

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.18839 of 2017
and
W.M.P.No.20373 of 2017

J.Sudharsanan

... Petitioner

Vs.

The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
Old Commissioner of Police
Office Campus,
Pantheon Road,
Egmore,
Chennai - 8.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent herein to consider the petitioner's representation dated 14.07.2017, requesting the respondent to consider the petitioner's application (Enrollment number 0512385), under the " Sports Quota" and declare the petitioner as selected in the Common Recruitment for the Post of PC, Jail Warder and Fireman, 2017 conducted by the Respondent/Tamil Nadu Uniformed Services Recruitment Board, (TNUSRB) and permit the petitioner for the physical Examination to be conducted on 27.07.2017.

For Petitioner : Mr.S.Vediappan

For Respondent: Mr.K.VenkataRamani
Additional Advocate General - VII
Assist by Mr.K.Dhanajeyan
Special Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to consider the writ petitioner for recruitment to the post of Grade - II Constable under the "Sports Quota".

2. The writ petitioner submitted his application for recruitment to the Post of Grade - II Constable as per the notification and on perusal of the application, the writ petitioner has applied under the category of "Sports Quota" and he has shaded category of "III", as he is in a possession of Form-III Sports Certificate. In column 25 also, the writ petitioner has marked as if he has enclosed the "Sports Quota" Certificates more specifically in Form-III. In the typed set of papers filed along with this writ petition in Page No.3, 4 & 6, the writ petitioner enclosed the Form - III certificates.

3. The learned Additional Advocate General appearing on behalf of the respondents contended that though the writ petitioner has marked column No. 17 under the "Sports Quota" and also marked that he has enclosed the Form - III certificate in column No. 25, he failed to enclose photo copy of the Form-III certificates, which is now enclosed in this writ petition. He has enclosed only the certificate of cross country race issued by the Director of Physical Education. Thus, the Additional Advocate General strenuously contended that the application of the writ petitioner was rightly rejected by the authorities and the petitioner had not submitted the application in accordance with the instructions and notifications. The authorities has no option but to reject the same.

4. The Learned Additional Advocate General refers to the judgment of the Division Bench passed in W.P. No.38761 of 2015 dated 10.12.2015, paras 9 and 10 are extracted hereunder:

"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 unequity 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."

5. 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".

6. 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".

By recording the fact that the writ petitioner appeared in the written examination and secured 40 marks and the cut off marks for the category of Sports General is 35. The writ petitioner is eligible for selection.

7. In view of the legal principles discussed above, this Court is inclined to grant the relief as follows. The case of the writ petitioner is directed to be considered under the Sports Quota as per the Form-III certificates now submitted by the writ petitioner, subject to the verification of other qualifications in accordance with law.

8. Thus, the writ petition stands allowed. However, there is no order as to costs. The respondent is directed to receive the copy of the Form-III Sports certificate enclosed in Page 1 of the typed set of papers and consider the name of the writ petitioner for inclusion in the selection list. Connected MP. stands closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kak

To

The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai - 8.

+ 1 cc to Mr. S. Vediappan, Advocate Sr.52613
+ 1 cc to Government pleader Sr.53496

W.P.No.18839 of 2017

AK(CO)
EU 22.08.17

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