

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.07.2014**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.P.No.**16539** of **2014**
and M.P.No.**1** of **2014**

T.Thanusu

.. Petitioner

- Vs -

1. The Secretary to Government of Tamil Nadu,
Department of Homes, Fort St. George,
Chennai – 600 009.
 2. The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.
 3. The Director General of Police / Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
807, P.T.Lee, Chengalvaraya Naicker Maligai,
Anna Salai, Chennai – 600 002.
 4. The Director General of Police,
Myalpore, Chennai – 600 004.
 5. The Director of Medical Services,
Kilpauk, Chennai – 600 010.
 6. The Superintendent of Police,
Ariyalur District.
- .. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the 3rd and 4th respondents herein to appoint the petitioner in the post of Police Constable Grade – II forthwith as per the provisional selection made by the respondents as per the interview conducted on 24.06.2012 by the third

respondent herein.

For Petitioner : Mr.S.Nagarajan
 For Respondents : Mr.R.Rajeswaran,
 Special Government Pleader
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ORDER

Of course, uterus and ovaries are the vital internal organs of a woman for attaining motherhood. But, "Does it mean that the one, who does not have these organs congenitally, though has got all the other characteristics of a woman, would lose her sexual identity as a woman ?" "Is she a transgender ?" These questions need to be answered in this writ petition.

2. The petitioner, who was born and brought-up as a female, recognised by the society as a female, educated as a female and selected for the post of Grade II woman police constable, was labelled as a transgender since the medical examination revealed absence of uterus and ovaries in her body, thereby, declaring her as a transgender and was denied employment. Contending that she ever remains to be a woman eligible for being appointed as a woman police constable, the petitioner is before this Court seeking justice. Incidentally, this happens to be the third such case which I deal with preceded by ***Nangai (name changed) Vs. The Superintendent of Police, Karur District*** reported in ***2014 (3) CTC 497*** and ***Nangai II (name changed) Vs. The Director General of Police, Chennai*** in ***W.P.No.15223 of 2014*** dated 24.06.2014.

3. The petitioner was born to poor parents who belong to a downtrodden community in Ariyalur district. She was sexually identified as a female and accordingly her sex identity was recorded in the Government records including the birth certificate. She studied in the Government High School at Nayaganaipiriyal village in Ariyalur district, where, she was given sexual identity as a girl. Thus, in all the Government records, she was recognised as a female and so by the Society at large.

4. The Tamil Nadu Uniformed Services Recruitment Board conducted selection process for recruitment of Grade II woman police constables. The petitioner was selected for the post of Grade II armed woman reserve police constable and accordingly allotted to Ariyalur district. But before deputing her for police training, she was sent to the Government Hospital at Perambalur for examining her medical fitness.

5. A team of medical experts after examining the petitioner issued a certificate of physical fitness on 10.11.2012, thereby, certifying that she was physically fit for appointment. But at the bottom of the said certificate, the Medical Board made a note as follows:

“Transgender – for Gynee opinion”

This opinion was based on the report of USG-Whole abdomen test

conducted at Perambalur Scan Centre which revealed the absence of uterus and ovaries.

6. Thereafter, the Superintendent of Police, Ariyalur in her letter C.No.A2/14000/12, dated 12.12.2012, informed the Director General of Police, Chennai that the petitioner had been declared as a transgender as her scan report revealed that uterus and ovaries were absent and thus, according to the Superintendent of Police, the petitioner is not fit for appointment as woman police constable.

7. Based on the said report of the Superintendent of Police, Ariyalur the Director General of Police, in turn, in Memo Rc.No.095339/Rect 1(1)/2013, dated 20.06.2013, requested the Superintendent of Police, Ariyalur to address to the Director of Medical Education, Kilpauk, Chennai for re-examination of the petitioner at an early date.

8. But the Director of Medical Education, Kilpauk, in turn, by his proceedings in K.Dis.No.57655/H&D-1/2013, dated 06.08.2013, informed the Superintendent of Police, Ariyalur that as per Medical Code Volume - 1 para 578, appeal to a second Medical Board can be ordered only by the Government. On this ground, the Director of Medical Education had requested the Superintendent of Police, Ariyalur to obtain permission of the Government in this regard. But obviously no such permission was obtained. Instead, the Superintendent of Police addressed to the Director General of

Police, Chennai, informing the stand taken by the Director of Medical Education.

9. In the meantime, the petitioner sent repeated representations to the Director General of Police and other authorities requesting them to issue appointment order and to depute her for training. But, it was not done. In these circumstances, the petitioner has come up with this writ petition seeking appropriate direction.

10. I have heard the learned counsel appearing for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents and also perused the original records produced from the office of the Superintendent of Police, Ariyalur in this connection.

11. The learned counsel appearing for the petitioner would submit that the petitioner has been unjustly humiliated by labelling her as a transgender though she has got a definite sexual identity as a female all along.

12. But the learned Special Government Pleader would contend that in the community certificate issued by the Thasildar, Ariyalur the petitioner has been described as 'Selvan' (male) and not as 'Selvi' (female). He would further submit that the scan report revealed absence of uterus and ovaries in the body of the petitioner and based on the same, the Medical Board has stated that the petitioner is a transgender and thus the petitioner is not eligible for being appointed as a woman police constable.

