



W.A.(MD)No.1351 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	31.08.2023
Date of Judgment	14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.(MD)No.1351 of 2023

M.Navaneetha Krishnan : Appellant/Petitioner
Vs.

1.The Chairman,
Tamil Nadu Uniform Services Recruitment Board,
Egmore, Chennai-600 008.

2.The Director,
Tamil Nadu Fire and Rescue Services,
No.17, Rukmani Latchmi Salai,
Chennai-600 008. : Respondents / Respondents

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 24.03.2022 made in W.P.(MD)No.11110 of 2020 on the file of this Court.

For Appellant : Mr.T.Lajapathi Roy
Senior Counsel
for M/s.Lajapathi Roy & Associates

For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.D.Sachikumar
Additional Government Pleader



W.A.(MD)No.1351 of 2023

J U D G M E N T

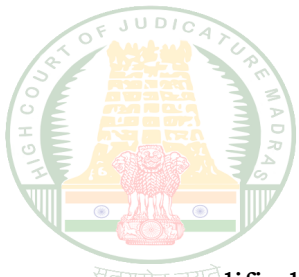
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D.BHARATHA CHAKRAVARTHY, J.

This Writ Appeal is directed against the order of the learned Single Judge, dated 24.03.2022 in W.P.(MD)No.11110 of 2020 in and by which, the learned Single Judge dismissed the writ petition filed by the appellant. In the said writ petition, the appellant herein had challenged the order of the second respondent dated 27.07.2020 thereby holding that the appellant was not suitable for appointment to the post of Fireman considering his character and antecedents. The consequential prayer of the appellant was to appoint him as Fireman as per the selection list dated 04.02.2020.

2. The facts in brief are that there exists a post of Fireman which is Category-5 in the Government of Tamilnadu Fire Subordinate Service. Recruitment to the said post is governed by the Rules framed under the proviso to Article 309 of the Constitution of India, which are known as Tamil Nadu Fire Subordinate Service Rules, as per which, the post is to be filled up by way of direct recruitment.

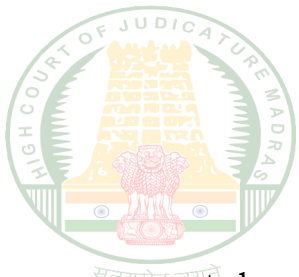
3. By a notification dated 06.03.2019, the respondents herein invited applications for the said post. The petitioner considering himself fully



W.A.(MD)No.1351 of 2023

qualified to be appointed to the said post submitted an application in April 2019. Pursuant to the application, the appellant was allowed to participate in the selection process and based on his marks in the written examinations, physical examination etc., the appellant was selected for the said post and his name figures in the select list of 191 persons selected for the said post. However, even though 178 out of 191 selected persons were sent for training with effect from 07.07.2020, the appellant was not called for training. Upon enquiry, the appellant was informed that on account of his antecedents being involved in criminal cases, he was not being sent for training. Therefore, the appellant made a detailed representation to the respondents on 16.07.2020. Upon the said representation, the impugned order dated 27.07.2020 was passed communicating the reasons for his non-appointment.

4. The impugned order states that an adverse police verification report regarding character and antecedents have been received in the case of the appellant that two cases namely a case in Manamadurai Police Station Crime No.188 of 2010 for offences under Sections 147, 148, 341, 323, 325, 307 and 302 of IPC and Manamadurai Police Station Crime No.294 of 2019 for the offences under Sections 294(b), 323, 342 and 506(1) of IPC. On account of the said adverse report, the appellant was informed that he could



W.A.(MD)No.1351 of 2023

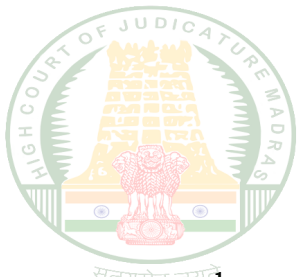
not be appointed as Fireman. Challenging the same, the present writ petition is filed.

