

**THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

Writ Appeal No.251 of 2023

JUDGMENT: (per Hon'ble Sri Justice G.Narendar)

Heard Sri C.V.R. Rudra Prasad, learned Central Government Counsel, for the appellants and Sri M. Kesava Rao, learned counsel for the respondent/writ petitioner.

2. The appellants herein are (1) the Medical Board (Staff Selection Commission) rep. by its Senior Medical Officer; (2) the Deputy Inspector General – Appellate Authority; and (3) the Staff Selection Commission, rep. by its Regional Director (SR).

3. This intra-Court Appeal is directed against the order of the learned Single Judge, dated 18.10.2022, rendered in W.P. No.12228 of 2014, whereby the learned Single Judge was pleased to issue the following directions on the writ petition of the respondent herein.

“19. Accordingly, the Writ Petition is allowed with the following directions:

- (i) The proceedings dated 28.01.2014 of the respondent No.1 and the proceedings, dated 22.03.2014 of the respondent No.2 are hereby set aside; and

- (ii) The respondents are directed to reconsider the claim of the petitioner by taking into consideration the opinion of the Medical Board, N.I.M.S., Hyderabad, dated 11.04.2022, for appointment of the petitioner as Constable within a period of four (04) weeks from the date of receipt of a copy of this Order.

There shall be no order as to costs.”

4. The parties herein are referred to by their nomenclature before the learned Single Judge.

5. At the very outset, we would like to place on record the shock this case has given to the Court. It is a case where the candidate has been otherwise found fully qualified and whose desire for employment with the Security Forces has taken a beating on account of an alleged deformity of the little finger. As is often said that fate can be sometimes cruel and this is a classic example of cruel fate where a candidate, fit as a fiddle, is made to run around the corridors of the justice dispensation system for ten long years, which even to a layman would appear unjustified.

6. The petitioner is present before the Court today and we have observed his hands and but for a little crookedness, the little fingers of both hands are fully formed and but for the bent

or little crookedness, even we as laymen can confidently state that the so called deformity would not in any way prove to be an impediment in the petitioner's endeavour to discharge his duties with the Central Industrial Security Force ("C.I.S.F."). The Force, which otherwise would have the benefit of a fit and determined person, has lost out the same to the vagaries of the system, which in the instant case has been compounded by sheer negligence on the part of professionals.

7. After hearing the learned counsels, we had asked the Medical Officer, who had examined and certified the petitioner as being unfit, to appear and assist the Court. We were informed that the Doctor has been posted to Arunachal Pradesh. Hence, we deemed it appropriate to grant liberty to the Medical Officer to make his appearance through virtual mode. Today, we have heard Dr.Surender Chowdary, the then Medical Officer, who examined the petitioner and issued the certificate holding him to be unfit. We have perused the certificate in detail and the Government guidelines and we have posed several queries to the Medical Officer, to which queries, the Medical Officer's only refrain was that he has relied on certain guidelines issued by the Department and on the basis of

those guidelines, he has certified that the petitioner to be unfit. The Medical Officer, was neither able to detail the guidelines that he had followed, apart from stating in general terms, nothing in specific nor detail was placed before us by the Medical Officer though we had put the learned counsel on notice as to why this Court required his assistance. Hence, the failure to produce the necessary guidelines, in our opinion, is inexcusable. That, apart the bare observation of the Medical Officer, it is clear that there are no other medical records which would go to demonstrate any inability on the part of the petitioner to discharge his duties, if he was selected to the post.

8. To a specific query from the Court, as to whether the deformity was sufficient enough to incapacitate the petitioner or reduce the efficiency of the petitioner to perform his duties, the Medical Officer would plead ignorance and would merely reiterate that the certificate was issued on the basis of the guidelines and he would further state that he presumed that the deformity would be an impediment in the petitioner's effort to discharge his duties efficiently. When we queried further about the basis for such presumption with reference to the alleged deformity, no answers were forthcoming.

