

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.09.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.23215 of 2018
and
W.M.P.No.27111 of 2018

E.Divya

..Petitioner

Vs

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Old COP Office Campus,
Pantheon Road, Egmore,
Chennai - 600 008

2. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
Old COP Office Campus,
Pantheon Road, Egmore,
Chennai 600 008

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to allow the petitioner to participate in the Physical Endurance test (PET) to be held on 07.09.2018 to 11.09.2018 for the post of Gr II Police Constables, Gr II Jail Warders (M&W) & Fireman - 2017-2018 based on my representation dated 31.08.2018 pending on the file of the first respondent and my marks scored in the Written Examination held on 11.03.2018.

For Petitioner : Mr.A.Prakash

For Respondent : Mrs.Narmadha Sampath,
Additional Advocate General
Asst by Mrs.R.Janaki,
Additional Government Pleader

ORDER

It appears that the petitioner had submitted her application for recruitment to the post of Gr-II PC, Jail Warden, Fireman in different wings of Tamil Nadu Police conducted by Tamil Nadu Uniformed Service Recruitment Board.

The case of the petitioner is that though she had secured 41 marks out of 80 marks in the written examination which is higher than some candidates of the category which the petitioner belongs to, who have been selected for the next round of Physical Endurance Test, her case has not yet been considered even though she had made a representation to the first respondent in this regard. Hence, the petitioner has now come out with this writ petition seeking the relief that the respondents be directed to include her name in the provisional list of selection for consideration to the next round of test.

2. The learned counsel appearing for the petitioner, submits that since the petitioner has got more marks than the persons included in the list, she should have been considered and called for to participate in the next round of selection that is physical test. In such premises, the petitioner has made the aforesaid prayer with an interim relief to keep one post vacant in the recruitment, pending disposal of the writ petition.

3. The learned Additional Advocate General appearing for the respondent, submits that since the candidates who have secured the cut off marks, have only been called for the next round of test, the non-inclusion of the petitioner cannot be said to be illegal and arbitrary and as such, she cannot be considered and hence, the writ petition being devoid of merit, she is not entitled to the interim relief also. The learned Additional Advocate General further, submits that sufficient number of candidates having been called in the ratio of 1:5 which is the norm prescribed and the petitioner on its own having not uploaded the certificate, allowing the petitioner at this stage to participate in the second round of test by rectification of the defect, would cause prejudice to the last candidate included in the list, that would dislodge the last candidate included in the provisional list as the respondent has to prepare the provisional list in the ratio of 1:5. Since the last candidate included, has not been made a party to this writ petition, allowing the prayer of the petitioner without hearing the said candidate included in the list would be an affront to the principle of Audi alteram partem, a salutary principle of natural justice. Hence, the learned Additional Advocate General submits the petitioner deserves no sympathy.

4. However, during the course of hearing, it was not disputed that in earlier occasions in similar facts and situations, this Court had granted relief to the respective writ petitioners as it was not brought to the notice of this Court by the respondent that the provisional list is in the ratio of 1:5. In the said orders, therefore this Court had not taken note of the prejudice to be caused for inclusion of those petitioners on rectification of the defect to the candidates included as it is the norm to call the candidates in the ratio of 1:5. The same is brought to the notice of the

Court for the first time today. But, it is also not in dispute that when there are more than one candidate in the last cut off, all are required to be included in the provisional list for the second round of test even if the number exceeds in the ratio of 1:5. Taking note of the aforesaid norms and the petitioners case who happens to be a more meritorious candidate than the candidates included in the provisional list belonging to his category and in similar facts and situations this Court has already directed inclusion of some candidates in the provisional list subject to verification of their possessing the required document on the date of application and also their marks secured is more than / or equal to the last cut off of the category to which they belong, the prayer of the petitioner also needs to be allowed rejecting the objection of the learned Additional Advocate General. Accordingly allowed.

5. However, the inclusion of the petitioner and similar persons already ordered to be included, shall not be prejudicial to the candidates already included in the provisional list, holding that the same shall be affront to the norm of the ratio of 1:5. In other words, candidates already included in the provisional list shall not be dislodged for inclusion of the petitioner and others in pursuant to the order of this Court.

6. Since the aforesaid order has been passed in the presence of the learned counsel appearing for the respondent, the same be communicated to the respondent that this Court has allowed him to participate subject to the qualifying cut off marks in the category. The petitioner may also furnish an affidavit in this regard before the respondent, who on receipt of the same shall act accordingly without awaiting for this order but the petitioner shall produce the order immediately on receipt of the same. However, production of affidavit should not be condition precedent as this Court has already directed the respondent counsel to intimate the order. No costs. Consequently, the connected miscellaneous petition is closed. However it is made clear that the petitioner if does not possess the qualification on the date of her application, the same entails rejection of her candidature.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

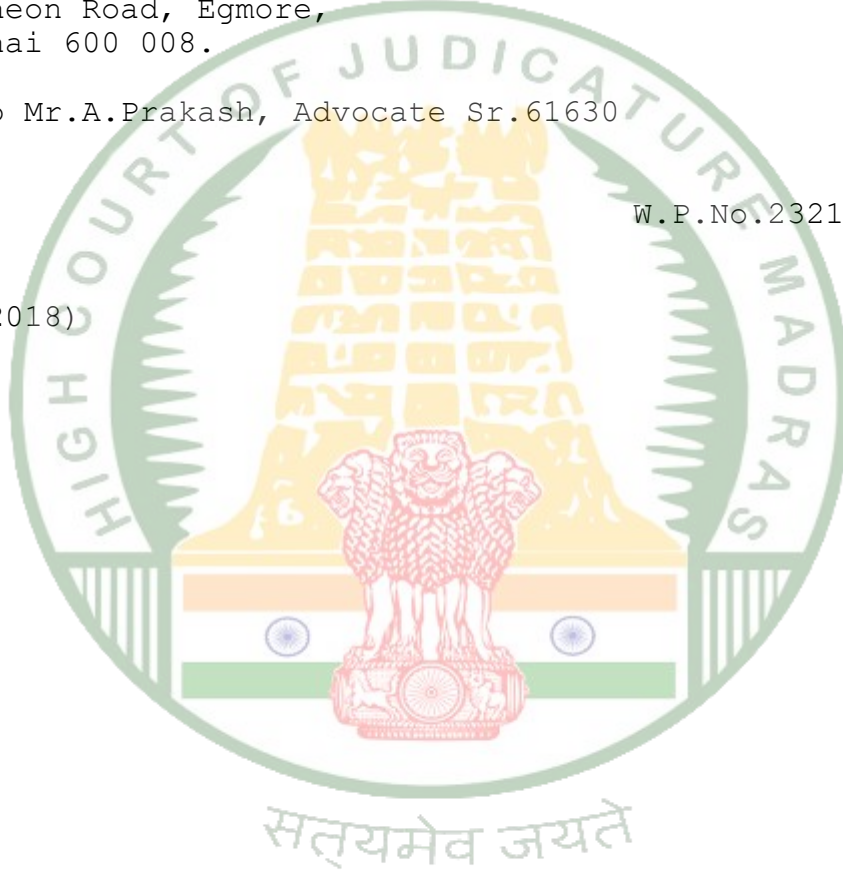
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To

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Chennai 600 008.
- + 2 ccs to Mr.A.Prakash, Advocate Sr.61630

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NRI (CO)
EU(01/10/2018)



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