

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2475 of 2018

U.Barkath

... Appellant

Vs.

1. The Director General of Police,
Chennai - 4.
 2. The Additional Director General of Police,
Armed Police,
Chennai - 10
 3. The Commissioner of Police,
Armed Reserve,
Coimbatore City,
Coimbatore District.
- ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 18.12.2017 made in W.P.No.32869 of 2017.

Prayer in W.P.No.32869 of 2019:

Calling for the records of the respondents in connection with the impugned order passed by the 3rd respondent in RC.No.N2/16178/2017 dated 26.10.2017 quash the same and further direct the respondent to convert the petitioner as Grade II police constable by transfer/by recruitment by transfer from Armed Reserve Coimbatore to General line within a reasonable time.

For Appellant : Mr.K.Ravi Anantha Padmanaban

For Respondents: Mr.STS Moorthy,
Additional Advocate General
Assisted by Mr.P.S.Siva Shanmuga
Sundaram
Special Government Pleader

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The instant writ appeal is directed against the order of the writ Court dated 18.12.2017 made in W.P.No.32869 of 2017.

2. The appellant is the petitioner in the writ petition. Writ petition has been filed challenging the order dated 26.10.2017, passed by the Commissioner of Police, Armed Reserve, Coimbatore City, Coimbatore, Respondent No.3, therein rejecting the representation of the petitioner and four others, for being appointed as Grade-II Police Constable from the post of Bugler Police Constable.

3. The representation was rejected on the ground that the petitioner who was a Bugler Police Constable and he cannot be equated as Grade-II Police Constable. The petitioner in the writ petition has stated that he participated in the selection process conducted by the Tamil Nadu Uniformed Service Recruitment Board in the year 2009 and was selected as a Bugler Police Constable. He was sent for training at Avadi and after finishing the training, he joined as a Bugler Police Constable in Armed Reserve Police Force in Coimbatore City.

4. The Director General of Police sanctioned two Bands viz., (a) State Police band in the Office of the Director General of Police and (b) Tamilnadu Special Police Band in the Regiment Centre at Avadi.

5. It is stated that the selection of Bugler Police Constable in the Armed Reserve and Tamil Nadu Special Police Battalion, was done by the District Superintendents of Police and Commissioners of Police, till the year 1991 and lateron, the selection was given to the Tamil Nadu Uniformed Services Recruitment Board.

6. The petitioner states that Rule 2 Clause (1) Category 7 of the Special Rules for Tamil Nadu Police Subordinate Service Rules, 1953, defines a Constable as including Band Constables, office of the Director General of Police, Madras, Reserve Constable, Bugler and Bellow boys. It is stated by the petitioner that all the constables stated above are treated as Gr-II Police Constable, for the purpose of payment of salary. It is stated categorically by the petitioner that the post is inter changeable.

7. It is the case of the petitioner that there is no separate distinction between Grade-II Police Constables and other Constables, in as much as their posts are inter

changeable. They carry the same scale of pay and they are treated alike in respect of promotion and upgradation. The petitioner states that a Chief office memorandum No.155370/RA.5/80 dated 01.09.1980 prescribes guidelines that after putting five years of service, the Bugler Police Constable is allowed for conversion as Grade - II Police Constable, subject to the condition that they have fulfilled the qualifications. The petitioner states that he made a representation to the 3rd respondent, Commissioner of Police, Coimbatore on 11.03.2017, for seeking conversion to general line as per the chief office circular dated 01.09.1980. The petitioner states that the claim of the petitioner was rejected by the impugned order.

8. The petitioner states that petitioner's name has been rejected primarily on the ground that even though Band Police Constable and General Police Constable belong to the same category, they are of different classes in Service Rules and right from the mode of their recruitment, process of training and nature of duties, everything is entirely different.

9. Apart from the office memorandum the petitioner also places reliance on a judgment of the Hon'ble Division Bench of this Court dated 08.12.2009 made in WA (MD) Nos.539 to 541 of 2009, supporting the contentions of the petitioner.

10. The petitioner, therefore, has challenged the impugned order contending that

(i) The GO.MS.No.877 Home (Pol IX) Department deals with the age condition, Education qualification, Physical qualification, Musical Knowledge, trial test, and after satisfied with the above qualification, final stage of selection is Medical Examination and police verification. The said GO is only for the selection process for Bugle PCs and not for conversion and the impugned order could not place any reliance on the said Government Order.

(ii) The 3rd respondent has failed to consider Rule 2 clause (1) category 7 of the Special Rules for Tamil Nadu Police Sub Ordinate Service Rules ,1953 which clearly defines constable including band constables, office of the DGP Madras, Reserve constable bugler and bellow boys. All the said constables are treated as Grade II constables for the purpose of payment of salary and all the said posts are also in the same category with same scale of pay and on this ground the impugned order is liable to be set-aside.

(iii) The 3rd respondent has failed to consider the guidelines prescribed in Chief office Circular Memorandum

NO.155370/RA.5/80, dated 01.09.1980, the impugned order is liable to be set aside.

(iv) The 3rd respondent has failed to consider that after GO.MS.No.877 Home (Pol IX) Department, several persons have got conversion from TSP/AR to general line. The Superintendent of Police, Vellore in his proceeding no.C.No.A2(1)/8871/2010 D.O.282/2010 dated 26.03.2010 has permitted conversion to two Bugler Police Constables and upgraded the two police constables as Gr-I and further upgraded as Head constable as per the memorandum issued by the 1st respondent dated 13.02.2010, but the same relief was rejected to the petitioner. This is totally unsustainable in law.

11. The learned Single Judge by order dated 18.12.2017, dismissed the writ petition holding that Bugler Police Constables are appointed specifically for the purpose of holding parade and other important official functions, and such Constables, cannot be permitted to be converted as Grade-II Police Constables. The learned Single Judge held that the persons who have been appointed as Bugler Police Constable, cannot ask for conversion as Grade-II Police Constable. It is this order, which is sought to be challenged under the instant writ appeal.

