

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 20.02.2018**

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM**W.P (MD) No. 15484 of 2013**

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C.Thangapandi

... Petitioner

Vs

1. The Principal Director,
Office of the Principal Director,
Highways Department,
Chepauk, Chennai-05.
2. The Chief Engineer,
(Highways),
Quality Control and Research Office,
Sardar Vallabhai Patel Road,
Kindi, Chennai-25.
3. The Joint Director,
(Administration),
Office of the Principal Director,
Highways, Chepauk, Chennai-5.
4. The District Employment Officer,
Virudhunagar District Employment Exchange,
Virudhunagar District,
Virudhunagar.

5. Mr. Rathinasamy

6. Mr. K. Baburaj

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 3 to appoint the petitioner as a Junior Drafting Officer in the Highways Department under Scheduled Caste Community (Arunthathiyar) quota within the stipulated period.

For Petitioner

: Mr. M. Jothibas

For R1 to R4

: Mr. R. Sethuraman,

Special Government Pleader

For R5 & R6

: No appearance

ORDER

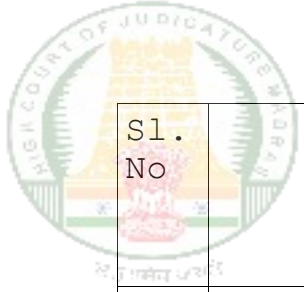
The relief sought for in this writ petition is for a direction to direct the respondents 1 to 3 to appoint the petitioner as a Junior Drafting Officer in the Highways Department under Scheduled Caste Community (Arunthathiyar) quota.



2.The petitioner states that the writ petitioner had participated in the process of selection for appointment to the post of Junior Drafting Officer in the Highways Department. The writ petitioner is questioning the process of selection after participating in the selection. The procedure of selection was questioned by the petitioner on the ground that the authorities have not properly conducted the interview. The petitioner states that totally 15 persons were attended in the interview under Scheduled Caste (Arunthathiyar) community. As per the Special reservation, 3% of reservation should be provided to Arunthathiyars. The petitioner claims that among the above 15 persons, he is senior most person in respect of age and employment seniority applied for the post of Junior Drafting Officer under Scheduled Caste (Arunthathiyar) community. This being the factum, the respondents ought to have consider the case of the petitioner for appointment.

3.At the outset, the petitioner is of an opinion that he is the senior most among the candidates, who appeared in the selection process, in respect of employment seniority and therefore, he should be given preference for appointment.

4.The learned Special Government Pleader appearing on behalf of the respondents 1 to 4 states that the selection was conducted strictly in accordance with the recruitment Rules in force. The appointing authorities had not violated any of the recruitment Rules, more specifically, the Rule of reservation was strictly followed by the authorities. The Director General of Highways vide letter, dated 28.03.2012 had requested the Commissioner of Employment & Training to sponsor a Consolidated List of candidates with the required qualifications for filling up of 146 posts of JDO by direct recruitment. Accordingly, the Commissioner of Employment & Training had sponsored 737 candidates in the ratio of 1:5 based on Statewide Employment Seniority and Communal Rotation. For the post of 8 reserved for Ex-Servicemen, 50 candidates were sponsored by the Joint Director, Directorate of Ex-Servicemen Welfare, Vide Letter R.C.No.13362/2012/C-2, dated 10.08.2012. All the 737 candidates were called for interview scheduled on 30.07.2012, 31.07.2012, 01.08.2012, 02.08.2012 & 21.08.2012 at the Office of Chief Engineer (Highways), Quality Control & Research, vide Letter No.1083/Admn 5(1)/2010-12, dated 06.07.2012. Similarly, all the 50 Ex-Servicemen were called for interview scheduled on 26.09.2012, at the same venue. Out of 737 candidates sponsored by Directorate of Employment & Training, 444 candidates attended the interview. Likewise, out of the 50 Ex-Servicemen sponsored, 23 Ex-Servicemen attended the interview. The pattern of distribution of marks as under:-



