoharan, Government Advocate for the Respondent.

2. The Petitioner has sought to quash the records relating to the result in respect of the NCC mark column published through internet on 18.11.2010 of the combined Recruitment of Grade II Police Constables/Gr. II Jail Warders/Fireman for the year 2010 by the Respondent and for a consequential direction to the Respondent to award 1/2 mark against the NCC column of the Petitioner's result and to proceed with the next selection process for him.

3. According to him, he applied for combined recruitment of Grade II Police Constables/Grade II Jail Warders/Firemen-2010, for which, the selection process was consisting of three tests, namely, written, physical and medical test. After passing the first test of writing, the candidate is eligible to attend physical test, which is comprising of two editions. The first one was with the height measurement, chest measurement and 1500 meter running and the second edition consists of the events of roping, running and long jump or high jump.

Then, the last one is a medical test. Before the medical test, the result will be published consisting of the marks of written and physical tests, besides, the marks being given under other three heads such as NCC, NSS and sports.

4. It is the further case of the Petitioner that he passed the written test, which was held on 08.08.2010 and also attended the physical test. Thereafter, the result was published on 18.11.2010. The combined recruitment consisting of four posts, on rank basis, namely, Armed Reserve (AR), Tamil Nadu Special Police (TSP), Jail warder and Firemen.

5. The Petitioner claims that he belongs to Scheduled Caste community and falling under the open category. The cut off marks for the Scheduled Caste community candidate under open category are as follows;

Marks

Date of birth

a.

Armed Reserve

79.00

(11.03.1989)

b.

TSP

72.00

(15.05.1986)

c.

Jail warder

71.50

(30.01.1987)

d.

Fireman

71.00

(04.04.1985)

In which, the Petitioner scored 71 marks in the written examination, which inclusive of written examination and physical efficiency and his date of birth is 11.12.1986. Apart from the written and physical tests marks, there are marks being given under three heads, namely, NCC, NSS and sports.

a)

NCC

Maximum 2 marks

b)

Sports

Maximum 2 marks

c)

NSS

Maximum 1 mark

In NCC, 1/2 mark will be awarded for one year membership, one mark for possession of "B" certificate and two marks will be awarded for possession of "C" certificate. According to the Petitioner, he is the person having one year membership and therefore, he is eligible for 1/2 a mark under NCC category. Thus, the Petitioner scored 71 marks and for selection, he is having less mark for the said posts and if 1/2 a mark is given to him under the NCC category, he will be considered for two posts, namely, Firemen and Jail Warder. Therefore, he applied to the Respondent on 21.11.2010 by way of a petition. As there was no action on the part of the Respondent, the Petitioner has come up with this Writ Petition with the above said prayer.

6. The Respondent has filed a counter, wherein, it is stated that the Petitioner applied for the combined recruitment of Grade II Police Constables (M&W)/Grade II Jail Warders/Firemen for the year 2010 and his application number is 3004866. In the selection process, 80 marks has been granted for written test, 15 marks for physical efficiency test and 5 special marks for possession of NCC, NSS and Sports Certificate. In the written test, the Petitioner secured 59 marks. In the selection process, those who have been secured 35 marks will be eligible for the physical efficiency test and reservation is provided as per the rules and regulations is 1:5 ratio, i.e. for one vacancy five candidates have to be called for interview. Since the Petitioner has secured the required cut off marks in the written test, he was called for certificate verification, physical measurement test, endurance test and physical efficiency test.

7. In the counter of the Respondent, it is stated that due to non production of the original NCC certificate, no special mark was awarded to the Petitioner. The Deputy Inspector General of Police, Chairman of Sub Committee, Tirunelveli, had sent a list of candidates, who had produced the original NCC certificates at the time of certificate verification. It is contended that the Respondent has no malafide intention for not awarding the special marks to the Petitioner herein. It is further stated in the counter that the Petitioner has not secured the requisite marks for the post of Armed Reserve, Tamil Nadu Special Police and Jail Warder

and the cut off date of birth for Firemen is 04.04.1985. It is the contention of the Respondent that taking into account, the date of birth of the Petitioner i.e. 11.12.1986, he is not eligible for the post of Firemen also.

