

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.872 to 887 of 2016

and

C.M.P.Nos.11300 to 11314 of 2016

G.Saravanan ... Appellant in W.A.No.872/2016
K.Mammudu ... Appellant in W.A.No.873/2016
C.Santhavalli ... Appellant in W.A.No.874/2016
B.Sivaraj ... Appellant in W.A.No.875/2016
N.Maharaja ... Appellant in W.A.No.876/2016
N.Arulmanimaran ... Appellant in W.A.No.877/2016
R.Ramesh ... Appellant in W.A.No.878/2016
M.Pothiraj ... Appellant in W.A.No.879/2016
K.Thirupathi ... Appellant in W.A.No.880/2016
A.Veluchamy ... Appellant in W.A.No.881/2016
S.Sundaram ... Appellant in W.A.No.882/2016
R.M.Velmurugan ... Appellant in W.A.No.883/2016
A.Kannan ... Appellant in W.A.No.884/2016
P.Karikalan ... Appellant in W.A.No.885/2016
S.Tamilselvan ... Appellant in W.A.No.886/2016
P.Rani ... Appellant in W.A.No.887/2016

-vs-

- 1.The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai-9.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- 3.The Chairman,
The Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai, Chennai-2. ... Respondents in all Writ
Appeals

Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.Nos.13698 of 2015, 16657 of 2014, WP.(MD).16658 of 2014, W.P.(MD)Nos.17781 of 2014, 19594 of 2014, W.P.No.27710 of 2014, 27742 of 2014, 4303 of 2015, 4304 of 2015, 4305 of 2015, 6976 of 2015, 9454 of 2015, 9455 of 2015, 13699 of 2015, WP.(MD).19595 of 2014 and 28236 of 2015, respectively, dated 27.01.2016.

Prayer:WP.No.13698/15,4303/15 to 4305/15, 6976/15, 9454, 9455/15, 13699/15 & 28236/15:

Petitions presented under Article 226 of the constitution of India praying to issue a writ of mandamus directing the respondents to select the petitioner for appointment as sub Inspector of Police in pursuance of the cut off marks secured by them in the recruitment process conducted in the year 1997-98 as per the orders of the supreme court in SLP.No.21828/06 in Civil Appeal No.7667/14 etc dated 7/8/2014 and appoint them as Sub Inspector of Police and grant them all consequential service and monetary benefits.

Prayer in WP.(MD).No.16657/14, 16658/14, 17781, 19594/14, WP.27710/14, 27742/14,& 19595/14:

Petitions presented U/A 226 of the constitution of India praying to issue a writ of Mandamu directing the respondents to select the petitioner for appointment as sub Inspector of police in pursuance of the cut off marks secured by them in the recruitment process conducted in the year 1997-98 as per the orders by the T.N.A.T. in O.A.No.9825/98 dated 19/7/01 and also based on the orders of the supreme court in SLD.No.21822/06 in Civil Appeal No.7667/14 etc dated 7/8/2014 and appoint them as sub Inspector of Police and grant them all consequential service and monetary benefits.

For Appellants :: Mr.S.Sivakumar
in all appeals

For Respondents :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The matter is with regard to selection to the post of Sub-Inspectors of Police by way of direct recruitment during the years 1998, 1999, 2000 and 2001. Several applications were filed before the Tamil Nadu Administrative Tribunal, which went up to the Hon'ble Supreme Court of India and a decision was rendered on 07.08.2014 in C.A.Nos.7667/2014 etc. batch by the Hon'ble Supreme Court. Thereafter, a batch of writ petitions were filed before this Court in W.P.Nos.26325 of 2015 etc.batch in this connection.

2.The Tamil Nadu Uniformed Services Recruitment Board invited applications for selection to the post of Sub-Inspectors of Police by way of direct recruitment from open market as well as from departmental candidates for the year 1997-1998 and since the selection was made on range wise basis and lot of resentment emanated, Original Applications were filed in O.A.Nos.9825/1998 etc. batch before the Tamil Nadu Administrative Tribunal. The

primordial challenge made to range-wise basis of selection was that though the applicants, who had approached the Tamil Nadu Administrative Tribunal, secured very high marks, were not selected, whereas the candidates, who had secured lower marks in other ranges, got selected. After formulating the points for consideration, the Tribunal found that selection made on zone-wise basis is contrary to the judgment of the Hon'ble Supreme Court of India in Radhey Shyam Singh and Others v. Union of India [1997 (1) SCC 60]. The Tribunal, taking note of the fact that number of years had elapsed from the date of announcement of the selection made on zone-wise basis, was not inclined to set aside the selection and further taking note of the fact that most of the applicants had secured higher marks than the persons selected from other ranges, thought fit to direct the State to give them orders of appointment as the number was limited to 12.