12. The petitioner apart from reiterating the contentions on the grounds raised, has also relied on an order dated 11.04.2011 passed by a learned Single Judge of this Court in WP.No.8976 of 2011, granting benefits to Bugler Police Constable, to be appointed as Grade-II Police Constable.

13. Reliance has also been placed on certain orders passed by the Commissioner, Greater Chennai Police, relaxing the educational qualifications for transfer of Bugler Police Constable as Grade-II Police Constable.

14. The Government have filed the counter affidavit and it is stated as follows:

(i) It is stated that in the Tamil Nadu Police, there are two sanctioned Police Bands. They are, (i) State Police Band in the office of the DGP, and (ii) The TSP Band in the Regimental Centre, Avadi. Apart from these two sanctioned Bands, there is no sanctioned Police Band anywhere else in the State. However, utilizing an instruction issued in 1957 that two Police Constables in Platoon of Armed Reserve and TSP Company can be earmarked for utilization as Bugler PCs. Police bands were raised in the Armed Reserves of Districts and Cities and in the Battalions. Selection of Bugler PCs for these Platoons and Company was done by District Superintendents of Police and

Commissioners of Police upto 1991. This mode of recruitment of Buglers, conducted during the year 1993-94 was abandoned due to the intervention of the erstwhile Tamil Nadu Administrative Tribunal on the plea that only the TNUSRB is the authorized agency to conduct the recruitment process.

(ii) Thereafter, no Bugler PC selection was conducted. In the above circumstance, while replying the debate on Police Demand No.21 on the floor of Assembly, on 15.03.2005, the Hon'ble Chief Minister announced, among others that while selecting personnel for Police Bands in the state, importance would be given to proficiency in music, if necessary, powers would be delegated to the Director General of Police, to relax the qualification relating to age, height, education, etc., and the rules for recruitments would be suitably modified. Accordingly, the Government in their order in G.O.Ms.No.877, Home (Police.IX) Department, dated 05.10.2005 issued orders for Special recruitment of Band personnel for the first time in the department and also framed necessary guidelines for recruitment process. In accordance with the orders issued in G.O.Ms.No.877, Home (Pol.IX) Department, dated: 05.10.2005, special recruitment for selection of 737 Band PCs was conducted, out of which only 278 fully qualified candidates were appointed as Band PC and sent for seven months training at RC, Avadi on 18.01.2010. 274 candidates have completed seven months Band training at RC, Avadi on 17.8.2010.

(iii) It is stated that in G.O.Ms.No.877, Home (Police.IX) Department, dated 05.10.2005, the Government have issued specific guidelines and qualifications for the recruitment of Band PCs wherein importance has been given to the proficiency in music knowledge alone. In the above recruitment procedure, no test was conducted to measure the aptitude or physical efficiency of the candidates, keeping in mind the nature of the job they were to be recruited i.e., to work as Band PC in Police Bands, whereas, in case of recruitment of Grade II Police Constables in general line in City / District Armed Reserves and TSP Battalions, the Government in G.O.Ms.No.834, Home (Policed.III) Department, dated 10.09.2001 have issued specific guidelines and qualifications, which are vastly different from the recruitment process followed during the recruitment of Band PCs. The educational qualification, physical measurements, aptitude and physical efficiency tests for recruitment of Grade II Police Constables in City / District Armed Reserves and TSP Battalions and the training procedure they have undergone are all are vastly different and more rigorous and strenuous from that of the recruitment of Band PCs.

(iv) It is further stated that even though the Band Police Constables and Grade II Police Constables in general line belong

to the same category, they are of different classes under the Service Rules and the mode of recruitment, process of training and nature of duties done by them are vastly different. In these circumstances, when the Government have issued G.O.Ms.No.877, Home (Pol.IX) Department dated 5.10.2005 framing guidelines and qualifications for the recruitment of Band Police Constables specifically, transferring them to the General line on par with those who were appointed directly for the post of Grade II Police Constables in City / District Armed Reserves and TSP Battalions through a vastly different and more rigorous recruitment process will be tantamount to allowing backdoor entry and if the prayer of the appellant is allowed then the seniority and promotional aspects of the those Grade II Police Constables who have been appointed directly as Gr.II PCs in TSPs and Armed Reserves will be adversely affected.

(v) It is stated that even though the Band Police Constables and Grade II Police Constables in general line belong to the same category, the guidelines and qualifications for the recruitment of Band Police Constables and Grade II Police Constables are entirely different and recruitment and training of Grade II Police Constables are more rigorous than that of the Band Police Constables. Further, the nature of duties handled by the Band Police Constables and Grade II Police Constables are vastly different. Even though all the said constables are treated as Grade II constables for the purpose of salary and have same scale of pay, the nature of duty of the Band Police Constables and Grade II Police Constables in general line are vastly different. As per G.O.Ms.No.1112, Home (Police.IX) Department, dated 13.12.2005 and G.O.(Ms).No.258, Home (Police.IX) Department, dated 02.03.2018, the Band Police Constables are given time bound upgradation as Band Grade I Constable after serving 10 years as Grade II Band Constable, Band Head Constable after serving 5 years as Band Grade I Constable and Band Special Sub- Inspector of Police after serving 5 years as Band Head Constable. The Band Constables will get time bound upgradation as Special Sub-Inspector of Police after serving 20 years. However, the general line Police Constables will get time bound upgradation as Special Sub-Inspector of Police only after serving 25 years of service.

