

MANU/TN/2160/2014

Equivalent Citation: (2014)7MLJ452

**IN THE HIGH COURT OF MADRAS**

W.P. No. 15223 of 2014 and M.P. Nos. 1 and 2 of 2014

Decided On: 24.06.2014

Appellants: **G. Nagalakshmi**  
**Vs.**

Respondent: **Director General of Police**

**Hon'ble Judges/Coram:**

*S. Nagamuthu, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Kiruba Munusamy*

*For Respondents/Defendant: R. Rajeswaran, Spl. G.P.*

**ORDER**

**S. Nagamuthu, J.**

1. Yes. It is yet another case, where a human being born as a female, brought up as a female, educated as a female, recognised as a female and appointed as a female Constable was at last misbranded as a transsexual on the ground that subsequent medical examination revealed that she is not a woman, but she has X-Y Chromosome. Of course, the exit of the petitioner was not directly on the said ground, but on the ground that the petitioner allegedly submitted a resignation letter, which was accepted by the Superintendent of Police, Thanjavur. Aggrieved over the above action, the unfortunate young girl is before this Court with this writ petition. The facts of the case would be as follows:

"(a) The petitioner was born on 15.10.1989 at Government Hospital, Thiruvaidaimaruthur, Thanjavur District. From her physical characteristics, the Doctors assigned sexual identity to the petitioner as a female in all the medical records. Based on the said medical records, the Registering authority under the Registration of Births and Deaths Act, 1969, registered her birth as a female child in the Register of births, on 18.10.1989 itself (vide the Birth Certificate at page No. 23 of the typed set of papers). She was named as 'Nagalakshmi' i.e., as a female child. She was admittedly brought up as a female child. She was also recognised as a female child by the society as well as by the Governmental organisations. In the family card issued to the family members of the petitioner, the petitioner was recognised as a female child. She had her early education as a female child and her higher secondary course in T.A. Higher Secondary School, at Thiruvaidaimaruthur, as a girl. She passed out the higher secondary examination with 761 marks. During her student days, the petitioner participated in a number of sport meets and events, in which she won number of medals. The petitioner, on few occasions, had even represented the State of Tamil Nadu in Long Jump events and also 100 mts. Dash. Along with the typed set of papers, she has produced as many as 30 certificates showing her participation and winning in

the sports meets. It is crystal clear that all along she was treated as well as recognised as a female by the family members, by the society and by the Governmental Organisations with no dispute or doubt regarding her gender identity.

(b) While so, the second respondent/Uniformed Services Recruitment Board conducted selection process for appointing Women Police Constables in the Tamil Nadu Police Subordinate Services. The petitioner participated in the same. The second respondent selected the petitioner and allotted her to the Thanjavur District. Based on the said selection, the 6th respondent/Superintendent of Police, Thanjavur, by his proceedings in Na.Ka.No.A2/11666/2012, dated 16.02.2013, issued appointment order, appointing her as a 'Woman Police Constable'. She was also deputed for training commencing from 17.2.2013 at the Police Recruit School at Villupuram in Villupuram District. The petitioner accordingly reported for duty and joined the training at the Police Recruit School, Villupuram. Before she was so deputed for training, the Superintendent of Police, Thanjavur, following the procedure, sent the petitioner for medical examination. The Medical Board consisting of six Doctors, drawn from various Specialities, conducted medical examination at Thanjavur Medical College Hospital and issued a certificate on 23.02.2013, thereby certifying that the petitioner was fit to be appointed as a 'Woman Police Constable'. It was only after having been satisfied with the said certificate issued by the Medical Board, the Superintendent of Police deputed her for training.

(c) While undergoing training at the Police Recruit School, Villupuram, she was unfortunately sent for routine medical check up, including gender test. A Doctor attached to the Government Medical College and Hospital, Villupuram, after examining her, issued a certificate that the petitioner is a 'Pseudo hermaphrodite'. In other words, the certificate was to the effect that the petitioner is a transsexual.

(d) Thereafter, the petitioner was appraised of the result of the Medical examination. Her parents were called and in their presence, again it was informed by the Principal of the Police Recruit School that the petitioner is not a woman, according to the medical opinion and she is only a transsexual.

