



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.5547 of 2011

V.Sathiyaraj

... Petitioner

Vs.

1. The State of Tamil Nadu,
represented by its,
Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.

2. Tamil Nadu Uniformed Services Recruitment Board,
represented by its Chairman,
No.807, P.T.Lee.Chengalvaraa Naicker Malligai,
Anna Salai,
Chennai - 600 002.

3. The Director General of Police,
Beach Road,
Chennai - 600 004.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.T3/7145/2010, dated 05.01.2011 on the file of the respondent No.2 and quash the same as illegal and consequently directing the respondent No.2 to consider the petitioner's candidature for appointment to the post of Grade II Police Constable if found medically fit from the date on which hi batch mates were appointed with consequential benefits.

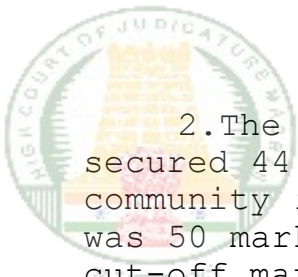
For Petitioner : Mr.T.Lajapathy Roy

For Respondents : Mr.M.Muthu

Additional Government Pleader

O R D E R

The order of non-selection of the writ petitioner for appointment to the post of Grade II Police Constable is under challenge in this writ petition.



2.The order impugned states that the writ petitioner had secured 44 marks in the selection. However, the cut-off mark for BC community in respect of the recruitment took place in the year 2010 was 50 marks. Thus, the writ petitioner had not secured the required cut-off mark and not even within the zone of consideration.

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3.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner ought to have accommodated in the 10% quota provided for the wards.

4.This Court is of an opinion that the quota fixed for the wards itself was not approved by the Division Bench of this Court. There cannot be any separate quota for wards and preference alone can be provided in the process of selection. The relevant paragraphs of the order of the Division Bench are extracted here under:

.....

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-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. Article 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 the 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.

5. This apart, the writ petitioner had not secured the required cut-off mark of 50 for BC category and he had secured only 44 marks. Thus, the writ petitioner was not within the zone of consideration and now after this length of time, he cannot be appointed in the post of Grade II Police Constable.

6. The learned counsel for the writ petitioner states that the grievance of the writ petitioner is that there is a discrimination in respect of the cut-off mark provided to the ministerial ward and the executive side. However, the very quota itself is untenable, in view of the judgment of the Hon'ble Supreme Court of India. This being the factum of the case, the claim of the writ petitioner cannot be considered.

7. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.
 2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
No.807, P.T.Lee.Chengalvaraa Naicker Malligai,
Anna Salai,
Chennai - 600 002.
 3. The Director General of Police,
Beach Road,
Chennai - 600 004.
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58472
+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 58011

MM

TE/KKR/SAR-3 : 25/04/2018 : 5P/6C

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