(vi) Selection of Bugler PCs for Armed Reserve Platoons and TSP Company, who became Band-men in Armed Reserves and TSP Battalions was done by District Superintendents of Police and Commissioners of Police upto 1991. This mode of recruitment of Buglers, conducted was abandoned due to the intervention of the erstwhile Tamil Nadu Administrative Tribunal, during the year 1993-94 on the plea that the TNUSRB is the authorized agency to conduct the recruitment process. Subsequently, the Government in their order in G.O.Ms.No.877, Home (Police.IX) Department, dated

05.10.2005 issued orders for Special recruitment of Band personnel for the first time in this department and also framed necessary guidelines for recruitment process. Accordingly the Appellant herein was selected as Band Police Constable, on completion of his training, he joined in Coimbatore City on 19.08.2010 FN. as Band Police Constable and not as a Bugler Police Constable. The Chief Office Circular Memorandum No. 155370/RA.5/80, dated 01.09.1980 referred by the Appellant was given to Bugler PCs who were appointed upto 1991 by the District Superintendents of Police and Commissioners of Police. This mode of recruitment of Buglers, conducted during the year 1993-94 was abandoned due to the intervention of the erstwhile Tamil Nadu Administrative Tribunal on the plea that the TNUSRB is the authorized agency to conduct the recruitment process. After the issuance of order in G.O.Ms. No. 877, Home (Pol.9) Dept., dated 05.10.2005 and framing the specific guidelines and qualifications for the recruitment of Band PC by the Government, none of the Band PCs have been transferred to Grade II PCs in General Line.

(vii) It is stated that the appellant's request was duly considered and rejected as per the instructions issued in memo No.175740/NGB III (3)/17 dated 6-10-2017 of the Director General of Police, Tamil Nadu, Chennai and the petitioner was duly informed of the facts by the 3rd Respondent in Endt No. N2/16178./2017 dated 26-10-2017.

(viii) The Petitioner is not a Bugler Police Constable and he was recruited by the Tamil Nadu Uniformed Services Recruitment Board as Band Police Constable. Further, though the Band Police Constables and the Gr II Police Constables in general line belong to the same category, they are different right from the mode of their recruitment and process of training. Further, the nature of duties handled by the Band Police Constables and Gr II Police Constables are vastly different and they could not be compared, dealing with entirely different issue and it has no bearing on comparison of Band Police Constables to regular line.

(ix) It is further stated that the order passed by this Hon'ble Court in W.P.No.1783 of 2007 etc batch and confirmed in Writ Appeal filed by the Government in WA.No.539 to 541 of 2009, does not deal with the legitimacy of the claim of the Band Police Personnel for conversion to Grade II Police Constable in general line in City / District Armed Reserves. The above orders of the Hon'ble Court relate to the fixation of seniority of the individuals who were originally appointed as Bugler Constable prior to the issuance of the G.O.Ms.No.877, Home (Police.IX) Department, dated 05.10.2005 and subsequently posted as general line Grade II Police Constables as per the instructions issued

in Chief Office Circular Memorandum No.155370/RA.5/80, dated 01.09.1980. Based on the orders of the Hon'ble court in WA.Nos.539 of 541 of 2009, the 1st respondent the Director General of Police in memorandum in Rc.No. 199044/NGB.III(2)/2009, dated 13.02.2010 had given instructions for fixation of seniority of the individuals who were originally appointed as Bugler Constable and subsequently posted as Grade II Police Constables, as an one time measure. In the present case, the request of the appellant for conversion from Band Police Constable to general line Grade II Police Constable was rejected. Therefore, there is no question of fixation of seniority in general line Grade II Police Constable.

(x) It is stated that if the request of the appellant herein is accepted it will adversely affect the functioning of Police Department and the purpose of recruitment / appointment of Band Police Constable itself would be defeated. Further, it is stated that the appellant was appointed as Band Police Constable. But he has mentioned his designation as Bugler to mislead the Hon'ble Court to get the benefits given to the Bugler PCs, who were appointed before the issuance of the G.O.Ms.No.877, Home (Pol.IX) Department, dated 05.10.2005.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. The Bugler Police Constable, Band Police Constable and Grade-II Police Constable are three distinct and different posts. The recruitment process, age limit, educational and other qualifications, physical measurements, selection process, training details, and the nature of the duty, are different.

17. Under the Tamil Nadu Special rules for Tamil Nadu Police Subordinate Service, the class, category and method of appointment and limitation of appointing authority of Constables and Band Constables, reads as under.

For Constables:

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
(1)	(2)	(3)
Category 7 Constables (Men and Women) (other than Band Constables, Office of the	Must have completed 18 years of age and must not have completed 28 years of age.	Must be not less than 168 cms in height *** Provided that in the case of candidates belonging to Scheduled

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
Director General of Police) and Reserve Constables *** inserted in G.O. Ms. No.1856, Home (Pol III) Dept, dt. 8.12.1995	Provided that a candidate who has served in any of the defence service, namely the Army, the Navy or the Air Force shall be eligible for appointment if his age after deduction the period of such service is below 28 years of age. Provided further that age limit of 28 years shall not apply to a candidate for the appointment by transfer from Tamil Nadu Special Subordinate Service. Provided further that the upper age limit shall be 33 years for the appointment of a candidate who is a member of a Scheduled Caste or Scheduled Tribe. * "Provided also that for the appointment of a candidate who is a member of Backward	Castes / Schedule: Tribes the height shall not be less than 165 cms. •"In respect of male candidates, the chest measurement must not be less than 81 centimetres on normal condition (on expiration) and must not be less than 86 centimetres round the chest or full inspiration with a minimum chest expansion of 5 centimetres. Must have passed S.S.L.C. of the old pattern or of the New Pattern of this State. Provided that men of Police whether in service or retrenched for want of vacancies shall be eligible for transfer or for appointment as Constables if they have studied upto I Form VI Standard. 2. Must be able to read and write a language of the District in which he is to be employed as specified in the Schedule. Provided that preference shall be given in the Armed Reserve and Motor Transport to candidates who are not less than 5

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
	Class or Most Backward Class or Denotified communities, the upper age limit shall be 26 years".	feet 7 inches in height.

