



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) Nos.21304 and 21306 of 2014

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| 1. M.Thangapandi | ...Petitioner in W.P.(MD) No.21304/2014 |
| 2. M.Chinnamuthu | ...Petitioner in W.P.(MD) No.21306/2014 |

-vs-

- | | |
|---|-----------------|
| 1. Union of India,
Rep. by Secretary to Government,
Ministry of Personal, P.G. & Pensions
Department of Personal and Training,
Sasthri Bhavan, New Delhi. | |
| 2. The Regional Director (SR)
Staff Selection Commission,
EVK Sambath Building 2 nd Floor,
College Road, Chennai-600 006. | ... Respondents |

Common Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd respondent to consider the name of the petitioners for the appointment to the post of Constable (GD) in CAPFs and Rifleman (GD) in Assam Rifles for the year 2012, advertised through Employment News dated 03.12.2011.

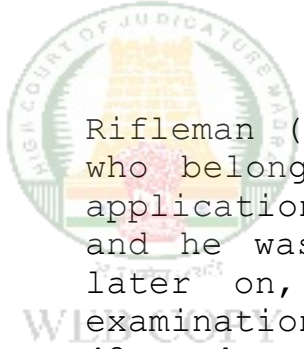
For Petitioners	: Mr.B.Vijay Karthikeyan
For R1	: Mr.S.Muthukumar
For R2	: No Representation

O R D E R

These writ petitions have been filed, seeking to direct the 2nd respondent to consider the name of the petitioners for the appointment to the post of Constable (GD) in CAPFs and Rifleman (GD) in Assam Rifles for the year 2012, advertised through Employment News dated 03.12.2011.

2. For the sake of brevity, the facts are being taken from W.P.(MD) No.21304 of 2014.

3. The case of the petitioner is that pursuant to the advertisement published in Employment News dated 03.12.2011, calling for applications from the suitable persons to the post of Constable (General Duty) in CISF, CRPF, BSF and SSB in CAPFs and



Rifleman (GD) in Assam Rifles for the year 2012, the petitioner, who belongs to SC category, applied for the same; that in the application the petitioner has given preference to the post of BSF and he was also declared successful in the physical test; that later on, he was issued Hall Ticket to attend the written examination and allotted Roll No.8204500814, in which, he scored 43 marks and was subsequently declared to be fit in the medical examination;

4. Further case of the petitioner is that the cut off marks prescribed for the SC category for the said post of Constable is 43 and in the selection list published on 17.10.2012, his name was not included under SC category, though other candidates, who scored less marks in the said category were included in the selection list; that the petitioner made several representations to the 2nd respondent and he was told that his name would be added in the forthcoming selection list; that till now, no fresh list was published after 31.01.2014 and the reason for non inclusion of his name is also not intimated, even though he has got required marks and therefore, having left with no other efficacious remedy, he is before this Court with the relief stated supra

5. The 2nd respondent has filed a counter, in which it has been stated that notice for recruitment of Constables (GD) in the Central Armed Police Forces (CAPFs) and Rifleman (GD) in Assam Rifles, 2012 was published in the Employment News dated 03.12.2011; that as per the relevant Recruitment Rules, the minimum educational qualification is Matriculation or X Class pass from a recognized board / university; that the petitioners also participated and their candidatures were considered and short-listed for Detailed Medical Examination as decided by the Commission; that the final result was processed in the following manner, finalized in consultation with Ministry of Home Affairs (MHA) and as per MHA guidelines:

"Select list has been prepared as per state-wise vacancies with further reservation for candidates of Boarder Districts / Naxal or Militancy affected districts within the State. Candidates belonging to Border / Naxal or Militancy affected districts have been considered against vacancies in such areas or in the State concerned as may be advantageous to them. Allocation to various CAPFs has been done as per merit cum option of the candidates, subject to availability of vacancies in State / UT concerned, reservation for Border district and Naxal / Militancy affected districts and category-wise reservation."

6. It is further stated in the counter that allocation made by the Commission to different police organizations was on the basis of merit cum option given by the candidates for different posts, subject to availability of vacancies in the State/UT concerned.

According to the respondents, the petitioners had exercised their option only for the post of preference "A" (BSF) for the State Category No.31, i.e., Tamil Nadu; that as per the final result declared by the Commission on 17.10.2012, they were considered for SC & UR vacancies, as their age was within the age limit for "UR" and they were not selected for the post of Constable in BSF preferred in their applications, since they have not secured the lowest cut off marks fixed by the Commission in the Written Examination for vacancy type G-General under 'SC' & 'UR' categories in respect of Tamil Nadu, which are as follows:

Post Opted	State Code	Type	Category	Vacancies	Filled Vacancies	Highest Marks	Lowest Marks
A	31	G	1 (SC)	2	2	74	68
A	31	G	9 (UR)	117	117	75	54

7. The respondents would submit that the selection process is already over and almost six years have gone by; that the petitioners are otherwise eligible to compete and participate in the forthcoming selection, if any advertised in the newspaper; that the learned counsel for the 1st respondent fairly submitted that though this Court directed to keep one post vacant, he is not aware whether such posts are filled up or not.

