

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.27016 of 2015

M.Anbazhagan

.. Petitioner

-vs-

1.Government of Tamil Nadu,
rep. by Secretary to Government,
Home (Police IV) Department,
Secretariat, Chennai-600 009.

2.The Director General of Police/Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,
Chennai-2.

3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for records pertaining to the issue of the impugned orders of the result published by the Net of the written examination CUT OFF mark for CV, PMT, ET and PET dated 18.07.2015 and CUT OFF mark for Viva-Voce dated 21.08.2015 issued by the second respondent and quash the same and consequently to direct the second respondent to revise the answer keys for the Question Nos.54, 64, 68, 83 and 142 based on the correct answers as stipulated in the PSO and IPC and consequently to award additional 2.5 marks to the petitioner and accordingly consider him for Viva-Voce and selection for the post of Sub-Inspector.

For Petitioner : Mr.N.Subramaniam for
Mr.Mutharasu

For Respondent : Mr.P.H.Arvinth Pandian
Addl. Advocate General
assisted by
Mr.STS.Moorthy
Government Pleader
Mr.V.R.Kamalanathan
Addl. Government Pleader

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner sought recruitment as Sub Inspector being an in-service candidate in pursuance to the notification published on 08.02.2015. It is the case of the petitioner that he could not reach the eligibility bench mark being half mark short of the cut off on account of certain questions and answers.

2. It may be noted that the procedure adopted by the respondents was that post examination on 24.05.2015, the key answers were published on 28.05.2015, inviting objections and the final key answers were published on 18.07.2015. Thus, there was possibility of change of key answers in the final key answers published and thus, even in a case where a candidate may not have filed the objections, if the objections filed by the other candidates were found meritorious, necessary changes would have been made.

3. In this back ground, we have examined the case of the petitioner initially on 14.09.2015 and rejected some of the claims of the petitioner qua the key answers while the others were kept pending for further consideration. For completion and understanding, we reproduce the order passed on 14.09.2015 as under:-

"The petitioner, a departmental candidate, appeared for the examination for recruitment to the post of Sub-Inspector of Police. The petitioner, however, secured 0.5 marks below the cut-off for clearing the written examination.

2.It is the case of the petitioner that post the examination held on 24.05.2015, preliminary key answers were published in the website on 28.05.2015. One week's time was granted to make any representation against the

same. The petitioner claims to have made a representation on 29.05.2015 in respect of five questions (4 are now stated to be incorrect as against 5). The cut-off mark as well as the final key answers were both published on 18.07.2015. In the said process, 2 out of 4 key answers alleged by the petitioner to be incorrect were corrected, while two remained as it is.

3.The petitioner claims to have made another representation on 20.07.2015 in respect of two key answers which were not correct as well as two other key answers, which were changed from the provisional list, which, according to the petitioner, were correct originally, but the final key answers are incorrect. The issue, thus, relates to these four key answers.

4.The petitioner claims that his representations remain unaddressed and the petitioner sought information through Right to Information Act on 24.08.2015 and also made a representation on the same date.

5.Learned Additional Advocate General for the respondents has obtained instructions and produced the file of the petitioner. He states, by perusal of the record, that no such representation as claimed by the petitioner was made either on 29.05.2015 or 20.07.2015. The only representation available on record is on 24.08.2015.

6.On our query, learned counsel for the petitioner states that he had taken the earlier two representations physically, but was asked to put them in a drop box. There is, thus, no proof of having handed over these representations.

7.Learned Additional Advocate General states that if the representations would have been received through this drop box, they would have been on record.

8.In view of the aforesaid position, we are unable to accept that there are any representations made as alleged by the petitioner on account of absence of any proof of receipt of such representations or representations being part of the record.