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5. The learned Single Judge considered the case of the petitioner and considering the Judgment of the Hon'ble Supreme Court of India in ***Commissioner of Police Vs. Raj Kumar***¹, held that the verification of suitability, eligibility and antecedents are of paramount importance and the decision of the selection committee in this regard becomes final and this Court cannot interfere with the decisions of the selection committee regarding the assessment of suitability, eligibility and verification of antecedents and once it was found that the appellant was involved in criminal cases, the claim of the writ petitioner cannot be countenanced and dismissed the writ petition. Aggrieved by the said order, the present writ appeal is filed.

6. *Mr.Lajapathi Roy*, the learned Senior Counsel appearing on behalf of the appellant, would submit that eventhough the post of Fireman is an uniformed service, the Recruitment Rules with regard to the rejection of candidature for suitability was amended only with effect from 14.09.2021. Prior to the amendment, as it was applicable as on date of this notification

¹ ***Civil Appeal No.4960 of 2021, dated 25.08.2021***



W.A.(MD)No.1351 of 2023

and consideration of the candidature of the appellant, the Rule position stood as follows:

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5B. Verification of character and antecedents.. (1) *The list of candidates who are declared fit during the medical examination shall be sent by the Tamil Nadu Uniformed Services Recruitment Board along with their temporary and permanent addresses to the Director General of Police, Tamil Nadu for verification of their character and antecedents. A police verification report in respect of each such candidate shall be sent to the Tamil Nadu Uniformed Services Recruitment Board, indicating therein the follows:*

- (i) whether he has more than one wife living.*
- (ii) whether his character and antecedents are such as to qualify him for the service; and*
- (iii) the details of criminal cases, if any, in which he is involved.*

(2) A candidate who has more than one wife living or who has convicted in any criminal case or in respect of whom a charge sheet is pending in a Court of law or against whom a criminal case is pending investigation shall be liable for disqualification.”

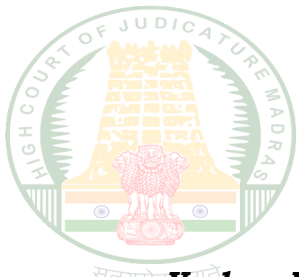
7. The Learned Senior Counsel would submit that when the two criminal cases were taken into consideration, the respondents omitted to consider that as far as the first case is concerned, even though the offence was serious in nature, the details of the occurrence is that there was a wordy quarrel between two groups involved in number of persons while



W.A.(MD)No.1351 of 2023

WEB COPY

attending a temple festival and on the way back, the victim is said to have attacked by a group of persons including the appellant, who was juvenile at that point of time and therefore, the appellant was dealt with by the Juvenile Justice Board and even the Juvenile Justice Board after trial, had found by its judgment dated 15.07.2022 more specifically in Paragraph No. 21 that there was no evidence on record to hold that the juveniles attacked the deceased or that they were present at the scene of occurrence and thus had acquitted the appellant. The appellant was 16 years of age at the time of occurrence was dealt with under the erstwhile Juvenile Justice (Care and Protection) Act, 2000. Placing reliance upon Section 19 of the said Act, which not only envisages that the involvement in any offence shall not disqualify the juvenile but also mandates even the destruction of the records thereby erasing the very incident from the life of the juvenile. The learned Senior Counsel by relying upon the United Nations, Convention on the Rights of the Child adopted by the General Assembly dated 20.11.1989 to which India is a party more fully by relying upon Article 40 would submit that the very purpose of the said Act is with an intention to reintegrate the child with the society and the child assuming a constructive role in the society. Therefore, he would submit that the respondents erred in taking into account the said case. The learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court of India in **Umesh Chandra**



W.A.(MD)No.1351 of 2023

Yadav Vs. The Inspector General and Chief Security Commissioner

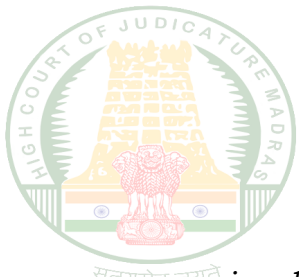
R.P.F. and Others², more specifically in paragraphs 18 and 19 to contend that the authorities specifically omitted to take into consideration that the appellant was juvenile when the occurrence happened.