9. We have also heard Sri C.V.R. Rudra Prasad, learned Central Government Counsel, appearing for the appellants, in detail. Matter was passed over in order to give an opportunity to the appellants to place before this Court any material or record in support of their contention and justifying the medical certificate. In the post-lunch session, the appellants have placed on record the guidelines (revised) stipulated by the Ministry of Home Affairs (Police Division-II), Government of India, dated 20.05.2015.

10. We have perused the same. Under the guidelines, several instructions and clarifications have been issued to eliminate, presumably, any arbitrariness in the process of certification of the physical fitness of the candidates. Sl. No.5 of the guidelines stipulates the parameters for general examination and Sl.No.5(g) reads as follows:

“Limbs, hands & feet should be well formed & fully developed and there shall be perfect motion of all the joints.”

11. Implying thereby, the limbs i.e. hands and feet should be fully formed and there should be motion of all joints. If the medical certificate is appreciated in this background, we do not find any opinion recorded which states that the motion of the

joints is restricted or there is no motion of the joints of the little finger because of the alleged deformity.

12. It would also be interesting to note Sl.No.5 (j) which stipulates that general examination should reveal that feet and toes are well formed. Similar stipulation is not found for the hands and fingers. Sl.No.6 stipulates the general grounds for rejection.

13. The only other ground of some import would be Sl.No.6 (4) which reads as under:

“(4). Generally impaired constitution, so as to impede efficient discharge of training/duties.”

As observed supra and at the cost of repetition, there is no opinion recorded, either by the medical officer or the medical board that the bend or crookedness in the little finger, would come in the way of discharging duties and that too efficiently.

14. This Court observes that there are 29 indicators. The remaining 28 apply to specific deformity or impediment and none of them apply to either to the upper limb or palm or the finger. Sl.No.7 details minor acceptable defects and the relevant entry i.e. Sl.No.7 (l) reads as under:

“(l) Loss of only soft tissues of terminal phalanx of little finger of one or both hands is to be accepted.”

15. In the instant case, it is not even a case of loss of soft tissues, as the little fingers of both hands appear well rounded. The Note appended to Sl.No.7 makes an interesting reading and they are extracted for the sake of convenience:

“NOTE:

(a) In all cases where a candidate suffering from trifling defects is accepted the Recruiting Medical Officer should fully satisfy himself that the defect will not in any way affect the efficiency of candidate and the defects should invariably be mentioned in recruitment form.

(b) Candidates suffering from minor defects of ordinary nature such as simple sores, shoe bite, common cold and similar other ailment which usually last only a few days, may be accepted. Recruiting Medical Officer before accepting such a candidate must fully satisfy himself that the disease is likely to be cured in a few days with outdoor treatment.

(c) In doubtful cases candidates may be referred to a specialist for examination and opinion which may include X-Ray examination or any other special investigation/test/examination.”

16. Note (a) and (c) are of relevance. It is probably this burden the Medical Officer found onerous and in order to avoid expending his energy for recording his opinion, chose the easier way out and declared the candidate unfit with a mere sentence. It is this, which in our opinion, is the bedrock upon which the

respondents should have established their case. A reading of the Note (a) and (c) makes it amply clear that the opinion of the Medical Officer cannot be whimsical, but, should be backed by reasons, not only for recommending but also for rejecting the case of the candidate.

17. It cannot be gainfully argued that, grounds should be recorded only for recommending a candidate as fit, and despite trifling defects, no reasons be recorded for certifying a candidate as unfit, when no obvious deformity or impairment is present. If such a case is accepted, it would amount to and give scope for arbitrariness and the instant case is a classic example of that. The impasse that has led to this Writ Petition and the Writ Appeal is directly traceable to the negligent conduct of the Medical Officer and the Review Board. It is shocking to see that the Review Board, consisting of three doctors, have proceeded to affirm the opinion of the Medical Officer even without a bare discussion about the deformity or the effects of the deformity in the performance and discharge of the duties. The omissions and commissions, which colour this case with arbitrariness, leave this Court with no option, but to

express anguish in the manner in which lives and careers of the burning youth of this country is stifled & trifled with.