9.The petitioner has approached this Court only on 27.08.2015. The Physical Endurance Tests were conducted on 3rd, 4th and 5th of August, 2015. Thus, if the last representation of 24.08.2015 is considered as the only representation, it is quite belated even on the facts of the case. In fact, we have dismissed similar petitions filed belatedly (being W.P.Nos. 28229 to 28233 of 2015) noticing that in an exam system, there has to be a prompt action by the candidates, as the matter cannot afford to languish.

10.Not only that we had dismissed on the ground that the petitioners therein had failed to take advantage of the opportunity given to object to the key answers and when the third stage had begun, the representations were made, after even Physical Endurance Tests were completed.

11.Learned counsel for the petitioner sought to claim the case being of personal motive of somebody in authority. The said plea is lacking in any particulars and seeks to pitch the case at a level not justified.

12.Learned counsel for the petitioner states that unlike the exams held by the TNPSC, which provides for no representation to be received, while it is not so in the present case, where key answers are published and verified. If at all, this is in fact an extra privilege given to the candidates to have better transparency and that does not entitle the candidates to approach for redressal as and when they please, specifically when one week's time has been granted in each of the situation after the preliminary key list was published and then, the final list was published.

13.On all the aforesaid grounds, the petition is liable to be rejected.

14.The last aspect the learned counsel for the petitioner submits is that how could, according to him, what he perceives to be the correct answers in the provisional list be converted into incorrect answers in the final list.

15.Learned Additional Advocate General submits that the same must have arisen on account of some objections being filed to those answers as originally contained in the provisional list by other candidates and must have been verified and the answers corrected accordingly.

16.On this limited account, the respondents may file an affidavit within a week setting out the position.

17.List on 23.09.2015."

4. On the remaining aspects the matter was examined on 13.10.2015 when we passed the following order:-

"We have heard the learned counsel for the parties on the limited issue of Question Nos.64 and 83. In respect of Question no.64, there is no dispute that the correct form is Form No.91, as opined in Writ Petition Nos.23511 to 23515 of 2015 by order dated 16.09.2015. The plea of the petitioner, however, is that there could be a possibility of confusion in the mind of the petitioner, despite being an in-service candidate, arising from the Police Standing Order, prescribing it as Form No.88.

2. In respect of Question No.83, what was asked for is the time allowed for an appeal against acquittal. Learned Additional Advocate General has drawn our attention to Section 378 of the Code of Criminal Procedure, 1973, where sub-section 5 prescribes for 'sixty days' period for grant of special leave to appeal in cases, other than those with the complainant being a public servant, where the period prescribed is six months. Instantly, the question does not state as to whether it is a case of special leave appeal, whether the acquittal is arising in a complaint from a public servant or any other case, only mentioning of period in months, though the period for appeal in case of acquittal of any other person is specified as sixty days. Learned counsel for the petitioner, on the other hand, has drawn our attention to the same Police Standing Order to state that at page 638 (page 82 of the typed-set filed by the petitioner) in Clause (4)(a), the time allowed for filing an appeal is specified as three months by referring to G.O.Ms.No.630, Home, dated 10.03.1955."

5. We have permitted the petitioner to go through the viva-voce in terms of our order dated 15.10.2015 and the viva-voce has now been completed.

6. In view of the reasons recorded on 13.10.2015, and the possibility of confusion as set out therein on account of the ambiguity in the questions framed, we are of the view that the petitioner is entitled to the half mark and would thus qualify for the next stage of viva-voce, which the petitioner has gone through.

7. The petitioner is thus entitled for declaration of his result accordingly.

8. The writ petition is allowed to the aforesaid extent, leaving the parties to bear their own costs.

-s/d-

Assistant Registrar(CCC)
dt:20/11/2015

True Copy

Sub-Assistant Registrar

bbr
To

- 1.The Secretary to Government,
Home (Police IV) Department,
Secretariat, Chennai-600 009.
- 2.The Director General of Police/Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai, Chennai-2.
- 3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

+1 cc to Mr.G.Muthurasu Advocate sr.60797
+1 cc to Government Pleader sr.61179

W.P.No.27016 of 2015

msm(co)
aa23/11/2015