THE TABLE
FOR MEN CANDIDATES

Serial No.	Events	One Star Standard 1 Star - 2 marks	Two Stars Standard 2 Star - 5 marks
(1)	(2)	(3)	(4)
1	High Jump	1.20 Meters	1.40 Meters
2	Long Jump	3.80 Meters	4.50 Meters
3	100 Meters Run	15.0 Seconds	13.5 Seconds
4	400 Meters Run	80.00 Seconds	70 Seconds
5	Rope Climbing	5 Meters	6 Meters

THE TABLE
FOR WOMEN CANDIDATES
FOR WOMEN CANDIDATES

Serial No.	Events	One Star Standard. 1 Star-2 marks	Two Stars Stand 2 Star-5 marks
(1)	(2)	(3)	(4)
1.	Long Jump	3.25 Meters	3.75 Meters
2.	100 Meters Run	16.50 Meters	15.50 Meters
3.	200 Meters Run	36 Seconds	33 Seconds
4.	Shot put	4.50 Meters	5.50 Meters
5.	Throw Ball	17 Meters	21 Meters

Out of five events the candidates shall participate in three events vice One Jump event, any one of the running event, and

either Shot-put, or throw ball events. The Marks (maximum 15 Marks) shall be counted for commutation of total marks for selection.

Explanation.- (i) Out of 75 Marks a candidate should secure a Minimum of 35 Marks to qualify for Viva-voce.

(ii) The total percentage under sports quota and quota for dependents of serving Police Personnel including Ministerial Staff shall not exceed 20%

Provided that the candidates for selection to the post of SI (Finger Print) must have also passed the Examination of Finger Print Experts at the NCRB, New Delhi.

There shall be a written test consisting of GK and Psychology Test and extra qualification for NSS/NCC/Sports Games as follows :

Subject	Marks
General Knowledge	45
Psychology	25
Extra Qualification for NSS/NCC/Sports/Games	5
Total	75
Viva-Voce	10

Explanation.- (i) Out of 75 Marks candidate shall secure a minimum of 35 marks to qualify for the Viva-Voce.

(ii) The total percentage under sports quota and quota for dependents of serving Police Personnel including Ministerial Staff shall not exceed 20 Percent.

For Band Master:

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
(1)	(2)	(3)
Band Master, Office of the Director General of Police, Chennai.	Must not have completed 50 years of age.	Must have experience for a period of not less than three years in a regimental or other first class band.
Category - 7 Constables Men &	Must have completed 18 years of age and must not have completed 24 years	1 (i) in respect of male candidates (a) the height must not be

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
Women (other than Band Constables Office of the Director General of Police) and Reserve Constables,	of age. Provided that for appointment of a candidate who is a member of SC/ST the upper age limit shall be 29 years of age. Provided further that for appointment -of a candidate belonging to Ex-Serviceman the upper age limit shall be 45 years and must have not passed more than three years from the date of discharge. Provided also that appointment of a candidate who is a destitute widows belonging to OC, BC, MBC or denotified communities or SC or ST the upper age limit shall be 35 years. Provided further that age limit of 28 years shall not apply to a candidate for appointment by transfer from TNSPSS.	less than 168 cms. (Provided that in the case of candidates belonging to. SC/ST the height shall not be less than 165 cms. (b) the chest measurement must not be less than 86 cms. round, the chest on full inspiration with a minimum expansion of 5 cms. (ii) In respect of female candidates (a) the height must not be less than 157 cms. Provided that in the case of SC/ST the height shall not be less than 155 cms. (b) There shall be no chest measurement for women candidate. Both men and women candidates should take physical measurement test first. Persons who qualified in physical measurement test alone will be permitted to the Physical Endurance Test. 2. Must have the ability to read and write one of the following languages namely Tamil, Telugu, Malayalam, Kanada & Hindustani. (3) (i) Must have passed X Std or SSLC old pattern and also sound knowledge to speak read and write in Tamil. (ii) Every candidate for appointment to the post of constable shall undergo an endurance test that is running 5 Kms in 23 minutes, women candidate shall undergo an endurance test that is running 400 meters in 2 minutes. The candidates who succeeded in a endurance test shall have to undergo Physical Efficiency Test which shall consist of five events specified in the table below.' Out of the said five events a male

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
		candidate shall participate in one jump event, one running event (100' meters or 1500 meters) and rope climbing and a female candidate shall participate in one running event, (100 meters or 200 meters) long jump and shot put or throw ball and they shall qualify in all the three events with at least one star standard in any two events and two stars standard in one event.

THE TABLE
FOR MEN CANDIDATES

Serial No.	Events	One Star Standard 1 Star - 2 marks	Two Stars Standard 2 Star - 5 marks
(1)	(2)	(3)	(4)
1	High Jump	1.20 Meters	1.40 Meters
2	Long Jump	3.80 Meters	4.50 Meters
3	100 Meters Run	15.0 Seconds	13.5 Seconds
4	400 Meters Run	80.00 Seconds	70 Seconds
5	Rope Climbing	5 Meters	6 Meters

THE TABLE
FOR WOMEN CANDIDATES

Serial No.	Events	One Star Standard. 1 Star-2 marks	Two Stars Standa 2 Star-5 marks
(1)	(2)	(3)	(4)
1.	Long Jump	3.25 Meters	3.75 Meters
2.	100 Meters Run	16.50 Meters	15.50 Meters
3.	200 Meters Run	36 Seconds	33 Seconds
4.	Shot put	4.50 Meters	5.50 Meters
5.	Throw Ball	17 Meters	21 Meters

Out of 5 events, the candidates shall participate in 3 events viz., one jump event, anyone of the running event and

either shot put or throw ball event. The marks (maximum 15 marks) shall be counted for commutation of total marks for selection.