3. Insofar as selection of candidates under departmental quota, the Tribunal has observed that the applicants who have appeared for selection while serving in the department as Police Constables/Head Constables, are to be selected and appointed as Sub-Inspectors of Police in the same manner as that of the applicants who have been directed to be appointed by way of direct recruitment. The Tribunal has passed this common order on 19.07.2001.

4. The State of Tamil Nadu, represented by its Secretary, Home (Police V) Department, Fort St. George, Chennai-9 and the Chairman, Tamil Nadu Uniformed Services Recruitment Board filed W.P.Nos.17639/2001 etc. batch challenging the legality of the above said common order passed by the Tribunal. The Division Bench of this Court, after taking note of the decision in Radhey Shyam Singh case (cited supra), has found that in the matter of selection for employment in the services of the State, while merit should be the basis for selection, zone-wise selection would result in less meritorious candidates being selected in one zone while more meritorious candidates might lose their chances in another zone. The Division Bench of this Court held that in the absence of a specific rule in the Special Rules for Tamil Nadu Police Subordinate Service, the action of the State in having resorting to such a zone-wise selection, can never be approved. The Division Bench, in the light of the above cited reasons, had concluded that the selection to the post of Sub-Inspector of Police (Men and Women) by way of direct recruitment in the year 1997-1998 for the Tamil Nadu Police Department pursuant to the notification dated 02.04.1998 from the open market, was invalid on the ground that such selection was made zone-wise without any provision in the statutory rules and also without prescribing such a procedure in the relevant notification for making such selection. The Division Bench had also expressed its view that it will not be appropriate to set aside the whole selection at this point of time and taking note of the various decisions of the Hon'ble Supreme Court of India, held that creating such a situation by setting aside the whole

selection, will not be conducive to the State administration.

5.The Division Bench has also taken note of the fact that the Government has ordered for recruitment of 1000 Sub-Inspectors of Police, vide G.O.Ms.No.1317, Home (Pol-III) Department dated 08.09.1997 and the ultimate selection was only to an extent of 918 candidates and the final order of appointment was issued only to 881 candidates in respect of the selection for the year 1997-98 and further taking note of the fact that with regard to the alleged malpractices, the Director of Vigilance and Anti-Corruption Department has also come out with a list that 53 ineligible candidates were benefited and that 10 eligible candidates were deprived of selection, also held that the said report would always be subject to the final outcome of the criminal case registered against three members of the Selection Committee and one other past employee of the writ petitioner, namely TNUSRB. Insofar as the candidates who have belatedly approached the Tribunal, the Division Bench held that they cannot be granted relief on account of delay and laches.

6.The applicants whose claims have been dismissed on the ground of delay and laches in the Original Applications and others, had filed Special Leave Petitions, challenging the common order dated 25.02.2005 made in W.P.Nos.17639/2001 etc. batch insofar as dismissing the case on the ground of delay and laches. The Hon'ble Supreme Court of India, vide order dated 11.12.2006, has issued notice to the official respondents only on the limited ground as to whether the High Court was justified in dismissing the Original Applications and Writ Petition on the ground of delay and laches and further ordered notice on the application for condonation of delay.

7.Special Leave Petitions filed by Tvl.K.K.Senthilkumar and others, after admission, were numbered as C.A.Nos.7667/ 2014 etc. batch and elaborate arguments were advanced before the Hon'ble Supreme Court of India on the issue of delay and laches. The Hon'ble Supreme Court of India, after taking note of the rival submissions, has observed that the applicants have admittedly been denied the right of appointment, merely on account of having approached the High Court belatedly and having given thoughtful consideration to the issue in hand, the Hon'ble Judges were satisfied that it was the bounden duty of the State Government to implement the judgment rendered by the Administrative Tribunal (O.A.Nos.9825/1998 etc. batch) in letter and spirit and more so, after the same had attained finality and not doing so would result in some meritorious candidates being ignored, despite their higher merit, than those appointed while implementing the order of the Tribunal. It was further observed that, had the aforesaid onus and responsibility been discharged by the State Government, there would have been no need for them either to approach the High Court or the Supreme Court. The Hon'ble Supreme Court has also felt that on account of the same, 11 applicants, viz. Tvl.A.Sethuraman, E.Ramesh Kumar,

V.Jayabalan, K.Sivakumar, S.Chandran, R.Ravi, K.K.Senthil Kumar, O.Dayalan, P.Paulraj, M.Sundarapandian and K.Moovendhan, who have been appointed in terms of the judgment passed by the Administrative Tribunal, have a right of being appointed in terms of their admitted position in the merit list. The Hon'ble Supreme Court has also taken note of the fact that number of vacancies still remained unfulfilled and therefore, not a single person appointed by the State Government would have to be dislodged, to extend the benefit of the judgment to these 11 persons and all of them could have been accommodated, against unfulfilled vacancies of the same recruitment process.