13. I have considered the above submissions.

14. The question is, who is a transgender ? What is the definition for the term 'transgender' in legal parlance ? Who is competent to declare a human being as a 'transgender' ? These questions were all considered by me extensively in **Nangai's case** (cited supra). In that case, I have observed in paragraph 29 as follows:

"29. It may be true that in medical terms an individual may not fit in within the definition of either male or female, and, therefore, medically the individual may be classified as transsexual, but, legally, the individual should be classified either as a male or as a female and not as a transsexual....."

In paragraph 26 of the said judgment, I have observed as follows:

"26. As I have already pointed out , as of now, there is no law in this country prescribing the mode to determine the sex. Before entering the sex of the child in the medical records, there is no law prescribing that the child should be subjected to any kind of medical test to find out whether medically the child has XX or XY Chromosomes and then to assign sexual identity to the child irrespective of the physical characteristics of the child. It is customary that as soon as the child is born, the Doctors identify the child only by means of the physical characteristics and accordingly, they assign the sexual identity to the child."

In paragraph 24 of the said judgment, while trying to find out the causes for

transsexualism, I have observed as follows:

"24. Why does this transsexualism occur? What are the causes? In this regard we may say that there is no consensus even among medical, psychological, psychiatry, genetical and the other scientific communities. A cursory reading of the subject would reveal that there are a number of theories about the cause for transsexualism. Biologists claim that it is because of the chromosomal aberrations. It is well known that if an individual has XX chromosomes, she is a female and if an individual has got XY chromosomes, he is a male. However, there are also persons with XXY and YXX Chromosomes. These are chromosomal aberrations. Some people by physical characteristics may be females though they may have XY Chromosomes indicating male characters. Similarly, there are people who are males by physical characteristics, but they have XX chromosomes indicating female characters. According to the medical community, these biological differences cause Transsexualism. There are other theories which say that imbalances or fluctuations in hormones or use of certain medications during pregnancy may cause transsexualism. There are also theories to say that transsexualism is, pure and simple, a psychological disorder. The Brain Bank in Netherlands Studies say that 19 there is a "brain sex" difference between Men and Women and

transsexual people have the brain sex of the gender to which they identify themselves. Thus, it is manifest that there is no consensus among various theories as to how the transsexualism happens in human beings. Similarly, there is no recognised or universally accepted mode drawing a line differentiating transsexuals from the other sexes."

15. Subsequently in **Nangai II case** (cited supra) when the petitioner therein was denied employment as a woman police constable by labelling her as a transgender based on medical report that she had XY chromosome, following Nangai's case, I held that the petitioner therein has liberty to choose her own sexual identity and since she had chosen to be identified as a female forever and since she has been recognised as a female by the society and since the mere presence of XY chromosome alone cannot oust her outside the definition of female, I set aside the order of dismissal and directed her to be reinstated in service as a woman police constable.

16. In **Nangai's case** (cited supra) I have extensively referred to the recent historic judgment of the Hon'ble Supreme Court in **National Legal Services Authority Vs. Union of India and others** reported in **2014 (3) CTC 46** wherein, I have held in paragraph 43 as follows:

"43. In the result, the writ petition is allowed in the following terms:-

(i) The petitioner is declared as a female for all purposes and she has got right to retain such

sexual / gender identity.

(ii) The petitioner has liberty to chose a different sexual / gender identity as a third gender in future based on the medical declaration, if there is any law put in place recognising FTMs as a third gender.

(iii) The impugned order of termination from service issued by the Superintendent of Police, Karur District is hereby set aside.

(iv) The respondents are directed to issue consequential order within a period of six weeks from today permitting the petitioner to join duty as Grade II Police Constable [Woman] with continuity of service."

17. In the case on hand, the only reason stated by the respondents to brand the petitioner as a transgender is that there is absence of uterus and ovaries in her body. In my considered opinion, if absence of uterus and ovaries is to be taken as the decisive factor for sexual identity as a transgender, then, it would be disastrous because it is only a congenital defect such as visual impairment, hearing impairment, clubbed legs etc., Similarly, a mere inadvertent entry in the community certificate as "Selvan" can not decide the sexual identity of the petitioner.

18. Therefore, following the judgment of the Hon'ble Supreme Court in **NALSA's case** (cited supra) and that of this Court in **Nangai's case**

(cited supra) and **Nangai II case** (cited supra), I have to hold that the petitioner has got freedom to identify herself as a female and since she has been recognised as a female all along, the denial of employment by misbranding her as a transgender is not sustainable in law and therefore the same needs interference at the hands of this Court.

19. In the result, the writ petition is allowed and the respondents are directed to issue appointment order to the petitioner as Grade II Woman Police Constable and depute her for training within a period of eight weeks from the date of receipt of a copy of this order. Consequently the connected miscellaneous petition is closed. No costs.

03.07.2014

Index : Yes
Internet : Yes
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NOTE 1: *With a view to preserve the right of privacy of the petitioner, it is directed that the press, electronic media and law journals shall not disclose her name and instead, they shall mention the name of the petitioner as "**Nangai - III**".*

NOTE 2 : *The Original Files were returned to the Superintendent of Police, Ariyalur through the learned Special Government Pleader.*

S.NAGAMUTHU.J.,

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To

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5. The Director of Medical Services,
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6. The Superintendant of Police,
Ariyalur District.

PRE-DELIVERY ORDER IN
W.P.No.16539 of 2014
and M.P.No.1 of 2014

03.07.2014