

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2019

CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.28122 of 2018
and
W.M.P.No.32767 of 2018

K.Hariharan

...Petitioner

Vs

1.The Tamil Nadu Uniformed Services
Recruitment Board,
Rep. by its Chairman,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai.

2.The DGP/ Director,
Fire & Rescue Services,
No.17, Rukmani Lakshimipathy Road,
Egmore, Chennai -8.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent herein to consider the case of the petitioner under 10% reservation meant for wards/dependants of the department or in the alternative to confer the post Grade-II constable (AR) as per the marks secured by the petitioner irrespective of the order preference made in the application.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.V.Kathirvelu,
Special Government Pleader for R1
M/s.P.Rajalakshmi,
Additional Government Pleader
for R2

O R D E R

The relief as such sought for in the present writ petition is for a direction to direct the 1st respondent herein to consider the case of the petitioner under 10% reservation meant for wards/dependants of the department or in the alternative to confer the post Grade-II, Police Constable (AR) as per the marks secured by the petitioner irrespective of the order preference made in the application.

2. Pursuant to the recruitment notification issued dated 28.12.2017, the writ petitioner submitted an application and participated in the process of selection for appointment to the post of Fire man and the Writ petitioner secured 73 marks.

3. The learned counsel for the writ petitioner states that the writ petitioner belongs in MBC category and the persons who secured below 73 marks were appointed to the post of Grade-II Police Constable(AR). Thus, the writ petitioner also considered for appointment to the post of Grade-II Police Constable (AR). As far as the grant of 10% quota for wards/Dependents is concerned, this Court had already delivered a judgment on 13.02.2018 in W.A.(MD).No.1241 of 2017 that such a quota provided to the wards/Dependents of the Police Personnel are unconstitutional. The matter was taken by way of Special Leave Petition (Civil), before the Supreme Court and the Hon'ble Supreme Court also confirmed the judgment. However, the Hon'ble Supreme Court has granted liberty to the candidates to approach the Division Bench for seeking clarification of the Paragraph No.14 of the judgment dated 13.02.2018. Accordingly, the review application No.192 of 2018 in W.A.(MD).No.1241 of 2017 is filed.

4.The Hon'ble Division Bench, after hearing the parties delivered the judgment on 30.01.2019 as follows:

"24. The provision of 10% reservation under wards/dependent quota was not followed in the Common Recruitment for the posts of Grade-II Police Constables, Grade-II Jail Warders and Firemen for the year 2017-2018 as per W.A.(MD).No.1241/2017 Madurai Bench order dated 13.02.2018, which declared the wards reservation as unconstitutional.

25. The implementation of the judgment passed in W.A.(MD).No.1241 of 2017 dated 13.02.2018 has been enumerated in the Status Report by the Government. We are completely satisfied with the manner, in which, the judgment passed in W.A.(MD).No.1241 of 2017 has been complied with and the respondents had rightly declined the provisions of 10% reservation under wards/dependents Quota. This apart, once the Constitutional Courts arrived a conclusion that a particular quota is unconstitutional, thereafter, question of extending the benefit of the quota, which was declared as unconstitutional only for the recruitment process, which was in progress cannot be granted. Such a interpretation now proposed by the review

petitioners are certainly contrary to the well established principles of law. Once an opportunity quota has been held unconstitutional, the recruitment should be allowed to be continued with the general reservations provided, excluding the quota, which was already declared as unconstitutional. Thus, the implementation of the orders of this Court by the Government is certainly in accord with the letter and spirit of the judgment delivered by us in W.A.(MD).No.1241/2017 dated 13.02.2018.

26. As far as Paragraph 14 of our judgment is concerned, undoubtedly, the review petitioners have misconstrued our intention. Our intention was to hold that the Reservation on 10% quota for wards/dependents of serving/retired police personnel and serving ministerial staff of the police personnel is unconstitutional. Once, the quota has been held as unconstitutional, there is no scope for any further continuance or to implement to quota even in respect of the recruitment, which was under process. The very writ petition was in relation to the recruitment process, which was in progress. When we held that 10% quota is unconstitutional with reference to the same recruitment process, undoubtedly, 10% quota cannot be implemented in respect of the recruitment process, which had commenced pursuant to the Recruitment Notification No.2 dated 28.12.2017. The said position was clarified by us by not granting the relief to the writ petitioners. When we had declined the relief to the writ petitioner in respect of the benefit of 10% quota for wards/dependents and held that the quota itself is unconstitutional, then there is no question of implementing the said 10% quota for the recruitment process commenced and was in progress pursuant to the Notification No.2 dated 28.12.2017. Thus, we have no hesitation in clarifying and reiterating that 10% quota prescribed in the Recruitment Notification No.2 dated 28.12.2017 is unconstitutional and therefore, the authorities had rightly implemented our order by not providing the

benefit of 10% quota to the candidates. The actions of the authorities in not providing the 10% quota with reference to the Recruitment Notification No.2 dated 28.12.2017 is certainly in consonance with out judgment and there is no infirmity in respect of the implementation done by the authorities competent.

27. Accordingly, Paragraph 14 of the judgment dated 13.02.2018 passed in W.A. (MD).No.1241/2017 is clarified as stated in the aforementioned paragraphs and accordingly, the present Review Petition stand dismissed. No costs. Consequently, connected miscellaneous petitions is also closed."

5. The learned counsel for the writ petitioner made a submission that, now the writ petitioner is not insisting of 10% quota, made for wards/dependents of the department. However, he says that he secured 73 marks and belongs to MBC category and therefore, the petitioner must be considered for appointment to the Post of Grade-II Police Constable, as the recruitment itself common for all the categories including Grade-II Police Constable, Fire Man and Jail warden.