8. On perusing the orders rendered by the Tribunal, Division Bench of this Court and the Hon'ble Supreme Court and upon hearing the submissions made by the respective learned counsel appearing for the parties and the State, this Court has categorised the cases as follows:

CATEGORY I

(A) Orders passed by the Division Bench remanding for consideration based on the order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case.

(B) Cases pending on the date of the order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case.

CATEGORY II

(A) Cases filed before the Principal Bench on the basis of the order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case.

(B) Cases filed before the Madurai Bench of this Court on the basis of the order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case.

CATEGORY III

(A) Fresh cases filed before the Principal Bench based on the above cited order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case

(B) Fresh cases filed before the Madurai Bench of this Court based on the above cited order passed by the Hon'ble Supreme Court of India in K.K.Senthil Kumar's case

9. After a threadbare analysis of the matter, this Court framed the following issues, for consideration and adjudication:

"(1)Whether the claim of some of the petitioners are hit by the Principle of Constructive Res Judicata/Res Judicata?

(2) Whether the claim of the petitioners are hit by delay and laches?

(3) Whether the dismissal of Special Leave Petitions in limine and also on the ground of delay and laches, would amount to merger?

(4) To what relief the petitioners are entitled?"

10. Thereafter, Issue No.1 was answered in favour of the concerned petitioners.

11. With regard to Issue No.2, this Court has held as follows:

"37. In the considered opinion of the Court, the ratio laid down in the judgment in Tukaram Kana Joshi and Ors. v. Maharashtra Industrial Development Corporation & Ors. [(2013) 1 SCC 353] is squarely applicable to the case of the petitioners belonging to Category I and II and it is also to be noted that no third party's right is also involved and by following the above cited order in K.K.Senthil kumar's case, they have to take their place last after the directly recruited candidates for the year 2015. Moreover, almost all of the petitioners in Category I and II are in police service as they subsequently joined as Constables and became Grade-I and Head Constables and are serving at present.

38. Insofar as the plea of constructive res judicata, it is submitted by the learned Advocate General that the claim of the petitioners in Category I and II have to be dismissed solely on the ground of delay and laches and not on merits. However, in the light of the ratio laid down in the Board of Trustees of Cochin Port Trust case (cited supra), it cannot be put against the petitioners coming under Category I and II."

12. With regard to Issue No.3, it has been held that since this Court, while answering Issue No.1 has dealt with the case of Mr.M.Muthukumar/petitioner in W.P.No.25146 of 2014 and S.L.P (C)No.3950-3951 of 2014, which came to be dismissed on the ground of delay with costs and in the light of the ratio laid down in the above cited decisions, it cannot be said that the order of dismissal in W.P.No.27969/2007 on the ground of laches

merge with the order of dismissal passed by the Hon'ble Supreme Court in the Special Leave Petitions.

13. With regard to Issue No.4, it has been held as follows:

"In the light of the findings/answers given to Issue Nos. I to III, the petitioners in Category I and II, both in Principal Bench as well as Madurai Bench, are entitled to succeed. Insofar as the petitioner in W.P.No.25146 2014 is concerned, if records are available he has to undergo viva-voce test; otherwise the findings rendered by the Hon'ble Supreme Court in paras 5 and 6 of the decision in K.K.Senthil Kumar's case would come into operation."

14. With regard to Category-III cases, since they approached this Court by filing writ petitions during the years 2014 and 2015 respectively, after the above cited judgment rendered by the Hon'ble Supreme Court in K.K.Senthil Kumar's case, this Court held that they were fence sitters and waited on the side lines as to the result of the litigation and after becoming aware of the judgment in K.K.Senthil Kumar's case referred to supra, have jumped into the fray by filing writ petitions during the years 2014 and 2015 respectively and pray for their appointment as Sub-Inspectors of Police.

15. Amongst many grounds raised, the main point put up by the learned counsel for the appellants in the present writ appeals is that having divided the entire cases into three categories as Category-I, Category-II and Category-III and holding that in respect of cases belonging to Category-II, delay will not apply, the learned single Judge has erred in stating that delay will apply to the applicants belonging to Category-III cases, even though they are similarly situated as that of the applicants belonging to Category-II cases. Hence, according to the learned counsel for the appellants, the orders in appeal are liable to be set aside, since Category-II cases are also on a similar footing like that of the appellants herein.