8. It is the further contention of the Respondent that when the same cut off mark is obtained by more than one candidate and if there are no vacancies to accommodate all of them, then the vacancies will be filled up according to their date of birth, i.e. those who are elder in age will be given preference and the remaining candidates, who are younger in age will not be considered and selected. In the instant case on hand, the Petitioner belongs to Scheduled Caste community and born on 11.12.1986, which is beyond the cut off date of birth, i.e. 04.04.1985, and therefore, he has not been selected. With the above contentions, the Respondent prays for the dismissal of the writ petition.

9. The foremost contention of the learned Counsel for the Petitioner is that the Petitioner has produced the NCC "A" certificate and having been produced the same at the time of certificate verification and it was also reflected in the OMR sheet produced before this Court, the Respondent has not awarded 1/2 a mark for possession of NCC "A" certificate. He further submits that if 1/2 a mark is granted for the Petitioner, he could be selected for two posts, namely, a) Jail Warders and b) Firemen.

10. On the other hand, the learned Government Advocate would submit that the Petitioner has not produced the original at the time of Certificate verification and therefore, he was not awarded 1/2 a mark for possession of NCC "A" certificate. He would further submit that the date of birth of the Petitioner is 11.12.1986, which is beyond the cut off date of birth as per the notification and as such, he is younger in age and therefore, under the said category, he was not considered and selected.

11. I have heard the learned Counsel on either side and perused the material documents annexed in the typed set of papers including the OMR sheet produced before this Court.

12. Admittedly, the Petitioner applied for the post of Grade II Police Constables/ Grade II Tamil Nadu Special Police, Jail Warders and Firemen under the recruitment for the year 2010. He passed the written test by securing 59 marks and his application number is 3004866. Subsequently, he was called for certificate verification. In the physical efficiency test, he was awarded 12 marks. The Petitioner belongs to Scheduled caste Community and for Grade II Police Constables, the cut off mark is 79, for Grade II Tamil Nadu Special Police 72 marks, for Jail Warders 71.50 marks and for Firemen the cut off mark is 71. The date of birth of the Petitioner is 11.12.1986.

13. At this juncture, it is vehemently contended by the learned Government Advocate that as the Petitioner is younger with date of birth of as 11.12.1986, the persons, who are younger in age will not be selected for want of vacancies and the cut off date of birth for the Petitioner's category is 04.04.1985, which

alone could be taken into consideration. The question of considering the date of birth as a criteria arises only when there is a tie between two candidates, who obtained the same mark, namely 71 marks. But the claim of the Petitioner is accepted if 1/2 of the mark is awarded, then the Petitioner will get 71 1/2 marks, which is higher than 71. Therefore, there is no question of taking the date of birth as a criteria for deciding the merit of the candidate. That being the position, the contention of the learned Government Advocate cannot be sustained in the eye of law.

14. It is seen from paragraph No. 6 of the counter of the Respondent that the Petitioner enclosed a copy of NCC "A" certificate along with his application, but he did not produce the original of the same and hence no special mark was awarded to the Petitioner. But, on verification of the OMR sheet, which is produced before this Court, it is found that column 12 has been darkened by the authorities and the same establishes that the Petitioner has produced the originals at the time of verification and the authorities are also confirmed the same in the OMR sheet. If that being the position, the Petitioner ought to have been given 1/2 a mark under the category of special mark for possession of NCC, NSS and Sports Certificate, in which, the Petitioner is entitled for 1/2 mark as accorded for one year membership. Since the Petitioner has produced the NCC "A" certificate and also originals, which is also confirmed by the authorities in the NCC column in the OMR sheet, the Petitioner's claim for 1/2 a mark has to be accepted, which according to the Petitioner, has not been awarded to him. Therefore, the publication of the result, which is impugned in the communication cannot be sustained and the same is liable to be quashed.

15. In view of the foregoing reasons and discussions, the impugned publication of the result, dated 18.11.2010, cannot be sustained and therefore, the same is set aside insofar as the Petitioner is concerned and the Writ Petition is allowed with a direction to the Respondent to award 1/2 a mark to the Petitioner under NCC category and to process the Petitioner's application for the further stage of recruitment and pass appropriate orders. Consequently connected Miscellaneous Petitions are closed. No costs.