

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.18784 of 2017

and

W.M.P.Nos.20310 & 20311 of 2017

K.Mahendran

...Petitioner

Vs.

1. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

2. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Pantheon Road, Egmore,
Chennai - 600 008.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records in connection with the impugned order passed by the 2nd respondent in proceedings No.Nil dated 12.07.2017 and to quash the same and further direct the respondents to permit the petitioner to participate in the next stage of selection and to select and appoint him as Grade-II Police Constable under 10% sports Quota.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.K.Venkataramani,

Addl. Advocate General -VII

Assisted by Mr.K.Dhananjayan

Special. Govt. Pleader

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O R D E R

The relief sought for in this writ petition is for direction to appoint the writ petitioner to the post of Grade II Police Constable under 10% sports quota by quashing the order of non selection issued by the Second Respondent in the proceedings dated in 12.07.2017. The writ petitioner belong to Scheduled Caste Community (hereinafter referred to as SC). Pursuant to the

notification dated 23.01.2017, invited applications for recruitment for the post of Grade II Police Constables, Jail Warder and Fireman for the year 2016. The writ petitioner has applied under the reservation category of 10% sports quota.

2.The Learned Counsel appearing for the writ petitioner contended that the petitioner is fully qualified for the appointment to the Post of Grade II Constable and has submitted his Application Form duly filled and the same was admitted and assigned with Registration / Enrollment No.1605028. The petitioner appeared for the written examination held on 21.05.2017 and secured 45 marks. However, the order of non-selection was issued to the Writ petitioner and subsequently the petitioner found that the candidate who secured only 35 marks from the SC Community was selected. Thus the writ petitioner is constrained to move this writ petition.

3.When the writ petition is taken up for admission, the Learned Additional Advocate General Thiru. K.Venkataramani appeared on behalf of the respondents, and furnished a copy of the application form submitted by the writ petitioner. On perusal of the same, in Column 6, the writ petitioner had marked that he belongs to SC Community. Another Column 17 is applicable to the candidates applying under sports quota. The petitioner marked 'YES' and also stated that he belongs to category No.3. In Column 25, wherein it has mentioned that the attested Xerox copies of the Sports Quota documents have to be enclosed. In the list of documents, the petitioner had enclosed proof of Date of Birth, SSLC Certificate, Community Certificate and Sports Certificate. In Serial No.4, Sports Quota Certificate as mentioned and petitioner has marked mere Form III.

4.The Learned Additional Advocate General contended that the Form III certificates now enclosed by the writ petitioner in Page 1 of the typed set of papers filed along with the present writ petition, is not enclosed in the application form submitted by the writ petitioner to the respondents. Contrarily, the petitioner has submitted other sports certificates which are not Form III certificates. Thus, the rejection of writ petitioner is in order and there is no infirmity.

5.Countering the learned Advocate General, the learned counsel appearing for the writ petitioner contended that the writ petitioner has rightly marked in the application form and he is very much in possession of the Form III sports certificates. In such circumstances, there cannot be any intention on the part of the writ petitioner to avoid the same, since he is very much interested and continuously aspiring for recruitment to the police service.

6.Thus the Learned counsel for the petitioner, at the outset, informed this Court that the writ petitioner had

enclosed the certificate and probably the authorities would have missed the same while dealing with lakhs and lakhs of applications in this recruitment process. However the petitioner has enclosed the same in Page No.1 of the typed set of papers filed along with the writ petition.

7. In these factual circumstances, this Court cannot investigate and decide whether such omission took place on the part of the writ petitioner or that of the Respondents / Recruiting Authority. It may not be possible for this Court to find out, who is responsible for the non-enclosure of Sports Certificate in Form III.

8. May that it be.

9. It is irrelevant at this point of time that if the Sports Certificate was not enclosed at the time of sending the application or it was missed during the sorting out of the applications in the office of the respondents. This court has to provide justice to the candidate, who has been affected in the recruitment process. The

Learned Additional Advocate General refers to the judgment of Division Bench passed in W.P. No.38761 of 2015 dated 10.12.2015 para 9 and 10 as under:

9. We may note that the exam process is over, list of successful candidates has been drawn and now the successful candidates are going through medical test, prior to be sent for training.