16. The learned Special Government Pleader appearing for the respondents has submitted that the learned single Judge has dealt with the matter in proper perspective and after a threadbare analysis of the matter, passed the impugned common order and the same does not require any interference. He further submitted that the appellants herein are fence sitters and only after being aware of the judgment passed by the Hon'ble Supreme Court in K.K.Senthil Kumar's case, they woke up and filed the writ petitions before this Court and only due to the same, the learned single Judge has dismissed their claim on the ground of delay / laches.

17. We have heard the learned counsel on either side and perused the materials available on record.

18.The appellants in the present writ appeals belong to Category-III cases. It has been clearly held by this Court that these applicants have approached this Court only after the judgment passed in K.K.Senthil Kumar's case and did not agitate their grievance for quite a long time; that on account of such a lapse of time and belated approach, they are not entitled to get the relief of parity with the applicants with regard to Category I and II, though they are similarly placed. It has been further clearly held by the learned single Judge that the claim of the appellants herein are hit by delay and laches in the facts and circumstances of their case and hence, equitable jurisdiction of this Court cannot be exercised in their favour. Stating so, the learned single Judge ultimately dismissed the writ petitions falling under Category-III to which these appellants belong.

19.In this connection, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of State of U.P. v. Arvind Kumar Srivastava, reported in (2015) 1 SCC 347, in which it is stated that even though normal rule is that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India, the said normal rule is however subject to well recognised exceptions in the form of laches, delays and acquiescence which would be valid grounds to dismiss their claim.

20.In view of the foregoing discussions, we find no error or infirmity in the impugned orders so as to warrant interference. Hence, these writ appeals are liable to be dismissed and accordingly the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

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Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Home (Police II) Department,
Fort St.George, Chennai-9.

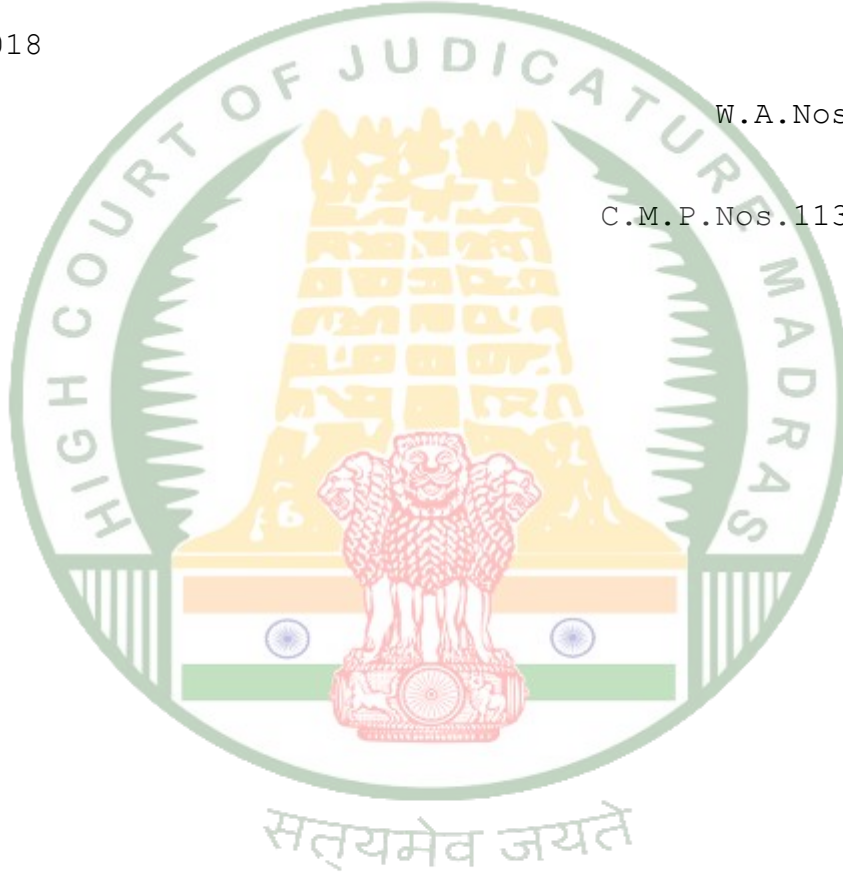
2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

3.The Chairman,
The Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai, Chennai-2.

+1cc to Government Pleader SR.No.23355
+15cc to Mr.S.Sivakumar, Advocate SR.No.23302

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W.A.Nos.872 to 887
of 2016
and
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