Sl. No	DISTRIBUTION		ARKS		M
				Maximum	
1	Diploma in Civil Engineering				10
	1.	Possession of educational qualification higher to DCE	5		
	1.	Possession of DCE in 1 st Class/Distinct	5		
2	Time period from year of passing				
	2.	Above 5 years	10		
	2.	Between 2 to 5 years	5		
3	Experience				10
	3.	In Private Enterprises			
	3.1	More than 5 years	5		
	3.1	Within 5 years	3		
	3.	In Government Enterprises/Undertaking			
	3.2	More than 5 years	10		
	3.2	Within 5 years	3		
4	Knowledge of candidate in the Interview				20
	4.	General Knowledge	10		
	4.	Technical Knowledge	10		
TOTAL					50

5. Based on the marks obtained and by following the Communal Rotation, 141 candidates were selected and appointed as Junior Drafting Officers, Vide Proceeding No.1083/Admn 5(1)/2010, dated 04.03.2013, in different places and they are all joined duty. The petitioner has approached this Hon'ble Court belatedly. Interview was conducted in July 2010 and for Ex-serviceman in September 2012. However, the writ petition was filed on 7th September 2013 after a lapse of one year from the completion of the date of selection process and appointment. Thus, the writ petition itself is to be rejected.

6. The writ petitioner participated in the process of selection and was un-successfull and after appointment of selected candidates, moved the present writ petition after a lapse of one year from the date of completion of the process of selection.



7. In respect of the writ petitioner, the respondents have categorically set out the marks scored and the details of the other candidates, who belongs to the same category in paragraphs 7 & 8 of the counter affidavit, which is extracted hereunder:-

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"7. It is submitted that the petitioner was one of the candidates sponsored by the Directorate of Employment and Training from out of the total 10 candidates sponsored in the category of Schedule Caste Arunthathiyar Non-Priority. The vacancy as per Communal Rotation was: two for Schedule Caste Arunthathiyar Non-Priority; one for Schedule Caste Arunthathiyar Priority and one for Schedule Caste Arunthathiyar Women, from out of the total 146 posts. From out of the total 16 sponsored and called for interview under the Schedule Caste Arunthathiyar Community-Women; Priority and Non-Priority, 15 candidates (2 Women; 4 General Priority and 9 Non-Priority) had attended the interview held on 02.08.2012. The petitioner did not possess any higher educational qualification (Nil Marks); had not passed D.C.E., in 1st Class or with Distinction (Nil Marks); had more than 5 years from the year of his passing D.C.E., (10 marks); had experience of more than 5 years with Private Enterprises (5 marks) and had secured 17 marks in the interview, thus, the petitioner had secured 32 marks out of 50 marks.

S1. No.	NAME	CATEGORY	MARKS SCORED
1.	C.Karthikeyan	General Priority	36/50
2.	M.Sivagami	Women Priority	33/50
3.	N.Rathinasamy	General Non-Priority	41/50
4.	K.Baburaj	General Non-Priority	35/50
5.	C.Thangapandi	General Non-Priority	32/50
6.	D.Dhanapal	General Non-Priority	20/50
7.	S.Santhiya	Women Priority	32/50

8. It is submitted that the 5th respondent was sponsored under the category of Schedule Caste Arunthathiyar General Non-Priority. He had B.E., Civil Engineering (5 marks); D.C.E., 1st Class (5 marks); more than 5 years from the year of passing of D.C.E., (10 marks); 5 years experience in Private Enterprises (5 marks) and had scored 16 marks in the interview, thus totaling 41 marks from out of 50 marks. Similarly, the sixth respondent was sponsored under the category of



Schedule Caste Arunthathiyar General Non-Priority. He had more than 5 years from the year of passing of D.C.E., (10 marks); 5 years experience in Private Enterprises (5 marks) and had scored 20 marks in the interview, thus totaling 35 marks from out of 50 marks. The 5th and 6th respondents had scored higher marks than the petitioner and were accordingly selected and appointed. The other candidates referred by the petitioner, viz., C.Karthikeyan was a candidate sponsored under the category of Schedule Caste Arunthathiyar General Priority and he had secured 36 marks; and M.Sivagami was a candidate sponsored under the category of Schedule Caste Arunthathiyar Women Priority and she had secured 33 marks and S.Santhya was a candidate sponsored under the category of Schedule Caste Arunthathiyar Women Priority and she had secured 32 marks. Thus, the entire selection process was based on merits. The petitioner's entire allegations are baseless and there's no iota of truth in any of his allegations.

