

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 28 - 01 - 2016

Judgment delivered on : 08 - 02 - 2016

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No. 38447 of 2015

1. K. Naresh
 2. D. Yogaraj
 3. R. Paramaguru
 4. N. Sakthi Narayanan
 5. R. Saravanan
 6. G. Narayanasamy
- ... Appellants

Vs.

1. The State of Tamil Nadu
Rep. by Principal Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St. George
Chennai
 2. The State of Tamil Nadu
Rep. by Principal Secretary to Government
Home Department
Secretariat
Fort St. George
Chennai
 3. Member Secretary
Tamil Nadu Uniformed Services Recruitment Board
P.T. Lee Chengalvaraya Naicker Building
No. 807 2nd Floor, Anna Salai
Chennai - 2
 4. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore
Chennai - 4
- ... Respondents

Prayer:- Petition under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the provisional list published by the third respondent on 15.11.2015, quash the same and

consequently direct the respondents 1 to 4 to implement Tamil Medium reservation in proper perspective as contemplated under the Tamil Nadu Appointment on preferential basis in the services under the State of Persons Studied in Tamil Medium Act, 2010 while filling up the post of Sub-Inspector as per the recruitment Notification No. 1/2015 issued by the 3rd respondent on 08.02.2015.

For Petitioner : Mr. N.G.R. Prasad
for M/s Row & Reddy

For Respondents: Mr. P.H. Aravind Pandian, AAG
Assisted by
Mr. S.T.S. Murthy, GP
Mr. V.R. Kamalanathan, AGP
Mr. V. Shanmugasundar, GA

ORDER

PUSHPA SATHYANARAYANA, J.

The petitioners, claiming to be applicants pursuant to Notification dated 08.02.2015 issued by the Tamil Nadu Uniformed Services Recruitment Board for the post of Sub-Inspector of Police (Taluk), have invoked Article 226 of the Constitution of India challenging the provisional list published by the Board and seek a direction to the respondents to implement Tamil Medium reservation in proper perspective as contemplated under the Tamil Nadu Appointment on preferential basis.

2. Six petitioners have joined together and have instituted the present writ proceeding jointly since their grievance is identical and reliefs sought for is also the same.

3. The dispute between the petitioners and the respondents revolves around the issue of reservation of posts for Backward Classes, Scheduled Castes, Scheduled Tribes, Women Candidates, Sportspersons and in-service candidates.

4. We may notice here the relevant facts before we advert to controversy in detail.

The first petitioner belongs to MBC Category while the other petitioners claim to be the BC category. As the petitioners fulfilled the eligibility criteria and being interested, they submitted their applications pursuant to the said advertisement. As per the selection procedure, the candidates should appear for Written Test, Physical Measurement Test, Physical Efficiency Test, Viva-voce, etc.. Each test is a qualifying stage to the next step. The candidates, who qualified in the Written Test, were subjected to Physical Measurement Test / Endurance Test /

Physical Efficiency Test from 03.8.2015 to 05.8.2015 in the ratio of 1:5 and the candidates qualified the Physical Education Test were called for viva-voce in the ratio of 1:2 and thereafter, provisional select list was published on 15.11.2015. It is after the publication of provisional list, the petitioners have come up with the present Writ Petition seeking to quash the same.

5. Indisputably, the selection, which was made for 984 vacancies and backlog vacancies of 94, consists of two separate wings, viz., 80% of the vacancies would be open quota and remaining 20% would be filled under departmental quota. The fact remains that the selection was processed at three levels, viz., Written Test for 70 marks, Physical Endurance Test for 15 marks, Interview for 10 marks and 5 marks were awarded under special category (NCC, NSS and Sports). Earlier, the selection was challenged in a number of writ petitions by candidates who were not included in the select list and the same were dismissed by this Court.

6. The main contention raised by the learned counsel appearing for the petitioners is that candidates who have obtained less mark than the cut-off fixed for the MBC / BC category has been selected thereby depriving the petitioners of their chance of selection. He vehemently contended that once a separate cut-off for Sports Quota, Police Wards, Police Ministerial Wards was fixed, horizontal migration should not be allowed.

7. Assailing the above contention, the learned Additional Advocate General representing the respondents submitted that the cut-off marks were arrived only based on the recruitment rules and reservation policy. According to him, the written test is only for getting entry into the second stage, viz., Physical Efficiency Test and since there are multiple stages in recruitment and qualifying every stage is mandatory, the claim of the petitioners that they have obtained higher marks in written test than final cut-off, cannot be sustained.

8. In a recruitment process, the General Turn, viz., Open Competition of 31%, is filled first on the basis of merit list irrespective of community, gender, special quota, etc. and the authorities move on to the next stage of filling up MBC / BC category for which the cut-off mark is fixed less than the General Turn. Therefore, it is crystal clear that in any selection process, the reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category and the candidates below them would be considered for appointment in the reserved categories. It is pertinent to point out at this juncture that during the process of moving,

the person falling under General Turn, who has obtained more marks than the cut-off fixed for MBC / BC category but less than the cut-off fixed for OC, cannot challenge the selection of the persons coming under MBC / BC category by merely making a comparison of marks scored by the individual as there would be shifting of quotas depending on the marks obtained. This view has been made clear by this Court in a batch of writ petitions challenging the very same selection in W.P. Nos. 27923 to 27925 of 2015. More over, it is obvious that in any selection procedure, the competition among the candidates gets narrowed down stage by stage and that is why the ratio also varies proportionately.

9. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in Anil Kumar Gupta v. State of U.P. [(1995) 5 SCC 173] wherein while discussing the method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, Their Lordships in paragraph 18 of the judgment observed in the following words:-

" The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)

10. In the instant case, from the materials available on record, it is seen that the petitioners have not secured the required cut-off marks fixed for MBC / BC candidates, ie., 49.5 and hence, they were not called for the next stage of CV, PMT,

ET and PET. Having waited till the selection procedure is over and finding that their names did not figure in the merit list of the selected candidates, the petitioners have challenged the select list, which was drawn based on the total marks obtained by the candidates in the selection process subject to the communal reservation and available vacancies. Such delay by the petitioners would go to show that it is only an afterthought knowing that on becoming unsuccessful chose to raise the ground of fault selection in order to make themselves participate until they are selected, which is impermissible in law. It is equally settled law that any person who subjected himself to the process of a faulty selection without any demur of protest, cannot turn around and challenge that on becoming unsuccessful. This view has been consistently upheld by the Hon'ble Supreme Court in catena of decisions. Therefore, the petitioners are estopped from raising the plea of any irregularity or violation in the selection process after subjecting themselves to the process without any protest.

11. As regards the claim of preferential reservation under PSTM category is concerned, the said issue has already been decided by this Court in the earlier Writ Petition with regard to the very same selection Notification in W.P. No. 27005 of 2015 holding that the same can be granted only for first time and that too, in a case where two persons are identically situated. In this regard, it would also be useful to refer to the Tamil Nadu Ordinance No. 3 of 2010 and the relevant portion is extracted hereunder:-

"Notwithstanding anything contained in section 3, where adequate number of qualified and suitable persons studied in Tamil medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons studied in other mediums within the respective category."

12. Significantly, in the instant case, nowhere in the affidavit, the petitioners have disclosed whether they are working in the Department or not for the simple reason that they decided to compete under open quota. On the contrary, as culled out from the Hall ticket and other details furnished in the typed set of papers produced by the petitioners, this Court finds that the petitioners 1 and 4 to 6 are employed as Police Personnel. It is also pertinent to point out that the fifth petitioner Saravanan has competed both under open quota as well as Departmental quota. In such circumstance, in the light of the earlier decision of this Court, the preference under PSTM cannot be granted to the petitioners.

13. Above all, the issue of Vertical reservation and Horizontal reservation raised by the learned counsel for the petitioners is notified in the Notification itself. If at all the petitioners are aggrieved by the Horizontal reservation, they have to challenge the Notification and not the selection process after having participated in the selection procedure and written test and so they are estopped from turning around to challenge the selection procedure and select list. The entire selection procedure, in the considered opinion of this Court, reflects utmost transparency and as such, no malice could be attributed in the decision taken by the Recruitment Board. Moreover, the Hon'ble Apex Court as well as this Court, have time and again held that in the case of direct recruitment, no candidate is having any absolute right to claim that the selection should be in a particular manner which was not notified nor intimated.

In view of the above, the Writ Petition fails and stands dismissed as devoid of merits. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
State of Tamil Nadu
Personnel and Administrative Reforms Department
Secretariat, Fort St. George
Chennai
2. The Principal Secretary to Government
State of Tamil Nadu
Home Department
Secretariat
Fort St. George
Chennai

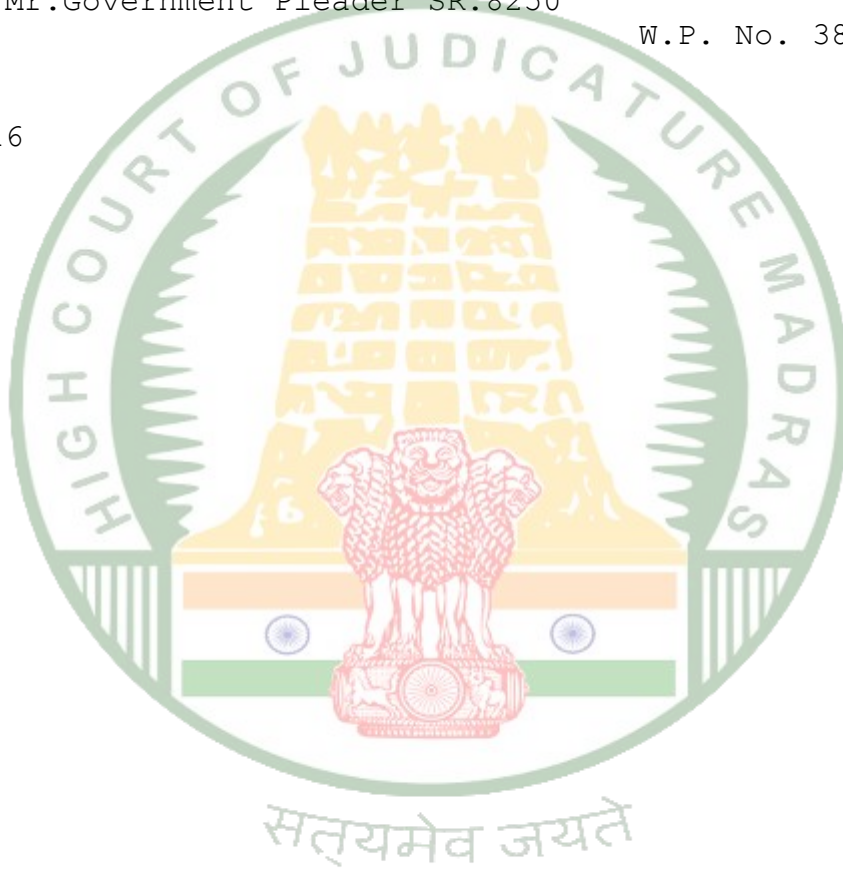
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4. The Director General of Police
Dr. Radhakrishnan Salai
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+ 1 cc to Mr.Government Pleader SR.8250

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