

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.28862 of 2018

and

W.M.P.No.33708 of 2018

M.Harikrishnan

...Petitioner

Vs

1.The Government of Tamil Nadu
rep.by the Secretary, Ministry of Home
Chennai.

2.The Chairman
Tamilnadu Uniformed Service Recruitment
Board, Old Commissioner of Police Office
Campus, Pantheon Road, Egmore,
Chennai 600 008.

....Respondents

For Petitioner : M/s.R.Meenakshi

For Respondents : Ms.Narmadha Sampath,
Addl.Advocate General
Assisted by Mr.V.Kadhirvelu,
Spl.Govt.Pleader

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the respondents to accept the petitioners 12th standard Transfer Certificate for the purpose of medium of study is in Tamil and thereby consequently include the petitioner's register Number 0113455 in the Provisional Selection List of the Recruitment for the post of Police Constable, Grade-II published on 13.10.2018 as admittedly he has secured the required cut off marks by considering the petitioners representation dated 15.10.2018.

O R D E R

This writ petition has been filed by the petitioner, challenging the rejection of the petitioner's name in the Provisional Selection List of the Recruitment for the post of Police Constable, Grade-II published on 13.10.2018, released by the second respondent.

2. The brief facts leading to the filing of the writ petition is as follows. The petitioner joined the Central Reserve Police Force in the rank of Constable (General Duty) on the basis of qualification of 10th Standard, while he was studying Higher Secondary second year. After the completion of basic training, he was deployed at Assam, Tripura, Meghalaya, Srinagar and he was posted to 77th battalion at Jammu and Kashmir and several other places. The Tamil Nadu Uniformed Services Recruitment Board gave an advertisement No.217 dated 28.12.2017 for the recruitment of Grade II Police Constable / Second Grade Jail Wardens / Fireman for the year 2017-2018 to fill the vacancies of 6140 by male and female candidates. In the advertisement, a special quota of 5% was given to ex-servicemen and 20% to those who studied in Tamil Medium. The petitioner appeared for the written test on 11.03.2018 and secured 35 marks and qualified for physical test. He appeared for physical measurement test, endurance test, physical efficiency test held on 07.09.2018 and 10.09.2018 and qualified by securing 9 marks against the maximum marks of 15. In total he secured 44 marks in written as well as physical test. Thereafter, certificate verification was carried out on 12.09.2018.

3. It is the grievance of the petitioner that he belongs to Scheduled Caste community and the cut off fixed for SC candidate under ex-servicemen quota under Persons Studied in Tamil Medium was 43, and that eventhough the petitioner has secured 44 marks, he was not considered and his name was not shortlisted in the final list published on 13.10.2018. On enquiry, the petitioner was informed that he has not produced the Transfer Certificate of 10th standard, showing that the petitioner has studied in Tamil Medium, whereas the petitioner has produced 12th standard certificate. As the petitioner has discontinued 12th Standard, the name of the petitioner was rejected in the provisional final list, which is under challenge.

4. Learned Additional Advocate General, appearing for the respondents would submit that Para 7 of the affidavit is very clear as to the requirements to be fulfilled by the petitioner, under which, the documents are listed which are to be uploaded by the applicants. The petitioner has not produced the Transfer Certificate of the 10th standard, and that the petitioner has admittedly produced only the Transfer Certificate of the 12th Standard.

5. Learned counsel for the petitioner submits that the Transfer Certificate of the 10th Standard can be produced only when he has been transferred from one school to another and admittedly he had studied in the same school all along, till he discontinued his 12th standard and therefore, the Transfer Certificate of 10th standard was not produced.

6. Per contra, the learned Additional Advocate General would submit that three lakh applicants appeared for the test and no discretion is vested with the authorities to consider Transfer Certificate of 12th standard in place of 10th standard certificate.

7. The fact remains that the petitioner has produced the 12th standard Transfer Certificate, whereas the requirement as per the advertisement was 10th standard Transfer Certificate. It is to be noted that at this era of cut throat competition, no one would be inclined to take a risk of choosing tamil language as a medium of instruction. Hence, the authorities should have accepted the certificate that is produced for the 12th standard in the place of 10th standard, because over qualification can never be a disqualification.

8. Learned counsel for the respondents also pointed out Clause VIII of the instructions in the advertisement No.217 issued by the Tamil Nadu Uniformed Services Recruitment Board, which reads as under.