10. In view of the aforesaid facts and circumstances, unfortunately the petitioner has to share the blame and the consequences of the certificate not having been obtained by her in time with the result that her application cannot be treated as complete. We may notice that there are numerous cases which were even before us where the full documentation was not filed and it would not be appropriate to indulge only the petitioner, as that would amount to an element of unequitability qua other candidates, who on such pleas have been denied the benefit of participation or non-suited. Needless to say that when the exams are held at such a large scale, where there are more than 1,85,000 candidates participated for 1078 posts, an element of strictness has to be maintained by how the application is to be complete before the cut-off date.

10.The Hon'ble Division Bench has taken a view in this regard based on the facts and circumstances of the case. Further, the Hon'ble Division Bench held that the strictness has to be maintained while dealing with such applications submitted in large numbers. Though, the Hon'ble Division Bench considered these aspects, based on the facts and circumstances of the case decided, this court is bound to consider the judgements in this regard rendered by the Hon'ble Supreme Court of India. Accordingly, in the case of Dolly Chhanda Vs. Chairman reported in (2005) 9 SCC 799, his Lordship Justice G.P.Mathur, delivered the judgment while speaking for the Bench, elaborated in paragraph 7 as under:

"7.The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. In the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificate, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidate".

11.The Hon'ble Supreme Court of India laid down the legal principles in this regard, in the case cited supra. Thus, this court is bound to follow the legal principles laid down by the Hon'ble Supreme Court in this regard.

12.Under these circumstances, this court is of the considered opinion that the judgment delivered by the Hon'ble Supreme Court of India in settling the legal principles in this regard has to be applied in the case on hand. The writ petitioner claims that he has enclosed the sports certificates in Form III. The respondents denied the same. Thus, this court, without going into the investigation regarding the issue as to who missed the certificates, is inclined to grant relief to the writ petitioner. The writ petitioner, who is a potential

candidate for the recruitment to the post of Grade II Police Constable is in distress and the mistake committed by him cannot be considered as a serious and at the worst it can be treated as an omission and such an omission is certainly condonable.

13. In our great nation, lakhs and lakhs of youths are unemployed and they are submitting applications after applications for various posts and putting tremendous effort in securing public employment with the State or Union. While sending such applications certain errors or omissions are possible and such human errors are certainly to be condoned and on that ground if application is rejected, it will be genuinely harsh.

14. The concern of the court is the genuinity of the candidate who committed such errors. Once the genuinity of omission is established, the court should provide the helping hand to such candidates who are otherwise fully qualified and meritorious. The whole object of the public employment under the constitutional scheme is to recruit the meritorious candidates in the public offices in order to provide better and effective services to the citizen of this country. Thus, this court is of the firm opinion that all public employment has to be provided to the meritorious candidates under the constitutional scheme and by following the reservations in this regard.

15. Another Division Bench of this court in a recent case passed by His Lordship Hon'ble Justice Nooty. Ramamohana Rao and Myself (SMSJ) delivered a judgment on 19.12.2016 in the case of R.Kanagapriya Vs. The Secretary, Tamil Nadu Public Service Commission as under:

"13. Is every infraction liable to be viewed very seriously is the question which we need to answer.

14. When Articles 14 and 16 of the Constitution of India hold out a great promise in the form of fundamental rights to the citizens of this country, minor and non-substantial infractions indulged in by the candidates should not be considered or treated to have come in the way as an impediment for exercise of such fundamental rights. Insignificant or minor lapses that have occasioned, while filling up the application forms should not result in frustrating the very fundamental right altogether. This apart, we take note of the fact that there is an acute dearth of good shorthand writers. The institutions like that of the Courts in general and the High Courts/Supreme Court in particular, cannot carry on with the huge volume of work, which they turn out on a day-to-day basis without even the basic infrastructure of providing

the assistance of a shorthand writer.