6. The learned Special Government Pleader appearing on behalf of the first respondent, in this regard, made a submission that as per the G.O.(Ms).No.968 dated 03.10.2001, if any person opts only for one post, say Grade-II Police Constable, and if his turn not reached for that category, he will loss eventhough he may be eligible as per merit list for the category of Grade-II Jail warder or Fireman. In this regard, the Government issued clarification in the said G.O. (Ms).No.968 as follows:

2.The Government have carefully examined the proposal of the Director General of Police and Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and direct that the Tami Nadu Uniformed Services Recruitment Board shall hereafter conduct a common recruitment to the posts of Grade-II Police Constable (Men and Women), Grade-II Jail Warder (Men and Women) and Fireman, by following the revised qualifications/Specifications/marks prescribed in the Government Order Seventh read above, for recruitment of Grade-II Police Constable; (Men and Women). The Candidates will be required to give their first, second and third preference for the three Categories, ViZ., Grade_II Police Constables, Grade-II Jail Warder

and Fireman, and the allotment of a candidate selected through the common recruitment among the above three categories shall be made taking into account his preference and depending on his rank and the availability of vacancies in the particular category and subject to the rule of reservation and communal rotation, as laid down in the rules. If any person opts only for one post, say Grade-II Police Constable, and if his turn not reached for that category, he will loss eventhough he may be eligible as per merit list for the category of Grade-II Jail Warder or Fireman.

7. This apart, an Amendment to Special Rules for Tamil Nadu Police Subordinate Services also issued in G.O.(Ms)No.247, Home Department, dated 03.10.2001 which reads as follows:

In the said Special Rules, in rule 11, after the proviso, the following provisos shall be added, namely:-

" Provided further that the Tamil Nadu Uniformed Services Recruitment Board shall conduct a common recruitment to the posts of Police Constables (Men and Women), (Jail Warders Grade-II (Men and Women) in the Jail Subordinate Service and Fireman, in the Fire and Rescue Subordinate Service by following the norms prescribed for recruitment of Police Constable (Men and Women). The candidates shall be required to give their first, second and third preference for the said three posts and the allotment of a candidate selected through the common recruitment among the above three posts shall be made taking into account, his preference and depending on his rank and the availability of vacancies in the particular post and subject to the rule of reservation and communal rotation, as laid down in the rules:

Provided also that, if any candidate opts for one post only, and if his turn is not reached for that post, the he shall lose his chance, even though he is eligible as per merit list for the other posts."

8. The amendments stipulates that, if any candidate, opts for one post only, and if his turn is not reached for that post, he shall lose his chance, even though he is eligible as per merit list for the other posts. When an amendment has been made in the Special Rules for Tamil Nadu Police Subordinate Services, the recruitment notification issued in cognizance, when the said rules are binding on the candidates. On a perusal of the one application itself, an order of preference is provided to the candidates. Accordingly, three preferences are given for the combined examination. A candidate may apply either for one post or he/she can apply for all the three posts in the order of preference. Preferences may differ from candidate to candidate.

However, an option is provided to the candidates in the application itself either to apply for one or all the three posts for which a combined written examination is conducted. The two sample applications are submitted before this Court and first one application was submitted by one Mr.M.Suresh Kumar, who in turn expressed his choice by availing the option. He has written as follows in his on-line application:

USER ID	USRB00202702
RECRUITMENT	COMMON RECRUITMENT 2017-18
APPLICATION NO	1000202708
PREFERENCE 1	GR.II-PC AR
PREFERENCE 2	FIREMEN
PREFERENCE 3	JAIL WARDER
PREFERRED DISTRICT/ CITY FOR WRITTEN TEST/	VILLUPURAM

9. The application submitted by the writ petitioner also has been produced before this Court. The writ petitioner written in the online application as follows:

USER ID	USRB00067310
RECRUITMENT	COMMON RECRUITMENT 2017-18
APPLICATION NO	1000067316
PREFERENCE 1	FIREMEN
PREFERRED DISTRICT / CITY FOR WRITTEN TEST/	VILLUPURAM

10. In view of the fact that the writ petitioner has opted to choose only Fireman Post as per the Special Rules, he has not entitled to get selection to other two posts. When the Special Rules for Tamil Nadu Police Subordinate Services, categorically enumerates that if, any person opts only for one post, say Grade-II Police Constable, and if his turn not reached for that category, he will loss eventhough he may be eligible as per merit list for the category of Grade-II Jail Warden or Fireman. By applying the above said rules, it is clear that only in case of submitting an application for all the three posts in the order of preference they are eligible to seek selection in respect of the other posts. If he/she submitted an application seeking only one post, then they are not eligible to submit an

option except the one which he has selected in the on-line application.

11. This being the Rules, this Court is of an opinion that the writ petitioner is not entitled to be considered in respect of the other two posts namely Jail warden and Grade-II Police Constable. As far as, the post of Fire man, which is opted by the writ petitioner is concerned, he secured 73 marks and he belongs MBC category, for which the required cut off marks are 75 and therefore, he is not coming within the zone of consideration.

12. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. However, this Court wishes the writ petitioner to get public employment during the next process of selection and he should not lose his spirit of competing in the forth coming process.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

pns/tta

To

1.The Chairman,
The Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai.

2.The DGP/ Director,
Fire & Rescue Services,
No.17, Rukmani Lakshimipathy Road,
Egmore, Chennai -8.

+1cc to Mr.R.S.Anandan, Advocate, S.R.No.26046
+1cc to the Government Pleader, S.R.No.26294 & 26290

W.P.No.28122 of 2018

EV(CO)

RRS (06/05/2019)