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Writ Appeal No.1804 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1804 of 2019
and
C.M.P.No.12221 of 2019**

The Tamil Nadu Uniformed Services
Recruitment Board,
Rep. By its Chairman,
P.T.Lee Chengalvaraya Naicker Maligai,
No.807, 2nd floor, Anna Salai,
Chennai – 600 002.

Now at
The Tamil Nadu Uniformed Services
Recruitment Board,
Rep. By its Member Secretary,
Old Cop office Campus,
Pantheon Road, Egmore,
Chennai – 600 008.

... Appellant

Vs

R.Menaka,
D/o.M.Ramalingam.

.. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 18.11.2016 made in W.P.No.4388 of 2013.



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For Appellant : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.J.Lenin

For Respondent : Mr.G.Ethirajulu

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal had been directed against the order passed by the Writ Court dated 18.11.2016 made in W.P.No.4388 of 2013.

2. The appellant called for applications to the post of Grade -II Police Constable for both men and women. As per the notification, 10% preference was given to the candidates, who are the Ward cum Dependant of those who are working in the police Department.

3. The respondent being one of the eligible candidate to be considered for the said recruitment made an application pursuant to the notification. The notification date is 21.03.2012, pursuant to which, on or before the last date i.e., 23.04.2012, the respondent made an application. The said application along with other application submitted by other



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candidates having been scrutinized. Exam was conducted, based on which, cut off marks have been prescribed.

4. Insofar as the respondent is concerned, since she belongs to Backward Class community, based on the cut off marks that was fixed at 54, despite the fact that she has secured only 50 marks she was called for certificate verification, which according to the appellant was conducted on 24.08.2012, however, though according to the respondent, it was scheduled to be conducted on 24.08.2012 it was not conducted on the said date and it was deferred and conducted only on 28.08.2012.

5. As per the notification whatever the claim that has been made by a candidate seeking any reservations, special quota etc., including the qualification, to that effect photocopies of the certificate should have been annexed along with the application. At the time of certificate verification only, the candidates were supposed to give the original certificates and after verifying the same, the further course of action would be taken up by the appellant/recruiting agency.



6. In this context, it has been made clear by the appellant in the very notification, which is otherwise called as brochure to the notification that, those who did not annexe any such certificates by annexing the photocopies of the same along with that application those certificates would not be permitted to be produced at the time of certificate verification.

7. In this context, it is the case of the respondent that, though the respondent made application originally by claiming only communal reservation of Backward Class community, did not claim any special reservation i.e., 10% reservation for the Wards cum Dependant of the serving police people.

8. Since the father of the respondent was working in the police Department, she become eligible to claim 10% quota as per the guidelines issued in the brochure, the respondent having secured such certificate, which was issued only on 27.08.2012 by the concerned Authority, had produced the same at the time of certificate verification on 28.08.2012. However, the same was not accepted by the appellant on the ground that, the said claim and certificate has not been made or annexed



along with the application, even the photocopy has not been annexed by the respondent at the time of making the application. Therefore, as per the condition imposed in the brochure issued along with the notification, the respondent would not be entitled to submit such certificate at later point of time i.e., at the time of certificate verification, therefore, the legal heir certificate to establish that the respondent was the legal heir of the person working in the police Department to claim 10% Ward cum Dependant quota was not accepted and on that ground, the claim made by the respondent was rejected through the order dated 06.02.2013.

9. The said order was under challenge in the said writ petition, where the learned Judge after having gone through the relevant provisions of the condition that has been imposed in the brochure and also the Division Bench Judgments of this Court made in W.A.Nos.909 and 1051 of 2015 dated 18.07.2016 was pleaded to allow the said writ petition by giving the following directions:

“10. Under such circumstances, the impugned order dated 06.02.2013 is set aside. The respondent is directed to consider the Ward cum Dependent Certificate dated 27.08.2012 produced by the petitioner and treat her under the “Ward cum Dependent” quota and issue appropriate



appointment order to the petitioner. The petitioner's appointment shall be made with effect from the date on which, her immediate junior was selected to the said post and the petitioner should be declared as selected under the "Ward cum Dependent" quota as on the date of the original selection. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

10. Aggrieved over the same, the present appeal has been directed.

11. Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.J.Lenin, learned Government Advocate appearing for the appellant would contend that, at the time of making the application when specific column has been mentioned as column 22 as to whether the candidate wants to select any quota of 10% under Ward-cum-Dependant, the answer given by the respondent in the application was emphatically 'No' and to support of his contention a photocopy of the original application submitted by the respondent has been produced before us for our perusal.



12. The learned Additional Advocate General would further contend that, when such claim itself has not been made, the question of submitting any photocopy of the said certificate of legal heir of a working person of the Department i.e., Police Department is concerned, that could not have been filed.

13. Therefore, the learned Additional Advocate General would canvass the point that, merely because after the certificate verification was over on 24.08.2012, the respondent since obtained the certificate admittedly only on 27.08.2012, she cannot produce the same on 28.08.2012 because in two ways, such a belated production cannot be accepted.