15. Viewed in that perspective and also in view of the fact that the writ petitioner is a Post graduate in English Literature, we consider that the ends of justice would be more fully met with in the peculiar facts of this case, by treating her application as 'responsive'. But, at the same time, we should also be conscious enough in noticing that when as many as 1,593 applications have been rejected by the TNPSC for one reason or other, including the one of the writ petitioner and she alone cannot be picked up for a more favourable treatment.

16. Hence, keeping the above aspect also in mind, we direct the candidature of the writ petitioner to be considered for the post for which she applied and the respondent will now process the case of the writ petitioner for the next stage of selection process, provided, the following conditions are satisfied:-

- i) she is qualified in the written examination;
- ii) she comes up in the merit list among Backward class candidates, who are shortlisted for the next process of selection, which might include testing her technical skills or an oral interview".

16. Considering the legal principles laid down in this regard, this court is of the firm opinion that the writ petition deserves to be considered and accordingly stands allowed.

18. The respondents are directed to receive the copy of the Form-III Sports certificate enclosed in page 1 of the typed set of papers and select the writ petitioner in accordance with the marks secured by him in the written examination, if he is otherwise qualified in all other respects.

19. The exercise to be undertaken by the respondents immediately without further delay. Consequently connected miscellaneous petitions are also dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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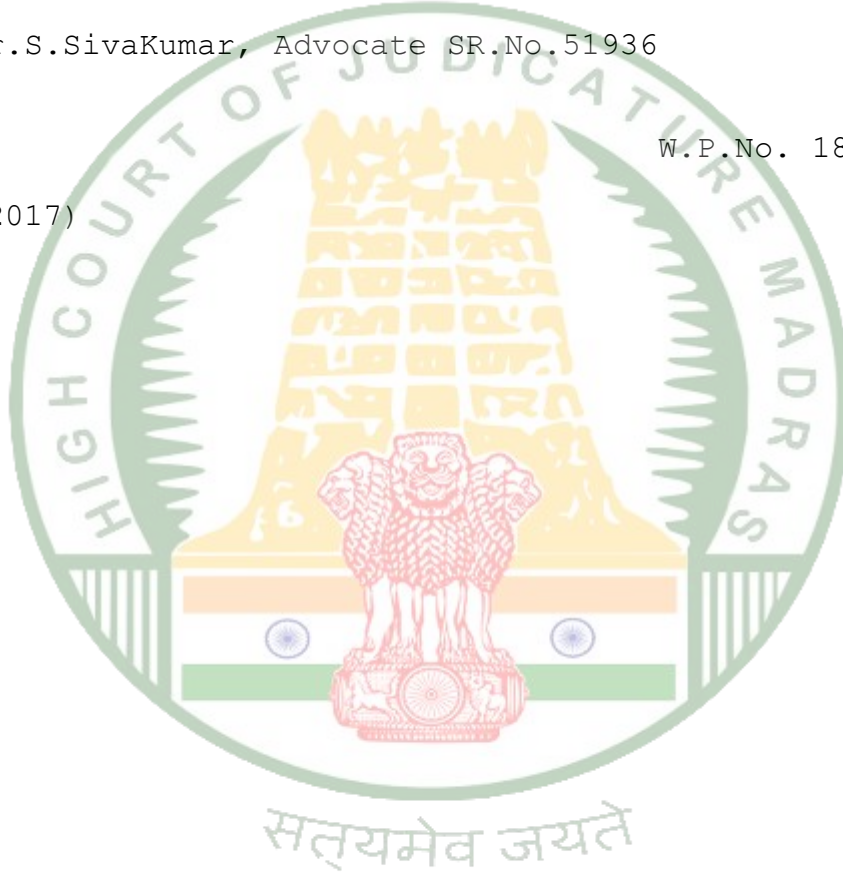
To.

1. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
2. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Pantheon Road, Egmore.

+1cc to Mr.S.SivaKumar, Advocate SR.No.51936

W.P.No. 18784 of 2017

GN(11/08/2017)



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