8. Learned counsel for the petitioners would contend that though the petitioners are not eligible for appointment to the 'A' (BSF) category, their case can be considered in any other category depending upon the marks obtained by them. He would further contend that the petitioner in W.P.(MD) No.21304 of 2014 has scored 43 marks and the petitioner in W.P.(MD) No.21306 of 2014 has secured 47 marks in their written examinations and therefore, the petitioner in W.P.(MD) No.21304 of 2014 can be considered and accommodated in the 'E' (ITBPF) category and the petitioner in W.P.(MD) No.21306 of 2014 to the 'E' (ITBPF) & 'F' (Assam Rifles) categories ITBPF, as the petitioners scored required minimum cut off marks for those categories.

9. Learned counsel for the petitioner drew the attention of this Court to the judgment of this Court dated 17.04.2013 in the case of V.Venkateswaran vs. The Chairman, Staff Selection Commission and another [W.P.(MD) No.12073 of 2009], wherein it has been held as under:

"16. In such circumstances, this Court is of the view that the respondents should exercise their discretion in favour of the petitioner and moreso when the petitioner has secured much higher marks than the minimum cut off mark and the candidates, who were secured less marks than him having been selected in ITBP. Furthermore, pursuant to the interim direction granted by this Court, one post has been directed to be kept vacant.



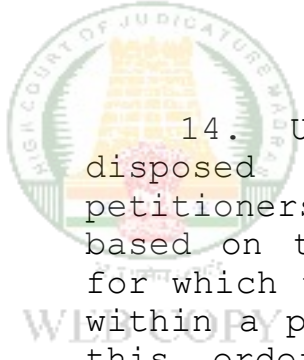
17. For all the above reasons, the writ petition is disposed of by directing the respondents to consider and select the petitioner to the post of Sub-Inspector in ITBP in the vacant post, which is directed to be kept vacant pursuant to the interim direction granted by this Court on 03.02.2010 by exercising their discretion as contemplated under Clause 22 of the terms and conditions and accommodate the petitioner in the available vacancy. Such decision shall be taken by the respondents and appropriate orders in this regard may be passed within a period of four months from the date of receipt of a copy of this order."

10. Learned counsel for the petitioner further pointed out the marks obtained by one Anandharaj (Roll No.8204500882), who has competed along with the petitioners and scored only 42 marks, but he was given appointment despite less marks secured by him.

11. Heard the learned counsel on either side.

12. It is not in dispute with regard to the marks obtained by the petitioners and they are also medically fit. Since they have only indicated 'A' category (Border Security Force) while applying for the post, for which, the minimum cut off marks required is 68, they were denied appointment, as they are admittedly not in possession of the said marks, even though they are qualified for 'E' & 'F' categories. From the recommended list for appointment (Tamil Nadu) dated 17.10.2012, it is apparent that yet another candidate having lesser marks (42) than the petitioners has been selected and recommended for appointment. It is seen that against the judgment of the learned Single Judge (referred to supra), an appeal has been filed by the Chairman, Staff Selection Commission in W.A.(MD) No.200 of 2014, which was dismissed by the Hon'ble Division Bench of this Court vide order dated 22.01.2016, thereby upholding the decision rendered by the learned Single Judge, stating that it was at best only a technical lapse in not specifying the options.

13. In view of the above, this Court is of the considered opinion that the case of the petitioners also falls on the similar footing, whereby the petitioners were not given appointment order on account of technical lapse in not indicating the suitable option, for which they are otherwise eligible. Rejecting to offer appointment to a person mainly on the ground of technical ground is disapproved by the Hon'ble Division Bench of this Court, as it is not the case of the respondents that the petitioners even do not fall under the zone of consideration in respect of other categories also. Moreover, this Court, by way of interim order, directed the respondents to keep one post vacant.



14. Under such circumstances, these writ petitions are disposed of, directing the respondents to accommodate the petitioners in the posts, falling under 'E' & 'F' categories, based on the marks secured by them in the written examinations, for which they are otherwise suitable and eligible to be appointed within a period of three months from the date on which a copy of this order is made ready. No costs. Consequently, connected miscellaneous petition are closed.

Sd/
Assistant Registrar(RTI)

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Sub Assistant Registrar.

To:

1. The Secretary to Government,
Union of India,
Ministry of Personal, P.G. & Pensions
Department of Personal and Training,
Sasthri Bhavan, New Delhi.
2. The Regional Director (SR)
Staff Selection Commission,
EVK Sambath Building 2nd Floor,
College Road, Chennai-600 006.

+1CC to M/S.B.Vijay Karthikeyan, Advocate, SR.No. 3624
+2CC to M/S.S.Muthukumar, Advocate, SR.No. 3832 & 3833

W.P. (MD) Nos.21304 and 21306 of 2014

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