There shall be a written test consisting of GK and Psychology Test and extra qualification for NSS/NCC/Sports Games as follows :

Subject	Marks
General Knowledge	50
Psychology	30
Extra Qualification for NSS/NCC/Sports/Games	5
Total	85

Out of 85 Marks a candidate shall secure Minimum of 40 Marks in the Written test.

Explanation.- (i) The total percentage under sports quota and quota for dependents for serving Police Personnel etc shall not exceed 20%

(ii) Ex-Servicemen served as Drivers. Auto Mechanics, Auto - Electricians and Armourers shall be exempted from undergoing physical measurement test and Physical Efficiency Test for the post of Gr. II PC.

For Band Constables:

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
(1)	(2)	(3)
Band Constables. Office of the Director General of Police, Madras.	Must not have completed 30 years of age. Provided that buglers of the Police Training College, and Police Recruits' School and Bellow Boys of the Police Training College, Vellore shall be eligible for appointment as Band Constables, Office of the Director General of Police by transfer if they have had the requisite experience for a period of not less than 2 years as an instrumentalist in the Band.	Must have experience for a period of not less than two years as Instrumentalist in a Military or first class Civil Band.
Class - II Category - 2 Junior Reporters of the Shorthand	Must have completed the age of 18 years and must not have completed the age	(1) Candidates appointed by direct recruitment must have passed the intermediate examination

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
Bureau.	of 30 years if the candidate is recruited by transfer from the Tamil Nadu Ministerial Service or from the Tamil Nadu Judicial Ministerial Service or the age of 28 years otherwise. Provided that the upper age limit shall be 33 years instead of 28 years for appointment by direct recruitment of a candidate who is a member of a Scheduled Caste or a Scheduled tribe if such a person possesses a general educational qualification which is higher than the minimum qualification prescribed for him and if he is otherwise qualified for appointment.	of a recognized University or Pre - University examination of a recognised University and the Government Technical Examination in English Shorthand by the Higher Grade and those to be trained in regional languages must have had the respective languages as part of their studies in their Intermediate Course. 2. Candidates appointed by transfer must possess the minimum general educational qualification prescribed for the public service and also a pass in Government Technical Examination in English. Shorthand by the Higher Grade and those to be trained in regional language must have either acquired knowledge in the respective language in the High School courses their mother tongue must be that language.
Class - IV Category - 2. Sowars.	Must have completed 18 years of age and must not have completed 28 years of age. Provided that a candidate who has served in any of the Defence Services, namely the Army, the Navy or the Air Force shall be eligible for appointment if his age after deducting the period of such service is below 28 years of age. Provided further that the age limit of 28 years shall not apply to a candidate for appointment by transfer from the Tamil Nadu Special Police Subordinate Service. Provided further that the upper age limit shall be 33 years for the appointment of a candidate who is a member of a	1. Must be not less than 168 Cms in Height, Must be not less than 86 Cms, round the chest on full inspiration with a minimum expansion of 5 Cms. Must have studied up to III Form or VIII Standard. Provided that men of the Special Armed Police, whether in service or retrenched for want of vacancies shall be eligible for appointment as Constables if they have studied up to I Form or VI Standard. Must be able to read and write a language of the district in which he is to be employed as specified in the Schedule. Provided that preference shall be given in the Armed Reserve and in Municipal Towns to candidates who are not less than 170 Cms. in height.

Class and Category	Age limit for appointment otherwise than by promotion	Qualifications
	Scheduled Caste or a Scheduled Tribe.	

Note : (i) In the case of a candidate who has rendered war service the period of his war service shall be excluded in computing his age for appointment. Such person shall, if invalidated from war service, be entitled to deduct from his age the period from the time when he was invalidated up to the 1st April 1946.

(ii) A person who immediately before the 1st November 1956 was serving in connection with the affairs of the former State of Travancore Cochin and who is allotted to the State of Madras for service shall, if he possess the minimum general educational qualification as prescribed in the rules of the former State of Travancore Cochin be deemed to possess the minimum general educational qualification.

Explanation : For this purpose, minimum general educational qualifications of the former Travancore Cochin State shall be a mere pass in the E.S.L.C. or S.S.L.C. examination with the declaration of eligibility for College course without the requirement of any minimum marks in any subject.

18. The chart showing the difference between the three posts viz. Bugler PC / Band Police Constable and Grade II Police Constable, is as under.

Rank	Bugler PC	Band PC	Gr II PC
Recruited by	Special Rules for the Tamil Nadu Police Sub-Ordinate Service	G.O.(Ms.) No.877, Home (Pol.IX) Dept., dt. 5.10.2005 Special Rules for the Tamil Nadu Police Sub-Ordinate Service	Special Rules for the Tamil Nadu Police Sub-Ordinate Service TNUSRB
Age limit	Not completed 25 years of age as on 1st July	* Not completed 25 years of age as on 1st July of the recruitment * SC/ST should not have completed 30 years of age on 1st July	Others-18-24 BC/MBC - 18-26 SC/ST - 18-29
Education al /	Studied upto VIII Std	VIII Std Passed (i) Must have	SSLC / X Passed

Rank	Bugler PC	Band PC	Gr II PC
other qualifications		experience at least two years in playing a musical instrument used in the Police Band (ii) Must have the experience for two years in Brass or Pipe Band (iii) Must have knowledge of Play Music	
Physical measurements	Height : 168 cms Chest : 81-86 cms	Height / Chest (in Cms) Open Candidate: 165/81-86 SC/ST: 162/81-86 Women: 155 -- SC/ST: 152	Height / Chest (in cms): MEN Open Candidate : 170/81-86 SC/ST: 167/81-86
Selection Procedure	Selection is made at the District / City / Battalion level based on the seniority of the petitions received. After selection is made, training is conducted at District / City / Battalion level.	i) Candidates who satisfy the qualification will be subjected to a 'Trial Test' in Music Proficiency by the Special Band Selection Committee. ii) The selection is made by marking system:- (a) Marks will be awarded for the trade qualifications, (b) Marks will be awarded for music performance in the Trial Test. Not test is conducted to evaluate the	The candidates who satisfy the pre-requisite condition of age and educational qualifications are called for Written Test. Those who come out successfully in the Written Test are called for Physical Measurement Test, Endurance Test, Physical Efficiency Test. Selection is made based on the marks obtained in Written Test, Endurance Test and Physical Efficiency Test.