8. Per contra, *Mr.Veerakathiravan*, the learned Additional Advocate General would submit that in this case, the appellant has involved in serious offences. The first case is one of murder. The second case is also serious that he attacked his own mother. Therefore, he would submit that even under the pre amended Rules, Rule 5B(2) enables the respondents to conclude as to whether his character and antecedents are such as to qualify him for the service. Considering that the post of Fireman is also one belonging to uniformed service, the authorities have considered the adverse police report received and accordingly decided not to appoint the appellant which cannot be faulted with. The learned Additional Advocate General relied upon the judgment of this Court in ***W.A.(MD)No.761 of 2022, dated 31.07.2023³*** and in support of his submissions more specifically to paragraph 14 which reads as follows:

“14. Thus it can be seen that the only consideration as far as the appointment to the post is concerned is about the very

² 2022 Live Law (SC) 300

³ MANU/TN/4305/2023



W.A.(MD)No.1351 of 2023

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involvement itself, whether would render a doubt as to the impeccable character and integrity of a person so as to make him a part of the police force tasked with responsibility of maintaining law and order. We have already extracted the nature of offences and the manner in which, the appellant was alleged to have been involved in those criminal cases. It cannot be said to be trivial or due to sudden and grave provocation. Further, it can be seen from the order impugned in the writ petition that there has been due application of mind on the part of the respondent. In view thereof, no exception whatsoever can be taken to the finding of the learned Single Judge of this Court that this Court cannot interfere in the decision of the respondent finding the appellant not suitable for the post.”

9. We have considered the rival submissions made on either side and perused the material records of the case. The question which arises for consideration in the present writ appeal is as to whether or not the action of the respondents in taking into account the two criminal cases referred above is in order?

10. Of the two cases, it can be seen that in respect of Crime No.188 of 2010, the matter was dealt with by the Juvenile Justice Board in Juvenile Case No.5 of 2019. As a matter of fact, the appellant and others were held to be not guilty. The finding of the Board in paragraph 21 is extracted hereunder:

8/16



W.A.(MD)No.1351 of 2023

WEB COPY

“21. மேலும் கடந்த 29.04.2010ம் தேதி நடந்த சம்பவத்தில் இறந்த நபரான கண்ணன் என்பவரை இந்த இளஞ்சிறார் மூவரும் தாக்கினார்கள் என்றோ, சம்பவ இடத்தில் இளஞ்சிறார்கள் இருந்தார்கள் என்றோ, அரசு தரப்பு சாட்சிகள் யாரும் சாட்சியம் அளிக்காத நிலையிலும், பிரிவு 302 இ.த.ச.வின் கீழான குற்றத்தினை இளஞ்சிறார்கள் செய்தார்கள் என்பதை அரசு தரப்பு சாட்சிகள் மூலம் நிரூபிக்காத நிலையில் இளஞ்சிறார்கள் குற்றவாளிகள் இல்லை என்று இந்நீதிக்குழுமம் முடிவு செய்கிறது.”

11. Though under the present Juvenile Justice (Care and Protection of Children) Act 2015, juveniles of the age of 15 and above have to be dealt with differently and tried as adults, the same was not in position under the repealed Juvenile Justice (Care and Protection of Children) Act 2000, under which the appellant was dealt with. Section 19 of the said Act reads as follows:

“19. Removal of disqualification attaching to conviction.—

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.”



W.A.(MD)No.1351 of 2023

WEB COPY

12. The Juvenile Justice Care and Protection Rules, 2007, enumerated certain principles to be followed in respect of Juveniles, under Rule 3(2), which includes the Principle of Fresh Start, which reads as hereunder :

“(1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while.....

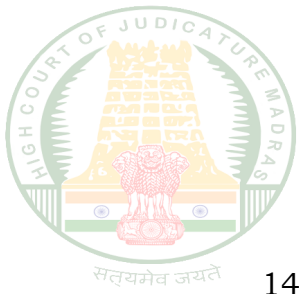
(2) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:

... ..

XIV. Principle of Fresh Start

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his part records.”

13. Thus it can be seen that the law as it stood at the time of commission of offence by the appellant, not only saves the juvenile of any disqualification attaching to the conviction of any offence, the records even of conviction is ordered to be removed after the expiry of the appeal. Thus, it can be seen that the law envisages complete erasing of the past.