14. In this context, the learned Additional Advocate General would contend that, first of all the photocopy of the said certificate was not annexed along with that application as per the condition precedent and secondly, the very certificate verification itself was over on 24.08.2012, therefore, the certificate admittedly obtained after 24.08.2012 can never be produced and if it is produced belatedly that cannot be accepted in view of the condition imposed in the brochure, therefore, for both the



reasons, the claim made by the respondent cannot be considered. Hence, there was a clear justification on the part of the appellant to reject the plea made by the respondent, which is impugned before the Writ Court.

15. Despite these factors according to the learned Additional Advocate General, the learned single Judge has not considered the issue in proper perspective, therefore, the judgment which is impugned herein is erroneous, hence he seeks indulgence of this Court.

16. On the other hand, Mr.G.Ethirajulu, learned counsel appearing for the respondent would contend that, insofar as the fact that the respondent is the daughter of a police person working in the Department regularly even at the time of issuance of certificate and thereafter, is not in dispute, therefore, she is entitled to get 10% quota of Ward cum Dependant. He would also submit that, as per the conditions imposed in the brochure, the certificate like the present one itself has to be obtained only after making the application after the notification issued in this regard. The notification itself was issued on 21.03.2012, hence, thereafter only such an application can be made to get such certificate and application made in this regard by the respondent having been considered



the certificate was issued by the competent authority only on 27.08.2012

immediately on the next date i.e., 28.08.2012, when the deferred date of certificate verification was going on, it was produced, however, the same was not accepted. Therefore, the learned counsel appearing for the respondent would contend that, insofar as the clause that has been relied upon by the learned Additional Advocate General in the brochure is not supporting the case of the appellant and only supporting the case of the respondent.

17. In this context, the learned counsel appearing for the respondent has also relied upon a decision of the Division Bench of this Court in the case of ***K.Sathish Vs. The State of Tamil Nadu rep. By its Secretary, Home Department and ors.*** dated ***13.02.2018*** made in ***W.A.(MD).No.1241 of 2017***, where even though a decision was taken by the Division Bench against the very 10% quota itself, in the operative portion of the order, the Division Bench has held that, the recruitment already been made in terms of the said reservation should not get affected. Therefore, the reservation of 10% having been applied in the said recruitment, which has also been approved by the Hon'ble Supreme Court. Therefore, in all fairness such a reservation should be extended to eligible candidates including the respondent, he contended.



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18. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

19. The issue raised in this case, it turns on a very narrow compass.

20. Insofar as the 10% quota that has been given to the Ward cum Dependant of the Police official is concerned, though two times the Division Benches have taken a view that such kind of quota cannot be provided as it goes against the constitutional provisions especially Article 16 of the constitution and accordingly, though the Division Bench declared that such quota is unconstitutional, in both the occasions, the matter has gone to the Hon'ble Supreme Court, where the Hon'ble Supreme Court have taken the view that the constitutional validity for such quota since has never been put into challenge, such kind of findings given by the Division Bench is beyond the scope of the lis and this was decided by the Division Bench of this Court, therefore, on that ground both the occasions, the judgment passed by the separate Division Benches were set aside and it was observed by the Hon'ble Supreme



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Court that the issue is left open, which would be decided later on at an appropriate lis.

21. When that being the position, insofar as the 10% quota is concerned, it is still valid, which was in fact applied to the recruitment, which is in question.

22. Insofar as the eligibility of the present respondent is concerned, who made an application under regular candidate i.e., only under the BC community quota and not under the 10% special quota, this become evident on verifying the copy of the application submitted by the respondent.

23. However, after filing the application and realising the fact that there has been a 10% quota available to the Wards cum Dependant of the persons working in the Department, the respondent also had made an application to get a certificate to that effect and the said certificate was issued to the respondent only on 27.08.2012 by the competent authority, which was immediately produced on the next date i.e., on 28.08.2012, which was an admitted fact.



24. However, the objection that was raised by the appellant Department is concerned, as per the condition that has been imposed in the brochure whatever the certificate, which had not been annexed or included along with that application by way of photocopy cannot be accepted at the time of certificate verification in order to verify the original.

25. In this regard, the learned Additional Advocate General has relied upon the following part of the brochure:

"(ஆ) சான்றிதழ்கள் சரிபார்த்தல் (Certificate Verification)

அசல் சான்றிதழ்கள் சரிபார்த்தலின் போது விண்ணப்பதாரர்கள் தங்களது விண்ணப்பத்துடன் இணைத்திருந்த நகல்களின் அசல் சான்றிதழ்கள் மட்டுமே சரிபார்ப்பதற்கு ஏற்றுக் கொள்ளப்படும். விண்ணப்பத்துடன் இணைக்காமல் ஏதேனும் புதிய சான்றிதழ்கள்/நகல்கள் சமர்ப்பிக்கப்பட்டால் அவைகள் கட்டாயமாக சரிப்பார்ப்பதற்கு ஏற்றுக்கொள்ளப்படமாட்டாது. உடல் தகுதித் தேர்வுக்கு அழைக்கப்படும் தேர்வாளர்கள் தங்களது வயது, கல்வித் தகுதி, சாதிச்சான்றிதழ் ஆகியவற்றையும், விளையாட்டு வீரராக இருப்பின் விளையாட்டுச் சான்றிதழ்களையும் (படிவம் I, II