Rank	Bugler PC	Band PC	Gr II PC
		candidates Aptitude, Physical endurance and physical efficiency	Endurance: - Running 1500 mts/ Rope Climbing Physical Efficiency: Long Jump and High Jump
Trainig details	No prescribed training	* 7 Months Training at RC Avadi in Band / Music * Trial test in music proficiency * No training in Law	* 7 months Basic Training at various PRS in law. * 1 month Practical Training in Police Station
Nature of Duty	*To alert Police personnel / Officers in the case of emergencies for quick reaction and assemble in a particular place. * To indicate routine roll calls and special call outs. * To attend Ceremonial parade besides playing bugle	* To be a member in the Guard party which in Honour His Excellency the President of India / Governors and other dignitaries during their visits. * Playing Band when His Excellency the Governor attending Convocation function in University. * To play Band while Commemorating martyrs which falls on 21st October every year. * To play Band in all Ceremonial parades. * To play Band in private functions	* Gr II PC is the lowest rank in the constabulary who is expected to perform individually and to assist his superiors in all spheres of Police work (Law & Order, VIP/VVIP Security / Bandobust duties, Crime Prevention and detections, collection of intelligence, Traffic regulations, Court duties etc.) * He is issued with an authentication (Sannath) by the SP which empowers as per law him to do

Rank	Bugler PC	Band PC	Gr II PC
		on payment as approved by the SP's / Commrs. of Police by paying remuneration to the Government.	all police work

19. The above mentioned chart, would show that there is a vast difference in the selection procedure, the training details and the nature of duty. They have been very succinctly stated by the 3rd respondent, while dismissing the writ petition. The order, which is self explanatory reads as under.

Rc.No.N2/16178/2017 City Police Office,
Dated: 26.10.2017 Coimbatore City,
Coimbatore -18.

ENDORSEMENT

Sub:- Police - Coimbatore City - Armed Reserve - Willingness petitions submitted by Band PCs for the post of Gr II PC - Instructions issued by Chief Office - Communicated - Regarding.

Ref:- Petitions submitted by Band PCs of Armed Reserve, Coimbatore City.
2) Chief Office memorandum in Rc No.175740/NGB III (3)/2-17, Dated 06.10.2017.

The following Band PCs of Armed Reserve, Coimbatore City have submitted willingness petitions for the post of Gr II PC.

- i. U.Barkath, 2550/CC
- ii. S.Ranjit Kumar, 2548/CC
- iii. S.Murugesan, 2555/CC
- iv. K.Selvaraj, 2559/CC
- v. M.Ramesh, 2569/CC

(2) The representation submitted by the Band PCs cannot be conceded as per guidelines/ instructions issued by the Chief Office vide reference 2nd cited. In this connection, the Chief Office has issued the following guidelines / instructions.

(i) Bugler selection conducted during the year 1993-94 was abandoned due to the intervention of the erstwhile TAT on the plea that the TNUSRB is the authorized agency to conduct the recruitment process. At that time, recruitment of Band PCs were

conducted and some of candidates were appointed as Bugler PCs during the year 1993. After this selection, no Bugler PC selection was conducted.

(ii) The Government in their order MS. No. 877, Home (Pol.9) Dept., dated 05.10.2005 have issued orders for recruitment process. In accordance with the above said Government Order, special recruitment for selection of Band PCs was conducted by the IGP, Armed Police, Chennai. After Police verification / Medical examination, the qualified candidates were appointed as Band PC and sent for seven months training at RC, Avadi on 18.01.2010 and completed seven months Band training at RC, Avadi on 17.08.2010.

(iii) Further, in the above-orders, the Government have issued specific guidelines and qualifications for the recruitment of Band PCs which are vastly different from the recruitment process followed during the recruitment of Grade II PCs which is more rigorous. Hence, if the petitioners claim has been conceded then the seniority, promotional aspects of the those Grade II Police Constables who have been appointed directly as Gr. II PCs in TSPs and Armed Reserves will be adversely affected.

(iv) Even though the Band PCs and the Grade II PCs in General line belong to the same category, they are of different classes under the Service Rules and right from the mode of their recruitment, process of training and to the nature of the duties done by them are vastly different. After the Government have issued order in Ms.No.877, Home (Pol.9) Dept., dated 05.10.2005, framing the specific guidelines and qualifications for the recruitment of Band PC, none of the band PCs have been transferred to Grade II PCs in General line.

(3) In view of the above position, the request of the Band PCs cannot be conceded.

(v) Acknowledge receipt.

Sd/-

A. Amalraj

Commissioner of Police,
Coimbatore City.

20. The reliance of the petitioner, for other candidates, where the educational qualification, etc., had been relaxed, is misplaced. Relaxation cannot be claimed as a matter of right. We have perused the orders granting relaxation and the orders

transferring, Band Police Constables and Bugler Police Constables. None of the orders save the impugned order, which deals with the issue regarding difference in the recruitment process, training and nature of duties. All the orders proceed on the basis that the posts are inter changeable.

21. This Court is at a loss to understand that when the duties to be performed and the purpose for which they are appointed is entirely different, how could the posts be inter changeable. Nothing in the rules have been shown to us, by the petitioner which permits persons appointed as Band Police Constable or Bugler Police Constable, could be transferred as a Grade-II Police Constable, whose training is entirely different.

