



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.(MD)No.1241 of 2017

and

C.M.P(MD)Nos.8618 & 8619 of 2017

K.Sathish

... Appellant/Petitioner

vs.

1.The State of Tamil Nadu
Represented by its Secretary,
Home Department,
Fort St.George, Chennai.

2.The Director General of Police,
Tamil Nadu, Santhome,
Chennai-600 004.

3.The Tamilnadu Uniformed Services
Recruitment Board,
Represented by its Chairman,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai-08.

4.The Tamilnadu Uniformed Services
Recruitment Board Sub Committee,
Represented by its Chairman,
Madurai Centre,
Office of the Superintendent of Police,
Madurai District.

5.The Superintendent of Police,
Madurai District (Rural),
K.Pudur, Madurai District.

... Respondents/Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order made in W.P(MD)No.16909 of 2017 dated 07.09.2017.



Prayer in WP(MD). 16909/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for all records relating to the proceedings in Na.Ka.No.B1/03464/33/2017 dated 16.02.2017 issued by the 5th respondent and quash the same and thereby consequently direct the respondents 1 to 5 herein to recruit the petitioner Sathish K registration No.2419290 as either grade-II police constable or Grade-II Jail Warder Or Firemen or Armed Reserved constable in the 1st respondent recruitment process 2017 and appoint the Petitioner forthwith with all benefits emoluments.

For Appellant : Mr.M.Joseph Thatheus Jerome

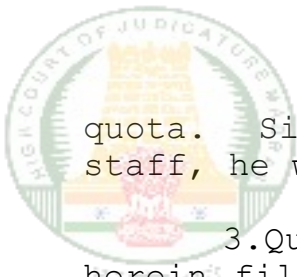
For Respondents : Mr.K.Chellapandian,
Addl., Advocate General
Assisted by Mr.A.K.Baskara Pandian,
Special Govt.Pleader for R1 to R5

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The appellant was a candidate, who applied in response to the notification issued by the third respondent calling for applications for filling up the posts of Grade-II Police Constable, Grade-II Jail Warder and Firemen and Armed Reserve Men Constable for the year 2017. The appellant's father served as a Ministerial Staff in the Police Department who retired from service on 31.03.2016. The appellant wanted to be considered under the 10% quota meant for wards/Dependents. The appellant applied to the 5th respondent for issuance of wards/dependents certificate. Since the issuance of the said certificate was delayed, he applied under the general category. The appellant took part in the written examination as well as the physical tests. He scored 61 marks. This was below the cut off marks prescribed for the general category. Had the petitioner been issued with the ward/dependents certificate, he would have been selected against the 10% quota.

2.He therefore, moved the authorities again. By the impugned memorandum dated 16.02.2017, the appellant was informed that since his father had already retired and cannot be considered as a serving ministerial staff, it would not be possible to issue the certificate sought for by him. The stand of the department is that as per Rule 12 of TNPSS Rules 1953 and Rule 7(b) TNPSS rules 1978 only ward/dependent of serving/retired/deceased or medically invalidated Police personnel and ward/dependent of serving ministerial staff or Police department are eligible to apply under the ward/dependent



quota. Since the father of the appellant is a retired ministerial staff, he would come under the said quota.

3. Questioning the said stand of the department, the appellant herein filed W.P.(MD)No.16909 of 2017. The said Writ Petition was dismissed on 07.09.2017 on the ground of delay and laches. Contending that the appellant was not at fault and that the issue must be decided on merits, this intra Court appeal came to be filed.

4. When the Writ Appeal came up for admission, the Bench took the view that the provision under which the appellant claimed benefit itself appeared to be unconstitutional. Therefore, the Bench decided to consider the validity of the 10% reservation provided for the ward/dependents of Police Personnel and the ministerial staff of the Police Department. In order to enable the State to justify the said reservation Rule, notice was issued to the State Government. This order was passed on 13.09.2017. Thereafter, the matter was adjourned on at least four occasions. Finally, the Government filed its Counter Affidavit on 14.02.2018.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Advocate General for the respondents.

6. The contention of the learned AAG appearing for the respondents was that the Hon'ble Chief Minister of Tamil Nadu in the inaugural address at the conference of the Police officers on 01.08.2001 indicated that a quota of 10% in the vacancies in the Police/Special Police Subordinate Services would be provided for the wards/dependents of the Police Personnel and the ministerial staff in order to boost the morale and strengthen its loyalty to the Force. Pursuant to the aforesaid assurance G.O.Ms.No.834, Home (Police III) Department dated 10.09.2001 was issued providing for the said quota in the following terms :

"10% quota under direct recruitment for dependents of the serving police personnel and the wards/dependents of retired, deceased and medically invalidated police personnel."