18. The statement of the Medical Officer to the Court, that he had examined more than 30 candidates a day leaves a lot to desire. The pressure of work cannot be an excuse to condone an act which has condemned a youth from his chosen path of serving a dedicated Force. Yet, we also appreciate the reality and pragmatic approach, which would move the Court to hold it's hands from making any observation against the Medical Officer. But, we cannot extend the same yardstick to the Review Board, more so, when the review was set in motion by the candidate seeking justification for his rejection. The Review Board despite being nudged by the candidate, in our opinion, has behaved like the infamous Roman Emperor Nero. The Review Board, consisting of senior doctors, was expected and it would not be out of the ordinary to expect such persons eminence, a little more care and concern in the discharge of their duties. This is a case which is an example of gross injustice where a person who was otherwise fully eligible and more suitable than the candidature of other candidates, actually suffering from physical deformities, has been

languishing and has lost a valuable decade of service which can be directly attributed to the system. Systemic failure cannot be a ground to deny justice to the candidate who was otherwise, in our opinion, also fully qualified. In our opinion, the Writ Appeal, in our opinion, appears to be borne, more out of ego than out of any merit. Neither the pleadings nor the material demonstrates even an iota of evidence which would support the conclusion drawn by the Review Board and the Appellate Authority.

19. In that view of the matter, we deem it appropriate and most justified to dismiss the Writ Appeal with exemplary costs. We have examined the Appeal and the case of the appellants from every conceivable angle and we do not find a grain of justification for the appeal. Time, money, resources and precious judicial time has been, in our considered opinion, wasted on this litigation just to sustain an erroneous opinion.

20. In that view of the matter, the Writ Appeal is dismissed with exemplary costs, quantified at Rs.3.00 Lakhs, which shall be paid by the appellants 1 and 2 at the rate of Rs.1.50 Lakhs each. The appellants 1 and 2 shall deposit the costs within a

period of four weeks from the date of receipt of a copy of this order, with the Secretary, A.P. State Legal Services Authority, Amaravati. Out of which, the respondent/writ petitioner is entitled to recover the costs of Rs.1.00 Lakh from the members of the Review Board, if it so deems it fit and necessary. It is entitled to do so after issuing a notice to the members of the Review Board and after affording them an opportunity of hearing. The directions of the learned Single Judge in our opinion are fully justified and supported by cogent reasons and do not call for any interference.

21. Accordingly, the Writ Appeal stands dismissed with costs as quantified above.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE G.NARENDAR

JUSTICE NYAPATHY VIJAY

Date:03.01.2024.

Note:
L.R. copy to be marked.
B/O
cs/anr

*** THE HON'BLE SRI JUSTICE G.NARENDAR
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+ Writ Appeal No.251 of 2023

% Dated 03-01-2024.

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..... Appellants

Vs.

\$ S.Yugandhar S/o.Thirupati Rao, R/o.Venkateswara Colony, Thagarapuvalasa, Bhemeli Mandal, Visakhapatnam District.

..Respondent

! Counsel for the Appellants : Sri C.V.R. Rudra Prasad,
Learned Central Govt. Counsel.

^ Counsel for the respondent : Sri M.Kesava Rao

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> HEAD NOTE:

? Cases referred: Nil.

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Writ Appeal No.251 of 2023**

1. Medical Board (Staff Selection Commission), rep. by its Senior Medical Officer, CAPFs Constable (GD) Examination, 2013-14, CISF, KRTC MUNDALI DME CONST/GD-13 at NISA, Hyderabad, P.O. Hakimpet, Hyderabad – 500 078 & Ors.

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..Respondent

JUDGMENT PRONOUNCED ON: 03-01-2024

**THE HON'BLE SRI JUSTICE G.NARENDAR
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THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

- 1) Whether Reporters of Local newspapers may be allowed to see the Judgments? -Yes-
- 2) Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
- 3) Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE G. NARENDAR