

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 36967 of 2016

A.Velmurugan

..Petitioner

vs

1. The Director General of Police,
Police Department,
Puducherry.
2. The Senior Superintendent of Police(HQ),
Commandant Home Guards,
Puducherry.
3. The Superintendent of Police (Home Guards),
No.3, Dumas Street, Police Head Department,
Puducherry.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to consider and dispose the petitioner representation dated 05.07.2016 within the time frame.

For Petitioner : Mr. Prakash Adiapadam

For Respondents: Mr.J.Kumaran
Government Advocate (Puducherry)

सतयमेव जयते
O R D E R

The relief sought for in this writ petition is for a direction to direct the second respondent to consider and dispose of the petitioner's representation dated 05.07.2016 within the time frame.

2. The learned counsel for the writ petitioner states that the writ petitioner is fully qualified for appointment as Home Guard, pursuant to the recruitment notification dated 17.10.2014. The writ petitioner submitted an application for recruitment to the post of Home Guard in the Puducherry. The petitioner participated in the selection process and secured 56 marks admittedly.

3. The grievance of the writ petitioner is that the writ petitioner has not given appointment, on account of the fact that he secured 56 marks, which is one mark less than the cut off marked fixed by the respondents. The candidates who secured 57 marks were appointed as Home Guards.

4. The learned counsel for the petitioner further states that the petitioner came to understand reliable source that 5 selected candidates have not joined in the post of Home Guard and the posts are still vacant, in view of the fact that the candidates have not joined. The writ petitioner ought to have been accommodated in the said vacant posts, since he is placed next below the person who secured 57 marks. In view of this factor, the writ petitioner is constrained to move the present writ petition.

5. The learned counsel appearing on behalf of the respondents opposed the contentions by stating that the writ petitioner has secured 56 marks and cut off marks fixed was 57. Therefore, he was not selected as Home Guard. In view of the fact that the writ petitioner was not within the zone of consideration, there was no infirmity in respect of the action taken by the respondents for rejecting the candidature of the writ petitioner. This apart, validity of the selections list prepared is for one year and the notification of the year 2014 and the selections were completed in the year 2015, and therefore, the very list itself has been lapsed. Thus, the writ petitioner is not entitled for any relief as such sought for in this writ petition.

6. Appointment can never be claimed as a matter of right. Appointment to the post of Home Guard is a honorary position. Thus the petitioner cannot claim the same, as a matter of right. This apart, the appointments even to the honorary position the same is to be done only in accordance with law and by following the rules prescribed. Admittedly, the writ petitioner had secured 56 marks and the cut off marks for selection was 57, in respect of recruitment of the year 2014. This apart, the writ petitioner had not secured the required cut off marks in the selection. Mere availability of vacancy will not confer any right on the candidates to claim appointment. If at all, the vacancy arises on account of non joining of the selected candidates, the same will not construed by the non selected candidates to claim right of appointment. These are all the Administrative decisions to be taken by the Competent Authorities and the writ petitioner cannot claim that the posts are vacant, and therefore, he must be accommodated in the post. Once a person who had not selected on account of the fact that he was not within the zone of the consideration, then he has no right to claim that the vacant posts are to be filled up and his

case also to be considered for accommodating in the said vacant post. Such a proposition raised by the writ petitioner is unknown to the service Jurisprudence. Filling up of all the vacant posts are the prerogative of the administrative authorities and a decision in this regard is to be taken by the competent authorities. The authorities competent are bound to follow the rules scrupulously and without causing any discrimination. This alone to be the rule for the purpose of selection and the mere claim set out in the writ petition cannot be considered.

7. The learned counsel for the writ petitioner states that a representation submitted by the writ petitioner on 05.07.2016, was within one year from the date of the publication of the list and the respondents ought to have provided some reply in either way. Such an argument deserves no consideration, in view of the fact that mere submission of representation without establishing a legal right cannot have any cause for moving a writ petition. Even to consider the representation submitted by the writ petitioner as a precondition, the writ petitioner has to establish a legal right. Failing which, no writ proceedings can be entertained under Article 226 of the Constitution of India. Thus, it is not as if a direction is to be given to the respondent to consider the representation. Even for that, a legal right is to be established. However, the writ petitioner has not established even a semblance of legal right so as to consider a relief as such sought for in this writ petition.

8. Accordingly, the writ petition stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pns/kp

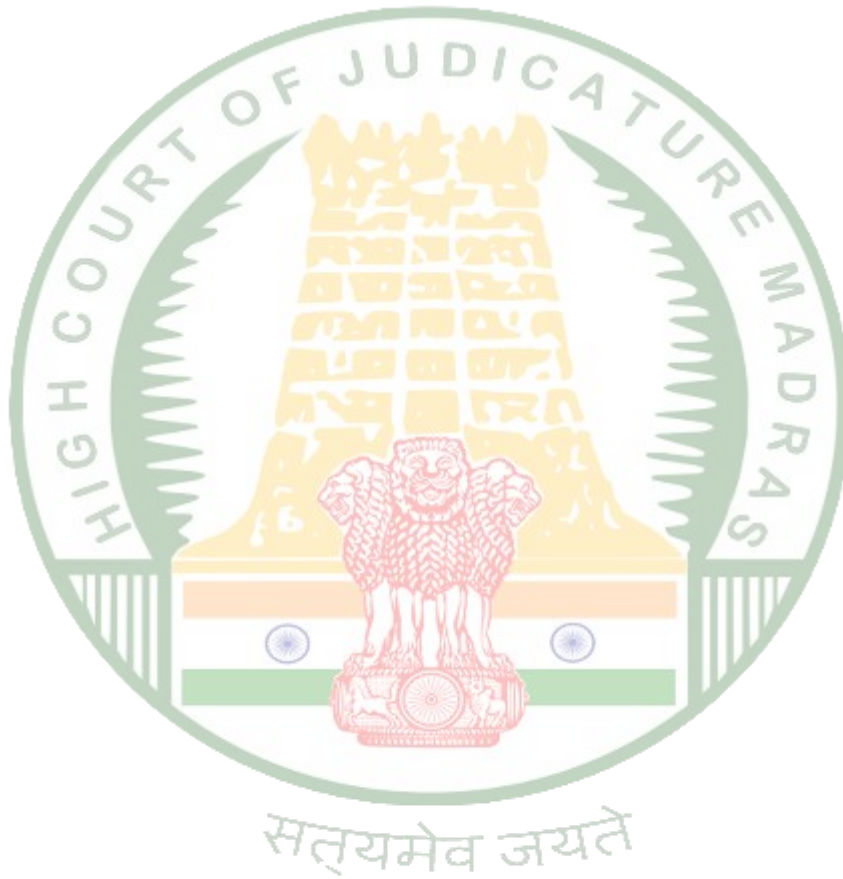
To

1. The Director General of Police,
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Puducherry.
2. The Senior Superintendent of Police(HQ),
Commandant Home Guards,
Puducherry.
3. The Superintendent of Police (Home Guards),
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Puducherry.

+1 CC to Mr. Prakash Adiapadam, Advocate sr 60225.
+1 CC to Govt.Pleader for Puducherry, sr 59210.

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SJ(CO)
SP(12/09/2018)



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