1. The learned counsel for the petitioner has placed strong reliance on a Division Bench judgment of this Court in W.A. (MD) Nos.539 to 541 of 2009. In the said cases, the writ petitioners / respondents in appeal, were initially appointed as Bugler Police Constables and their claim to be converted as Grade II Police Constables, was rejected and when challenged in writ petition, the learned Single Judge allowed the writ petition stating that the services rendered as Bugler Police Constable, should be equated as services rendered as any other Grade-II Police Constable. The State Government filed an appeal. Judgment dismissing the appeal reads as under.

"9. A plain reading of the above two provisions would make it manifestly clear that as per rules , there is no post as a Grade-II police constable at all. However, by means of certain policy decisions , which were declared by means of government orders, the constables have been categorized as Grade-II Police constables and Grade I Police constables and all along, indisputably, the government has been treating the post of Grade I Police constables as the feeder category. Though this practice has been in vogue for several years , as we are at loss to find any such amendment made to the said Rules enabling such categorization.

10. It is needless to mention on that the government orders, circulars, regulations , guidelines or administrative instructions cannot override the provisions of the service rules issued by the government in exercise of power conferred under Article 309 of Indian Constitution . Therefore, all these government orders , under which the post of constable have been categorized as Grade-II police constable treating the Grade I Police constable post as promotional post, has got no sanction of law. Thus,

this exercise has done all along ignoring the Rules. When a specific query was posed on the learned Special Government Pleader as to how such kind of anomaly could be allowed to happen, he would fairly concede that though no amendment has been made to the Service Rules, the practice has been in vogue for many years and the defect was not noticed in the past.

11. In this regard, we do not want to express any further opinion, since the categorization of Police Constables as per the Government Orders and the promotion given for Grade-11 Police Constables as Grade-1 Police Constables are not under challenge reform us. We would only record our expectation that the government will to bring a necessary amendment to the service rules, if so advised, atleast in future so as to obviate the said anomaly.

12. As rightly pointed out by the learned counsel, a reading of category No. 2 of Rule 2 reflects that Buglar constables are also Constables and therefore, they cannot be treated differently from the Grade-11 police Constables. May be true that the method of appointment, the training and period of training are different for directly recruited Grade-11 Police Constables and Buglar constables. But that will not make any difference because these two posts, unless there is such distinction made in the service rules. As we have already stated, we do not find any such provision in the rules making such distinction. Therefore, the service rendered by the respondents as Buglar Constables should be equated to the service rendered by any other Grade-11 police Constables directly and such service should be taken into account for the purpose of promoting them as Grade I police constables in terms of the government order. The Learned Single Judge has rightly done in which we do not find any infirmity warranting interference."

23. We are afraid that the said judgment is clearly a Per Incurium. The said judgment does not take into account the provisions, under which they are appointed. It also does not give any reasons as to why the posts should be equated. It is well settled that decisions should be treated as Per Incurium, when it is given in ignorance of the terms of a statute or of a rule having the force of the statute. The order delivered without argument, without reference to the relevant provisions of the Act and without any citation on authority, is Per Incurium.

24. Per incuriam means of decision of its own or of a Court of co- ordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct, but cannot be said to be per incuriam.

25. The literal meaning of the expression "per in curiam" is "through want of care" (Vide: Mozley and Whitely's Law Dictionary. 7th Edition, page 255). In Black's Law Dictionary, 5th Edition, page 1025, it has been defined as "through inadvertence". In Halsbury's Laws of England. Fourth Edition, Volume 26, page 259 - Paragraph .578, it is stated thus:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake"

26. In Ramachandra Naidu Vs. Pattabhi Reddy, reported in 1964 (1) ALT 90, it was held that a decision rendered per incuriam need not be followed, even by that Judge not to speak of other courts of co-ordinate jurisdiction and to a decision given per incuriam the principle of comity of judgments will not apply.

27. In State of U.P and another vs. Synthetics and Chemicals Ltd., and another, reported in 1991 (4) SCC 139, the Hon'ble Supreme Court held as follows:-

"Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is

rendered, 'inj ignoration of a statute or other binding authority (Young vs. Bristol Aeroplane Co.Ltd., reported in 1944 (1) KB 718 = 1944 (2) All ER 293). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

28. In Gomthy Vs. State, reported in 1996 (2) KLT 91, it has been held that Judgment rendered ignoring the binding authority or basing on wrong understanding of law or a binding precedent, would be Judgment per incuriam.

29. In Government of Andhra Pradesh and another vs. B.Satyanarayana Rao (Dead), reported in 2000 (4) SCC 262 = AIR 2000 SC 1729 = 2000 AIR SCW 1561, the Hon'ble Supreme Court held as follows:-

"Rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. We therefore find that the rule of per incuriam cannot be invoked in the present case. Moreover a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."

30. In State of Bihar vs. Kalika Kuer, reported in AIR 2003 SC 2443 = 2003 (5) SCC 448, the Hon'ble Supreme Court held as follows:-

At this juncture, we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (Fourth Edition) Vol.26: Judgment and Orders Judicial Decisions as Authorities (Pages 297-298, Para 578) we find it observed about per incuriam as follows:-

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction while covered the case before it, in which case it must decide which case to follow (Young vs. Bristol Aeroplane Co.Ltd., reported in 1944 (1) KB 718 = 1944 (2) All ER 293), or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having

statutory force (Young vs. Bristol Aeroplane Co. Ltd., reported in 1944 (1) KB 718 = 1944 (2) All ER 293). A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties (Morville Ltd., vs. Wakeling, reported in 1955 (2) QB 379 = 1955 (1) All ER 708 C), or because the court had not the benefit of the best argument (Bryers vs. Canadian Pacific Steamships, Ltd., reported in 1957 (1) QB 134 = 1956 (3) All ER 560 (CA) and as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority (A and J Mucklow Ltd., vs. IRC, reported in 1954 Ch 615 = 1954 (2) All ER 508 (CA)). Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake." (Williams vs. Glasbrooks Bros. Ltd., reported in 1947 (2) All ER 884 (CA)).