8. In view of the detailed facts provided by the respondents, this Court is of an opinion that the writ petitioner was not selected and therefore, he is not entitled for any relief as such prayed for.

9. The Hon'ble Supreme Court of India in the case of **Ashok Kumar and another vs. State of Bihar and others reported in 2017 (4) SCC 357** held that the scope of entertaining the writ petition by unsuccessful candidates in the selection process is limited and the relevant paragraphs are extracted hereunder:-

" 13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari V. Shakuntala Shukla ((2002) 6 SCC 127: 2002 SCC (L&S) 830), this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India V. S.Vinodh Kumar((2007) 8 SCC 100: (2007) 2 SCC (L&S) 792), this Court held that : (SCC p.107, para. 18).



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' 18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar V. Rajiv Govil* ((1991) 3 SCC 368: 1991 SCC (L&S) 1052) and *Rashmi Mishra V. M.P. Public Service Commission* ((2006) 12 SCC 724: (2007) 2 SCC (L&S) 345).'

14. The same view was reiterated in *Amlan Jyoti Borooah* (*Amlan Jyoti Borooah V. State of Assam*, (2009) 3 SCC 227: (2009) 1 SCC (L&S) 627) wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In *Manish Kumar Shahi V. State of Bihar* ((2010) 12 SCC 576: (2011) 1 SCC (L&S) 256, the same principle was reiterated in the following observations: (SCC p.584, para 16)

' 16. We also agree with the High Court (*Manish Kumar Shahi V. State of Bihar*, 2008 SCC Online Pat 321: (2009) 4 SLR 272) that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the Writ petition. Reference in this connection may be made to the Judgments in *Madan Lal V. State of J & K* ((1995) 3 SCC 486: 1995 SCC (L&S) 712), *Marripati Nagaraja V. State of A.P.* ((2007) 11 SCC 522: (2008) 1 SCC (L&S) 68), *Dhananjay Malik V. State of Uttaranchal* ((2008) 4 SCC 171: (2008) 1 SCC (L&S) 1005: (2008) 3 PLJR 271), *Amlan Jyoti Borooah V. State of Assam* (*Amlan Jyoti Borooah V. State of Assam*, (2009) 3 SCC 227: (2009) 1 SCC (L&S) 627) and *K.A. Nagamani V. Indian Airlines* ((2009) 5 SCC 515: (2009) 2 SCC (L&S) 57).'

16. In *Vijendra Kumar Verma V. Public Service Commission* ((2011) 1 SCC 150: (2011) 1 SCC



(L&S) 21), candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In *Ramesh Chandra Shah V. Anil Joshi* ((2013) 11 SCC 309: (2011) 3 SCC (L&S) 129), candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p.318, para 18).

'It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.'

18. In *Chandigarh Admn. V. Jasmine Kaur* ((2014) 10 SCC 521: 6 SCEC 745), it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai V. Dinesh Kumar Pandey* ((2015) 11 SCC 493: (2015) 3 SCC (L&S) 274), this Court held that: (SCC p.500, para 17)

'17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview.

This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in



the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.'

This principle has been reiterated in a recent Judgment in *Madras Institute of Development Studies V. K. Sivasubramaniyan*. (2016) 1 SCC 454: (2016) 1 SCC (L&S) 164: 7 SCEC 462).

10. In view of the fact that the writ petitioner had participated in the process of selection and not selected and further, the present writ petition has been moved belatedly after a lapse of one year. The question of considering the case of the petitioners does not arise at all.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

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Virudhunagar District,
Virudhunagar.

AM

VB/SV/MMS/SAR2/07/03/2018/8P/5C

W.P (MD) No. 15484 of 2013

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