

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.26344 of 2010

S.Senthilkumar

... Petitioner

Vs.

1.The Secretary to Government,
Home (Pol-IV) Department,
Fort St.George, Chennai - 9.

2.The Director General of Police cum
The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Anna Salai, Chennai - 2.

3.The Director General of Police,
No.4, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to add "3 marks" to the petitioner for the Written Test and also grant "2 Special Marks for the NCC, B & C Certificate" produced by the petitioner at the time of Recruitment to the post of Sub-Inspector of Police (Men) for the year 2006 under the Open Market (80%) Quota and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police and fix his seniority in the appropriate place in the selection with all consequential service and monetary benefits and grant such further or other relief as this Hon'ble Court.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.J.Ramesh, AGP

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O R D E R

The prayer made in this writ petition is to issue a writ of Mandamus directing the 2nd respondent to add 3 marks to the petitioner for the Written Test and also grant 2 Special Marks for NCC and B & C Certificate produced by the petitioner at the time of recruitment to the post of Sub-Inspector of Police (Men) for the year 2006 under the Open Market (80%) Quota and further

direct the respondents to select and appoint the petitioner as Sub-Inspector of Police and fix his seniority in the appropriate place with all consequential service and monetary benefits.

2. However, when the matter was taken up for consideration, the learned Additional Government Pleader appearing for the respondents submitted that the issue involved herein is squarely covered by the judgment dated 23.12.2010 passed by a Division Bench of this Court in W.A.Nos.1719 to 1739 and 1602 to 1636 and 1933 to 1958 of 2010, wherein, in para 30, it has been observed as follows:

"30. No doubt the petitioners had legitimate expectation about the selection and they are also not responsible for the problem. However, the petitioner approached the Court only in 2009 for the first time. The Hon'ble Supreme Court in Shiba Shankar Mohapatra and Ors vs. State of Orissa and Ors. Reported in AIR 2010 SC 706 held as follows:

"28 It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (vide Aflatoon and Ors. v. Lt. Governor, Delhi and Ors. MANU/SC/0437/1974: AIR 1974 SC 2077; State of Mysore v. V.K. Kangan and Ors. MANU/SC/0429/1975: AIR 1975 SC 2190; Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors. MANU/SC/0022/2000; AIR 2000 SC 671; Inderjit Gupta v. Union of India and Ors. MANU/SC/0447/2001; (2001) 6 SCC 637; Shiv Dass v. Union of India and Ors. MANU/SC/7032/2007; AIR 2007 SC 1330; Regional Manager, A.P. SRTC v. N. Satyanarayana and Ors. MANU/SC/8097/2007; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors. MANU/SC/81250/2008; (2009) 1 SCC 168)". (emphasis supplied).

Hence the petitioners who approached the court for the first time are definitely "fence sitters". In view of that the writ petitions filed by those petitioners who approached the court for the first time in 2009 are dismissed on the ground of delay."

3.Following the same, this writ petition is liable to be dismissed on the ground of delay, as the petitioner has approached this Court for the first time only in 2010 and hence, it is dismissed. No costs.

Sd/-

Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

drl

To

- 1.The Secretary to Government,
Home (Pol-IV) Department,
Fort St.George, Chennai - 9.
- 2.The Director General of Police cum
The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Anna Salai, Chennai - 2.
- 3.The Director General of Police,
No.4, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

+1cc to Mr.M.MUTHAPPAN, Advocate, S.R.No.39613

+1cc to the Government Pleader, S.R.No.39536

W.P.No.26344 of 2010

RJ(CO)
TR(12/07/2018)

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