

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.28457 of 2019 and

W.M.P.No.28161 of 2019

P.Mohan Muthu Raman

..Petitioner

vs

The Chairman

Tamil Nadu Uniformed Services

Recruitment Board

Egmore, Chennai-8.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to award 0.50 marks for the wrong question No.120 in booklet "C" series to the petitioner (Reg.No.0107199) and consequently select and appoint the petitioner in the post of Sub-Inspector of Police (Finger print) 2018 vide notification of respondent in Advertisement No.2/2018 dated 29.08.2018 within the time frame fixed by this Court.

For Petitioner : Mr.A.Edwin Prabakar

For Respondent : Mrs.Narmada Sampath
Additional Advocate General
Assisted by Mr.V.Kadhirvelu

ORDER

Writ Petition is filed for issuance of Writ of Mandamus directing the respondent to award 0.50 marks for the wrong question No.120 in booklet "C" series to the petitioner (Reg.No.0107199) and consequently select and appoint the petitioner in the post of Sub-Inspector of Police (Finger print) 2018 vide notification of respondent in Advertisement No.2/2018 dated 29.08.2018 within the time frame fixed by this Court.

2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Advocate General appearing for the respondent.

3. The case of the petitioner is that he is working as Grade - I Police Constable in Greater Chennai Police Armed Reserve-I in Tamil Nadu Police Department. He belongs to BC community. The respondent has invited application for around 202 vacancies for the post of Sub-Inspector of Police (Finger Print) for the year 2018 vide notification in Advertisement No.2/2018 dated 29.08.2018. Since the petitioner has qualified for the said post, he applied for the same under 20% quota (departmental candidate) vide Registration No.0107199. Thereafter, written examination was conducted on 22.12.2018. The petitioner attended the written examination and secured 55 marks. Subsequently, the petitioner was called for viva voce and secured 8.00 marks and totally, the petitioner has secured 63 marks. Thereafter, the respondent published the cut off marks for examination and the cut off marks for the BC community is 63.70. While being so, it appears that one Arunachalam had challenged the results for a particular question which was wrong before this Court in W.P.No.5542 of 2019. On the basis of the order passed in the above writ petition, the respondent has granted 0.5 marks to around 2388 candidates including the petitioner for those candidates, who are all attended the question No.117 in 'A' booklet and in their respective booklets. In view of the above, the petitioner is presently entitled to 63.50 marks. If the mark is given in favour of the petitioner, he is eligible to be considered for the said post. The respondent has released the preliminary key on 24.12.2018 in which, for question No.120 in Booklet 'C' series, they had mentioned the answer as 'C'. Since the answer arrived by them is wrong, the petitioner has made an appeal/objection on 27.12.2018, which is well within the period of 7 days prescribed by the respondent. Thereafter, on 31.12.2018, they published final key in which they mentioned 'D' as correct answer and further on the same day itself, they published the list of candidates selected for viva-voce without giving opportunity for anyone to raise objections. Though the petitioner has secured 63.50 marks, cut off mark for BC category department candidate is 63.70 marks. The petitioner was short of 0.20 marks. If the petitioner is granted 0.50 marks for question No.120 (Booklet 'C' series), he would be selected for the above post. Aggrieved for not awarding the said mark in respect of question No.120, the present writ petition is filed by the petitioner.

4. Learned counsel appearing for the petitioner submitted that for question No.120 in 'C' series booklet in Tamil, it is stated as " மூன்று இயக்க எண்களின் எண்ணிக்கை? பதில் A)729, B) 901, C) 899, D) 900" and the question in English is "The number of three digit number is_ Answers: A) 729, B) 901, C)899, D) 900". They have wrongly translated in Tamil. However, all the four key answers are correct. Whereas at the time of publishing preliminary answer sheet, answer for question No.120 is mentioned as option 'C' and the same was changed in final answer key as option 'D', which is incorrect. Accordingly, the petitioner is entitled to get grace mark of 0.50 marks. If grace mark is granted to the petitioner, he is entitled for selection. Therefore, he prays for allowing this writ petition.

5. Learned Additional Advocate General appearing for the respondent submitted that question and answer key given by the authority are correct. Initially, the key answer for question No.120 is given as 'C' and then, it was changed to 'D'. We have two folds of process for giving key answers. One is preliminary key answer and thereafter, the experts will be consulted after publishing of preliminary key answers. The petitioner has to make a representation regarding this issue. The said Arunachalam, who filed W.P.No.5542 of 2019, has also not filed representation. In support of her contention, she relied on the decision of the Hon'ble Apex Court reported in (2018) 7 SCC 254 (Uttar Pradesh Public Service Commission, through its Chairman and another vs. Rahul Singh and another) and submitted that when there are conflicting views, the Court must bow down to the opinion of the experts. The relevant paragraph No.14 is extracted hereunder:

"14. In the present case, we find that all the three questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain textbooks. When there are conflicting views, then the Court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts."

6.The issue involved in the present case is whether question No.120 in 'C' series booklet in Tamil and its English translation are correct or not. This Court perused question No.120 and the question in English is "The number of three digit number is: Answers: A) 729, B) 901, C)899, D) 900". As per Tamil translation, the question is "மூன்று இயக்க எண்களின் எண்ணிக்கை? பதில் A)729, B) 901, C) 899, D) 900". According to the petitioner, question No.120 in Tamil translation is wrong. Because in மூன்று இயக்க எண்களின் எண்ணிக்கை? "இயக்க" means "movement or command". Whereas real translation is "இலக்க" means (digit). Therefore, this Court is of the view that the translation given by the authority for question No.120 in Tamil is wrong. Further, in English, they have mentioned that 'three digit number', for which, whatever answers given by the candidates are correct. Initially, they have published preliminary key answer as option "C" and after getting opinion from the experts, they have declared the final answer as option "D". Whereas the petitioner has given the answer as option "A". This Court has also perused the decision of the Hon'ble Apex Court cited supra, wherein the Hon'ble Apex Court has held that when there are conflicting views, then the Court must bow down to the opinion of the experts. In the case on hand, there is no conflicting view, it is mere translation error i.e., wrongly translated in Tamil as "இயக்க" as against "இலக்க". However, in English, answers for three digit number mentioned in all the four key answers are correct. If any one answer is contradiction one, for not awarding mark in favor of the petitioner is bad in law.

7. Learned Additional Advocate General appearing for the respondent further submitted that the petitioner has not filed objection within seven days from the date of publication of preliminary key answer. A perusal of the records reveals that the preliminary key answer was released on 24.12.2018 and the petitioner has made objection on 27.12.2018, which is well within the time. Further, the petitioner is working as Grade-I Police Constable, he is an in-service candidate and he is entitled to participate in the departmental post for the next avenue of promotion. Denying the same, learned Additional Advocate General appearing for the respondent submitted that there are only fourteen vacancies. In view of the above, denying the post in favour of the petitioner is unreasonable. However, the learned Additional Advocate General appearing for the respondent submitted that a direction may be issued to the respondent to award mark to the candidates, who attended question No.120 in "C" series booklet.

8. In view of the above, this Court hereby directs the respondent to award mark to the petitioner as well as other candidates, who attended question No.120 in "C" series booklet and redo the exercise as per the cut off marks in respect of BC, MBC and other categories. Accordingly, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Chairman
Tamil Nadu Uniformed Services
Recruitment Board
Egmore, Chennai-8.

+1cc to Mr.V.Kadhirvelu, Special Government Pleader sr.93088
+2cc to Mr.A.Edwin Prabakar, Advocate sr.93300

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W.M.P.No.28161 of 2019

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