31. In M/s. Nicks (India) Tools vs. Ram Sarat, reported in AIR 2004 SC 4348 = 2004 (6) Supreme 417, the Hon'ble Supreme Court held that "In the instant case, we have already noticed the basic ground on which the Labour Court reduced the back wages was based on a judgment of the High Court of Punjab and Haryana which as further noticed by us, was overruled by a subsequent judgment of a Division Bench. Therefore, the very foundation of the conclusion of the Labour Court having been destroyed, the appellant could not derive any support from the above cited judgments of that Court."

32. In Nirmal Jeer Kaur vs. State of M.P and another, reported in 2004 (7) SCC 558, on the principles of per incuriam, at paragraph 21, the Hon'ble Apex Court observed as follows:-

"Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum. English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'inj ignoratum of a statute or other binding authority (Young vs. Bristol Aeroplane Co. Ltd., reported in 1944 (1) KB 718 = 1944 (2) All ER 293). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

33. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra*, reported in (2005) 2 SCC 673, at paragraph 7, the Hon'ble Supreme Court reiterated per incuriam means a decision rendered by ignorance of a previous binding decision such as a decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law.

34. In *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors*, reported in (2012) 3 SCC 495, after considering a catena of decisions, reiterated what per incuriam means, the Hon'ble Supreme Court at paragraphs 28 to 33, considered the principles and judgments as follows:-

28. The principle of per incuriam has been very succinctly formulated by the Court of Appeal in *Young v. Bristol Aeroplane Co. Ltd* reported in 1944 KB 718 (CA) Lord Greene, Master of Rolls formulated the principles on the basis of which a decision can be said to have been rendered "per incuriam". The principles are: (KB p. 729). Where the court has construed a statute or a rule having the force of a statute its decision stands on the same footing as any other decision on a question of law, but where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam."

29. The decision in *Young v. Bristol Aeroplane Co. Ltd*. R reported in 1944 KB 718 (CA) was subsequently approved by the House of Lords in *Young v. Bristol Aeroplane Co. Ltd*. reported in 1946 AC 16 (HL), AC at p. 169 of the Report. Lord Viscount Simon in the House of Lords expressed His Lordship's agreement with the views expressed by Lord Greene, the Master of Rolls in the Court of Appeal on the principle of per incuriam (see the speech of Lord Viscount Simon in *Bristol Aeroplane Co. Ltd*. case, reported in 1946 AC 16 (HL), AC at p. 169 of the Report).

30. Those principles have been followed by the Constitution Bench of this Court in *Bengal Immunity Co. Ltd. v. State of Bihar* reported in AIR 1955 SC 661 = 1955 (2) SCR 603 (see the discussion in SCR at pp. 622 and 623 of the Report).

31. The same principle has been reiterated by Lord Evershed, Master of Rolls, in *Morelle Ltd. v. Wakeling*, reported in 1955 (4) 2 QB 379(CA), QB at p. 406. The principle has been stated as follows:

"As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong."

32. In *State of U.P. v. Synthetics and Chemicals Ltd.* reported in 1991 (4) SCC 139, this Court held (SCC p. 162, para 40) that the doctrine of "per incuriam" in practice means "per ignoratium" and noted that the English Courts have developed this principle in relaxation of the rule of stare decisis and referred to the decision in *Bristol Aeroplane Co. Ltd.* reported in 1946 AC 163 (HL). The learned Judges also made it clear that the same principle has been approved and adopted by this Court while interpreting Article 141 of the Constitution (see *Synthetics and Chemicals Ltd. case*, SCC para 41).

33. In *MCD v. Gurnam Kaur* reported in 1989 (1) SCC 101, a three-Judge Bench of this Court explained this principle of per incuriam very elaborately in SCC para 11 at p. 110 of the Report and in explaining the principle of per incuriam the learned Judges held:

"11. . A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute."

35. In *Oriental Insurance Co. Ltd. v. Siby George*, reported in (2012) 12 SCC 540, the Hon'ble Supreme Court reiterated that a decision rendered in ignorance of binding precedents, has no precedential value and thus it is per incuriam.

36. The said judgment also can be said to be sub silentio, if the particular point of law involved in the decision, is not perceived by the Court or present to its mind.

(i) The meaning of a judgment sub silentio has been explained by this Court in Municipal Corpn. of Delhiv. Gurnam Kaur [(1989) 1 SCC 101] (vide paras 11 and 12) as follows: (SCC pp. 110-11)

"... 'A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.'

(ii) In Gerard v. Worth of Paris Ltd. [(1936) 2 All ER 905 (CA)] the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675 : (1941) 2 All ER 11 (CA)] the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed."

(iii) The principle of sub silentio has been thereafter followed by this Court in State of U.P. v. Synthetics & Chemicals Ltd. [(1991) 4 SCC 139] , Arnit Das v. State of Bihar [(2000) 5 SCC 488 : 2000 SCC (Cri) 962] , A-One Granites v. State of U.P. [(2001) 3 SCC 537] , Divisional Controller, KSRTC v. Mahadeva Shetty [(2003) 7 SCC 197 : 2003 SCC (Cri) 1722] and State of Punjab v. Devans Modern Breweries Ltd. [(2004) 11 SCC

26].

37. The judgment of the Hon'ble Division Bench is clearly hit by doctrines of per incurium and sub silentio and is therefore, not a binding precedent. It is therefore not necessary to place the case, before My Lord the Hon'ble Chief Justice, to be placed before a larger Bench. Hence, the instant Writ appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Director General of Police,
Chennai - 4.

2. The Additional Director General of Police,
Armed Police,
Chennai - 10.02.2016

3. The Commissioner of Police,
Armed Reserve,
Coimbatore City,
Coimbatore District.

+lcc to Mr.K.Ravi Anantha Padmanaban, Advocate Sr.75107

W.A.No.2475 of 2018

nr[co]
srg 01/11/2019

WEB COPY