(e) The petitioner submits that she was put to intolerable mental torture, agony and ridicule by the above statement of gender identity. Thereafter, it is stated in the affidavit that the then Vice Principal of the Police Recruit School insisted the petitioner to write a letter to quit the service as though she was suffering from cardiac decease. The petitioner further claims that such a letter was obtained from her and the said letter was forwarded to the Superintendent of Police, Thanjavur District. Acting on the same, the Superintendent of Police, by his proceedings, in Na.Ka.No. A2/11666/2012, dated 08.03.2013, accepted the so called resignation and relieved her from the post. It is this order which is under challenge in this writ petition."

**2.** I have heard the learned counsel for the petitioner and Mr. R. Rajeswaran, the learned Special Government Pleader appearing for the respondents and I have also perused the records carefully.

**3.** A detailed counter has been filed by the Superintendent of Police, Thanjavur,

wherein the selection of the petitioner as a female, her appointment as a Woman Police Constable, the medical certificate issued by the Board of Doctors, at Thanjavur Medical College and Hospital and her deputation for training, are all admitted. It is also admitted that during the routine medical check up conducted at Villupuram Government Medical College and Hospital, the petitioner was declared as a transsexual. However it is stated that not on that ground she was terminated from service, but, the petitioner, on her own volition, had submitted a letter of resignation to the Principal of Recruit School, which in turn was forwarded to the Superintendent of Police and acting on the same, her resignation was accepted and she was relieved. Thus, there was no mala fide at all on the part of the Superintendent of Police, it is stated. Therefore, according to the respondents, the writ petition deserves to be dismissed.

**4.** I have considered the above submissions.

**5.** The plight of the transgenders, who are neither females nor males came to be considered in National Legal Services Authority v. Union of India and Others, MANU/SC/0309/2014 : AIR 2014 SC 1863 : 2014 5 SCC 438 : 2014 (3) CTC 46 : (2014) 3 MLJ 595, wherein the Honourable Supreme Court in a historic judgment delivered, on 15.4.2014, has declared that the transgenders do not fall within the binary classification of 'male' or 'female', and they should be treated as a third gender.

**6.** I had an occasion to consider the said judgment in Nangai (name changed) v. Superintendent of Police, Karur District, MANU/TN/0759/2014 : 2014 (3) CTC 497 : (2014) 4 MLJ 12. In that case, the petitioner therein, who was born as a female, recognised as a female, brought up as a female, appointed as a female, was at last branded as a transsexual and terminated from the post of Woman Police Constable, by the Superintendent of Police, Karur. While considering the said judgment of the Supreme Court, more particularly, paragraph Nos. 107 and 129 of the judgment, I have elaborately dealt with the cases of transgenders, who are of two kinds, namely, 'females to males' (FTMs) and 'males to females' (MTFs). The judgment of the Honourable Supreme Court in National Legal Services Authority v. Union of India and Others (supra) was concerned only with the transgenders, who are 'males to females'. In Nangai (name changed) v. Superintendent of Police, Karur District (supra) I have elaborately dealt with the case of the 'transgenders' who are 'females to males'. I have quoted the cause for transsexualism and I have also pointed out that, as of now, there is no Special law in this country to protect the interest of these transsexuals, who are 'females to males'. I have also, after having a thorough survey of the legal as well as factual aspects, in the said case, which I do not want to elaborate in this judgment, in paragraph No. 43 of the judgment held as follows:

"43.....

(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."

**7.** The petitioner in this case is also similarly placed. As I have already pointed out, the petitioner was born as a female, brought up as a female, recognised as a female by the Society as well as by the Governmental authorities, but unfortunately she was misbranded as a transsexual only based on the medical examination. Whether such a finding about the sexual identity, based on mere medical examination by a allopathy doctor, can be accepted itself is debatable. There is no consensus among the scientists. Therefore, I have held in paragraph Nos. 24 to 26 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 YXY 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 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.