7. There was a subsequent amendment and the following proviso was added :

"Provided that 10% of the above 10% quota shall be filled up from among the dependents of the serving Ministerial staff".

8. The learned Additional Advocate General also pointed out that communal reservation as per Rule 22 was also being scrupulously followed. Placing reliance on the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1495, he contended that it is fully within the competence of the Government to decide as a matter of policy the source from which the personnel required for manning the service are to be drawn.



9. We are unable to agree with the submissions of the learned AAG appearing for the State. The rules in question provide for recruitment on the basis of birth and descent. The issue is no longer res integra. The Hon'ble Supreme Court in the decision reported in (1987) 1 SCC 631 (Yogender Pal Singh v. Union of India) held as follows :

While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In *Gazula Dasaratha Rama Rao v. The State of Andhra Pradesh & Others*, [1961] 2 SCR 931 the question relating to the constitutional validity of section 6(1) of the Madras Hereditary Village Offices Act, 1895 (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in section 3, clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the Constitution. The Court observed in that connection at pages 940- 941 and 946-947 thus:

"Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds-



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religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16 cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Articles 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Art. 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject (Pages 940-941). There can be no doubt that s.6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution." (Pages 946--947).

We are of opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards or children or relatives of the police officers has got to be negatived since their claim is based on 'descent' only, and others will thereby be discriminated against as they do not happen to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional.

10. In this case also 10% reservation has been provided for the wards/dependents of serving and retired personnel of the police department. There is an inherent vice in the provisions in the recruitment rules enabling such reservation. They are repugnant to



Article 16 of the Constitution of India. Opportunity to enter public service should be extended to all citizens equally.

11. We are however conscious of the fact that when the Division Bench of this Court struck down these very provisions, the matter was taken on appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court in the decision reported in (2005) 3 SCC 451 (*Secy. to the Government v. M. Senthil Kumar*) held that in the absence of a challenge to the reservation in question the High Court was not justified in holding that it is unconstitutional. But while allowing the appeal filed by the Government, it was also observed no opinion has been expressed on the validity or otherwise of the policy decision providing for 10% special quota to a particular group of candidates.

12. In the present case, the Government was specifically put on notice that this Bench proposed to examine the constitutional validity of the reservation in question. Sufficient opportunity was given to the Government to file their written response and counter affidavit was also finally filed. The only justification offered by the Government is that this reservation will boost the morale and loyalty of the Police force.

13. The object behind the introduction of the rule may be laudable. No doubt, communal reservation is being followed. But it will not take away the vice affecting the character of the rule. Reservation based solely on the grounds of birth and descent are inherently unconstitutional. The Hon'ble Supreme Court had already declared it to be so. It is true that there was no challenge to the validity of the said rule. But then when an unconstitutional provision happens to come up for consideration, we cannot gloss over the same and proceed as if we have seen nothing amiss. We have taken oath to bear true faith and allegiance to the Constitution of India and to uphold it. What is flamboyantly termed as the power of judicial review is in fact the duty of Courts and Judges to ensure the rule of law. (Philip Hamburger's *Law and Judicial Duty*)

14. Therefore, even as we declare that the reservation for wards/dependents of serving/retired police personnel and serving ministerial staff of the police department is unconstitutional, we make it clear that the recruitment already made in terms of the said reservation would not be affected. However, in future the State Government shall not resort to the said reservation. Since the appellant seeks benefit under a rule that has been declared as unconstitutional, the question of granting relief to him will not arise.

15. This writ appeal is accordingly disposed of. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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To

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- 1.The Secretary,
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Fort St.George, Chennai.
- 2.The Director General of Police,
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- 4.The Chairman,
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Recruitment Board Sub Committee,
Madurai Centre,
Office of the Superintendent of Police,
Madurai District.
- 5.The Superintendent of Police,
Madurai District (Rural),
K.Pudur, Madurai District.

+One cc to The Special Government Pleader, SR.No.48519

+One cc to M/s.Joseph Thatheus Jerome, Advocate, SR.No.48464

skm

RL/8C/7P/SV/MMS/SAR2/26/3/2018

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