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மற்றும் III), முன்னாள் இராணுவ வீரராக இருப்பின் அதற்கான சான்றிதழ்களையும், களப்பணியாளர் அல்லது அமைச்சுப் பணியாளரின் சார்ந்துள்ள வாரிசாக இருப்பின் விளம்பரம் வெளிவந்த நாளுக்குப் பின் பெறப்பட்ட வாரிசுக்கான சான்றிதழ்களையும், ஆதரவற்ற விதவையெனில் அதற்கான சான்றிதழ்களையும், தேசிய மாணவர் படை, நாட்டு நலப் பணி திட்டத்தில் பங்கு பெற்ற சான்றிதழ்களையும் பிற விளையாட்டுச் சான்றிதழ்களையும் அசல் சான்றிதழ் சரிபார்ப்பிற்குச் சமர்ப்பிக்க வேண்டும். வயது மற்றும் கல்வி ஆகியவற்றில் தகுதிபெறாதவர்கள் முதல் கட்டமான சான்றிதழ் சரிபார்த்தலின்போதே தகுதி இழப்பு செய்யப்பட்டு, வெளியேற்றப்படுவார்கள்."

26. Relying upon this condition, the learned Additional Advocate General though vehemently contended that, the rejection of the certificate produced by the respondent dated 27.08.2012 on 28.08.2012 is justifiable, on careful reading of the afore-stated condition imposed in the brochure, we are of the view that this kind of certificates even can be obtained only after the issuance of the notification, therefore, once such a certificate is obtained after the notification was issued, the question of submitting those certificates or annexed those certificates even the



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photocopy of the same along with the application may not be possible in number of cases. Here also certificate itself was issued only on 27.08.2022, therefore, before which it cannot be annexed either at the time of filing the application or in between.

27. Immediately, on the next date, it was produced before the appellant at the time of deferred certificate verification was taken place on 28.08.2012, therefore, it cannot be stated that the said certificate was produced by the respondent belatedly.

28. Insofar as the further interpretation of clause (ஆ) as stated supra for this certificate is concerned, it has been mentioned that களப்பணியாளர் அல்லது அமைச்சுப் பணியாளரின் சார்ந்துள்ள வாரிசாக இருப்பின் விளம்பரம் வெளிவந்த நாளுக்குப் பின் பெறப்பட்ட வாரிசுக்கான சான்றிதழ்களையும், therefore the meaning thereby is that insofar as the legal heir certificate to establish that she is the legal heir of the Ward cum Dependent of the working person in the Police Department or in the Ministerial Service of the same Department is concerned, such certificates obtained after the advertisement was issued, pursuant to the



notification, can be produced.

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29. Therefore, the very condition imposed in the brochure itself can be understood that this kind of certificates can be applied and obtained only after the notification.

30. The reason being that this kind of certificates is not the one like community certificate or degree certificate or education qualifications certificate etc.,. Those certificate is meant only for the 10% quota for Ward cum Dependent of the person working in the Police Department, for which few applicants would be eligible to make such claim.

31. Therefore, only for this minimum people to get such certificates normally such kind of endeavour would be made only after the notification was issued otherwise no one would get such certificate and keep it pending for ever. Realising this position only, such specific clause has been added in clause (2b) as stated supra.

32. When that being the position, it cannot be expected that since



such certificate should have been obtained and annexed along with the application submitted by the respondent. Therefore, the certificate dated 27.08.2012 secured and produced on 28.08.2012 on that date according to the learned counsel for the respondent, the deferred certificate verification went on, therefore, it cannot be stated as belated one and also it cannot be stated that it is against the condition imposed in the brochure.

33. Therefore, absolutely there has been no reason for the appellant to reject the plea of the respondent to accept such certificate.

34. Coming to the further merits of the case of the respondent is concerned, though she belongs BC community and secured 50 marks she cannot be selected under the BC category alone because the cut off mark for BC quota was fixed at 54.

35. However, insofar as the 10% quota for the Ward cum Dependent is concerned, it is only 32 marks, therefore the respondent secured very high marks comparing with the cut off mark of 32 as she secured 50 marks, therefore, she can very well be included in the zone of



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consideration for selection and appointment to the post of Police Constable Grade -II in the said recruitment.

36. Having gone through all these aspects, the learned Judge since has passed an order in the said writ petition, we do not find any error in the said approach and the conclusion reached by the learned Judge in the order impugned.

37. In the result, the writ appeal fails, hence it is liable to be dismissed accordingly, the writ appeal is dismissed. As a sequel, there shall be a direction to the appellant to select and appoint the respondent by enlisting her name as Police Constable Grade -II for the said recruitment of the 2014.

38. However, it is made clear that the respondent shall not claim any seniority and her seniority shall be taken into account only from the date she joins in service pursuant to this order.

39. The needful as indicated above shall be undertaken by the appellant Department within a period of six(6) weeks from the date of receipt of a copy of this order.



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With these observations and directions, this writ appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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