"VIII. 20% Priority to the Candidates studied 10th Standard Education in Tamil Medium

- a) The candidates those who studied 10th standard education in the Tamil language (Medium of Instructions) will be given 20% priority at the time of preparation of final provisionally selected list.
- b) In case the details of the applicants studied in Tamil language as medium of instructions in 10th standard Marks Sheet / School Transfer Certificate which are the educational qualification for this post are not available, they should obtain a certificate as they have studied 10th standard in Tamil language as medium of instructions and upload the certificate.
- c) The applicants those who have not uploaded the required certificate will not be considered under 20% priority at the time of preparation of final provisional selection list."

9. Pointing out the above clause, the learned counsel for the respondents would submit that nothing prevented the petitioner to produce the certificate from the head master of the school in which he studied to show that he has studied 10th standard in Tamil Medium. This contention cannot be accepted for the simple reason that there is some other equivalent certificate to show that the petitioner's medium of instruction is Tamil. Under the circumstances the certificate already

produced would be sufficient to show that clause No.VIII as given in the advertisement No.217, has been satisfied. Learned Additional Advocate General, appearing for the respondents relied on the judgment reported in "Ashok Kumar Vs State of Bihar" reported in (2017) 4 SCC 357, wherein it has been held that a person who consciously takes part in selection process cannot thereafter turn around and challenge method of selection and its outcome.

10. This Court is of the view that the petitioner has participated in the selection process fully aware of the requirements as per Clause VIII extracted above and uploaded the Transfer Certificate of 12th standard (the last certificate, which is normally held by a person) as well as other documents, which were required to substantiate his medium of instruction as Tamil till 12th Standard, implying that he had his education only in Tamil Medium. That apart, the petitioner only seeks a direction from this Court to accept the petitioner's 12th standard transfer certificate to prove that the medium of instruction of his study is only Tamil and to include his name in the provisional selection list, after securing the requisite cut off marks, and has not challenged the method of selection on any ground whatsoever. Therefore, the decision relied on by the learned Addl. Advocate General is not applicable to the facts of the present case.

11. Further, it is to be pointed out that normally any person continuing his education in the same school, where he studied 10th standard, it is the customary practice that Transfer Certificate is not issued and even if it is issued, the same is taken back by the school when admitting the student to the next higher class, viz., 11th standard. Even if a student goes to any other school and gets admitted, the transfer certificate issued by the previous school is taken by the new school where the student gets admitted. In such a scenario, the petitioner having discontinued his 12th standard, a transfer certificate has been issued. Therefore, it is implied that he would have surrendered the transfer certificate, which was issued to him on completion of 10th standard to the school in which he was admitted, be it the same school or otherwise. The above scenario is fortified by the fact that a copy of the certificate from the Head Master of Government Boys Higher Secondary School, Timiri - 632 512, Vellore District, where the petitioner had studied, certifying that the petitioner had studied in Tamil Medium till he finally left the school, ie., till he discontinued his education in 12th standard has been produced. This clearly reveals that the petitioner has continued in the same school after completing the 10th standard.

12. However, learned counsel for the respondents objected to the same saying that there are lot of corrections in the certificate and that the original certificate has to be produced. On the objection from the side of the respondents, the matter was adjourned by a day for production of the original certificate by the petitioner.

13. Today when the matter is taken up, the original certificate dated 14.11.2018, issued by the Head Master, Government Boys Higher Secondary School, Timiri - 632 512, Vellore District is produced which clearly shows that the petitioner had underwent his education through Tamil medium and, therefore, the certificate produced by the petitioner with regard to his medium of instruction upto 10th standard being Tamil is liable to be accepted.

14. Considering the facts and circumstances, the respondents are directed to accommodate the petitioner in the post that is kept vacant by virtue of the earlier order of this Court dated 31.10.2018. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Kst

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary
The Government of Tamil Nadu
Ministry of Home
Chennai.

2.The Chairman
Tamilnadu Uniformed Service Recruitment
Board, Old Commissioner of Police Office
Campus, Pantheon Road, Egmore,
Chennai 600 008.

+1cc to M/s.R.Meenakshi, Advocate, S.R.No.80727
+1cc to Mr.V.Kadhirvelu, Advocate, S.R.No.81511

W.P.No.28862 of 2018

SSD(CO)
KAK(19/12/2018)