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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.02.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**

and

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

W.A(MD)No.170 of 2018

and

C.M.P(MD)No.934 of 2018

against

WP(MD)No.19589 of 2017

1. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
Chennai.

2. The Chairman Sub-Committee,
Tamil Nadu Uniformed Services
Recruitment Board,
Ramanathapuram Centre,
Ramanathapuram.

: Appellants/Respondents

Vs.

Muthuraman

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 22.12.2017 passed in W.P(MD)No.19589 of 2017 by the learned Single Judge.

Prayer in WP(MD). 19589/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the 1st respondent to issue the petitioner the training order in the Common Recruitment for the posts of Gr.II Police Constables (Men, Women & Third Gender), Gr.II Jail Warders (Men & Women) and Firemen for the year 2017.

For Appellants

: Mr.B.Pugalendhi,
Additional Advocate General,
Assisted by Mr.A.K.Baskarapandian,
Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The official respondents in W.P.(MD)No.19589 of 2017 are the appellants in this Writ Appeal. The Writ Petition filed by the respondent for issuing a Writ of Mandamus, directing the first appellant to issue him the training order in the Common Recruitment for the posts of Grade II Police Constables (Men, Women and Third Gender), Grade II Jail Warders (Men and Women) and



Firemen for the year 2017 came to be allowed and challenging the legality of the same, came forward to file this Writ Appeal.

2. Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.A.K.Baskarapandian, learned Special Government Pleader, has invited the attention of this Court to the copy of the Notification published by the Tamil Nadu Uniformed Services Recruitment Board as well as the Information Brochure regarding Common Recruitment for the Posts of Grade II Police Constable, Grade II Jail Warder and Firemen, 2017 and would submit that the respondent made a claim that he is an Ex-serviceman and has stated that he is entitled to preference under 5% quota reserved for the Ex-servicemen for the Armed Reserve category and admittedly, at the time of submitting the application, he did not enclose the Certificate and would further add that the above said Notification as well as the Information Brochure mandate that for claiming such reservation/benefit, it is the bounden duty of the applicant to enclose a Certificate to that effect and admittedly, such Certificate was produced belatedly only at the time of Certificate verification and as such, he ought to have been considered only under the general quota and however, the learned Judge, without properly considering the mandatory nature of the Notification as well as the Information Brochure, has allowed the Writ Petition and he prays for interference.

3. This Court has considered the submissions made by the learned Additional Advocate General and also perused the materials placed before it.

4. The facts of the case would disclose that the Tamil Nadu Uniformed Services Recruitment Board has issued a Notification dated 23.01.2017 for Common Recruitment for the Posts of Grade II Police Constables, Grade II Jail Warders and Firemen for the year 2017 and thereby, invited applications from Indian Citizens.

5. The last date for submission of the application was on 22.02.2017. The Writ Petitioner/Respondent, who is an Ex-serviceman, got discharged on 03.10.2016 and however, did not enclose the Certificate to that effect along with the application and he has obtained the same only on 24.03.2017, that is, after the last date of the submission of the application. However, before Certificate verification done, he has submitted a representation enclosing the said Certificate and it was not considered and, therefore, he came forward to file the said Writ Petition. The learned Judge, after taking note of the factual aspect and also considering the decisions rendered by the Hon'ble Supreme Court of India in **Charles K.Skaria vs. Mathew [AIR 1980 SC 1230]** and **Dolly Chhanda vs. Chairman, JEE [2005(9) SCC 779]** as well as the decision of this Court in **Premanand vs. The State of Tamil Nadu [1995 (2) MLJ 325]**, **Dr.A.Rajapandian v. State of Tamil Nadu [2006(5) CTC**

529], **Secretary, TNPSC v. M.Chitra** [2010(2) MLJ 146] and **C.Stella Mary v. TNPSC** [2009(6) MLJ 1211], held that the failure to produce Certificate along with the application before finalization of the list of candidates, is not fatal for the reason that the said clauses cannot be termed as mandatory in nature and admittedly, Certificate has been produced before the Certificate verification done on 01.08.2017 and, therefore, allowed the Writ Petition.

6. In **Dolly Chhanda vs. Chairman, JEE** [2005(9) SCC 779], the facts of the case would disclose that the appellant therein passed Higher Secondary Examination and she was desirous of joining a Medical Course and accordingly, appeared in the Joint Entrance Examination conducted for the year 2003 under the reserved MI category being a daughter of an Ex-serviceman who was discharged from the armed forces on the ground of permanent disability. She was called for counselling and during the course of scrutiny, it was revealed that in the Certificate dated 29.06.2003 given to her father by the Zilla Sainik Board regarding Column 3 which pertained to "disabled/killed in war/hostilities", the words "not eligible" were written and on that score, her application was rejected. Thereafter, the appellant therein approached the first respondent with the correct Certificate, but no action was taken and, therefore, came forward to file the Writ Petition and it was dismissed by the High Court of Orissa on the ground that at the time of counselling on 07.07.2003, the Certificate furnished by the appellant did not bear any testimony that her father being a personnel of the armed/paramilitary forces of Orissa had been disabled in action. Therefore, the matter reached the portals of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has taken into consideration the **Charles K.Skaria's** case (cited *supra*) and observed as follows:

. "7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure.



Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

and accordingly, allowed the appeal filed by the candidate.

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7. In the considered opinion of the Court, the said decision would squarely apply to the facts of this case for the reason that it is not in serious dispute that the respondent is an Ex-serviceman and however, at the time of submission of the application, he was not able to get the said Certificate on time and having obtained the same, submitted the same before the Certificate verification on 01.08.2017. It is also pertinent to point out at this juncture, at the time of Certificate verification, admittedly, the selection process was not over and as such, no rights of the third parties also got intervened. In the considered opinion of the Court, the learned Judge has correctly applied the legal principles and rightly allowed the Writ Petition. This Court finds no error or infirmity in the reasons assigned by the learned Judge, while allowing the Writ Petition.

8. In the result, the Writ Appeal stands dismissed confirming the order dated 22.12.2017 made in W.P.(MD)No.19589 of 2017. However, in the facts and circumstances of the case, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board,
Chennai.

2. The Chairman Sub-Committee,
Tamil Nadu Uniformed Services
Recruitment Board,
Ramanathapuram Centre,
Ramanathapuram.

+1cc to The Spl. Government Pleader Sr.No.46604,46392

SML

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