**25.** It is in this fluid situation, we, in India, have recognized only the binary classification of the human beings as "males" and "females" and accordingly apply the laws. When there is no classification in any law as third sex [Transsexual] and when the transsexuals do not fall within the classification of "male" or "female", Would it be justifiable in law, to label them as third sex as claimed by the medical, psychological, genetical and the scientific communities and to deny them the basic human rights?" None can answer this question in the affirmative. If these transsexuals are not treated either as males or females, while applying the laws, since there is no special law recognising the transsexuals as third sex providing them with special rights, the transsexuals will be reduced into mere animals. In this country, fortunately, even animals have been given certain statutory protections, such as, The Wild Life Protection Act, 1972, The Prevention of Cruelty to Animals Act, 1960, etc. Thus, it was all along a challenge to the legal community to reconcile the position of the transsexuals and to bring them within the binary classification of male or female so as to ensure them all rights which are

available for males and females.

**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."

**8.** In view of the said conflicting views among scientists, in my considered opinion, in the absence of any Special law, providing a device, mechanism or authority to declare the sexual identity of an individual, as has been held by the Honourable Supreme Court in *National Legal Services Authority v. Union of India and Others* (supra) the petitioner has got liberty to choose her sexual/gender identity.

**9.** Here in this case, the petitioner has been identifying herself only as a female, which is not disputed by the Society as well as the Governmental organisations and therefore, I have to necessarily hold that the petitioner is a female for all purposes and the directions issued in *Nangai (name changed) v. Superintendent of Police, Karur District* (supra) are applicable to the petitioner also.

**10.** Now. turning to the contention of the respondents that the petitioner was not thrown out on the ground that she is a transsexual, but only acting on the resignation letter submitted by the petitioner, the contention of the petitioner is that the resignation letter was obtained by force. I find every reason to accept the said contention of the petitioner. Admittedly, the petitioner was born to illiterate poor parents, who belong to a downtrodden community, namely, 'Scheduled Caste'. The records would show that the petitioner's father is a 'Sweeper'. Such a girl, who had undergone the process of selection, in my considered opinion, would not have given the letter of resignation, voluntarily. In the so called resignation letter it is stated as though the petitioner was constrained to resign her post, as she was suffering from chest pain. But the fact remains that she did not have any such health problem. More particularly, she did not have any chest pain at any point of time. In the counter it is admitted that the family members of the petitioner were called and they were appraised of the position that she is a transgender. This happened on 6.3.2013. The petitioner underwent the medical examination on 6.2.2013 and the resignation letter was also obtained on the same day, in the presence of her parents. This is, in a way, admitted in the counter. This would only go to show that the petitioner would not have resigned her job on her own volition, but due to humiliation and fear of ridicule as a 'transsexual', she would have given the said letter. Therefore, I hold that the resignation letter is not voluntary. Though there was no mala fide on the part of the respondents, since I am of the firm view that the resignation letter is not voluntary, I have to necessarily interfere with the impugned order.

**11.** It may be easy for the authorities to declare a girl as a transsexual. But it is easier to perceive the mental agony and ridicule that the girl would have to undergo in the Society, after such declaration. Once she is declared by a Governmental authority that she is a transsexual, it will prove to be highly difficult for her to get married in future, though choosing a person of the opposite sex as a life partner by marriage itself is a part of right to life guaranteed under Article 21 of the Constitution



of India. The petitioner has got every right to have her own sexual identity that has been recognised by the society, which itself is another fundamental right falling under Article 19(1)(a) of the Constitution of India.

**12.** In my considered opinion, if the petitioner is allowed to go out of service with the declaration that she is a transsexual and thus, she is not a woman, it will be a ridicule, as this will reduce the life of the petitioner to more or less a mere animal existence. Those who have self identity either as a transmen or transwomen need, not only sympathy, but empathy as well from the rest of the humanity. Their progress should not be frustrated but facilitated. Let the approach of the society towards them be neither insensitive nor disincentive. 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, Thanjavur District, Thanjavur is hereby set aside.

(iv) The respondents are directed to reinstate the petitioner in service and allow her to complete the training and then post her at the appropriate place as a Woman Police Constable, with continuity of service.

(v) Since the learned counsel for the petitioner would submit that the petitioner does not insist for back wages, though it is directed that the petitioner shall have continuity of service, her past pay scale will be calculated only notionally for the purpose of fixing her future salary.

(vi) The Respondents are directed to issue consequential order reinstating the petitioner in service within a period of six weeks from today permitting the Petitioner to join duty as Grade II Police Constable (Woman) with continuity of service."

No costs. Consequently, connected miscellaneous petitions are closed.

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