W.A.(MD)No.1351 of 2023

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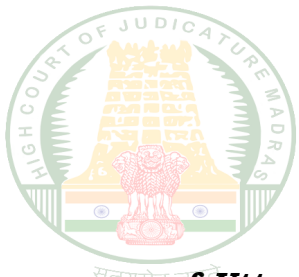
14. The purpose of the said law, can be understood in terms of the United Nations Conventions on the Rights of the Child adopted on 20.11.1989 to which India is a signatory. Article 40 of the Convention reads as under:

“ States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

.... “

15. Thus it can be seen that it aims at the child's reintegration into the society and the child assuming a constructive role in the society. The Hon'ble Supreme Court of India in **Umesh Chandra Yadav** cited *supra* had also observed that the authorities should also consider as to the fact regarding the candidate was juvenile while considering the character and antecedents.

16. In this regard, useful reference can also be made to the recent decision of the Hon'ble Supreme Court of India in **Vinod Katara -Vs- State**



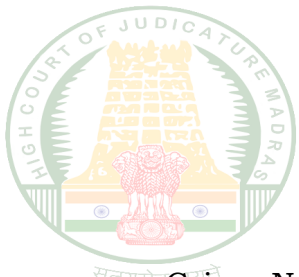
W.A.(MD)No.1351 of 2023

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*of Uttar Pradesh*⁴, more specifically in paragraph 30 and 31, wherein the principles enumerated under Rule 3(2) of the Rules are referred to and concept of protection of the child is held to be enshrined in the form of Directive Principles in Article 39 of the Constitution of India. For all the above reasons, we are of the opinion that as far as the first crime No.188 of 2010 is concerned, the same ought not to have taken into account while considering the suitability of the appellant regarding his character and antecedents.

17. As far as the second offence is concerned, it may be seen that the mother of the appellant, who has given the complaint. A perusal of the FIR, the defacto complainant, the mother had made a specific allegation against the appellant. However, in the subsequent investigation, she has retracted from the said statement on account of which, the case has been closed as 'Mistake of Fact'. Merely because, the case has been closed as 'Mistake of Fact', it cannot be contended that the matter cannot be taken into account at all. Therefore, it will be open to the authority to consider the issue and decide whether or not the character and antecedent of the appellant would disentitle him of the post. We therefore reject the submission of the learned Senior Counsel appearing on behalf of the appellant in respect of second

⁴ 2022 SCC Online SC 1204



W.A.(MD)No.1351 of 2023

Crime No.294 of 2019 and hold that the authorities are entitled to consider the same irrespective of the fact that the case was referred as 'Mistake of Fact' as the very involvement also matters while considering the character and antecedents.

18. However while assessing the character and antecedent, since both cases have been taken and a decision has been arrived at, and since we have held that one of the cases that is Crime No.188 of 2010, in which, the petitioner is said to have involved in the offence when he was a juvenile, cannot be taken into account at all, we are unable to sustain the order impugned in the writ petition and consequently the order of the learned Single Judge cannot be upheld.

19. In view thereof, the writ appeal is allowed on the following directions:

(i) The order passed by the learned Single in W.P.(MD)No.11110 of 2020, dated 24.03.2022 shall stand set aside;

(ii) The order of the second respondent dated 27.07.2020 impugned in the writ petition is set aside;

(iii) The first and second respondents through the concerned committee shall review the case of the appellant by considering the case in



W.A.(MD)No.1351 of 2023

Crime No.294 of 2019 alone and shall independently take a decision as to the suitability of the petitioner with reference to the Rules in force as on the relevant date;

(iv) Needless to say that if the petitioner is found eligible, he shall be forthwith appointed and be included in the next batch of training in which case, the petitioner will be entitled for all the benefits from the date of appointment. However, his seniority will be on the bottom of the batch in which the petitioner was selected;

(v) If the committee still finds the petitioner is ineligible, the said order shall be duly communicated to him;

(vi) The entire exercise shall be carried on within a period of three months from the date of receipt of the copy of this Order.

(vii) No costs.

(S.S.S.R.,J) (D.B.C.,J)

14.09.2023

NCC : Yes / No

Index:Yes/No

Index:Yes/No

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14/16



W.A.(MD)No.1351 of 2023

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To

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W.A.(MD)No.1351 of 2023

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Pre-Delivery Judgement made in
W.A.(MD)No.1351 of 2023

.09.2023