

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No. 30021 of 2018

K.N.Gunsekar

.. Petitioner

versus

1. The Director General of Police,
Tamil Nadu, Santhome,
Chennai-600 004.

2. The Tamil Nadu Uniformed
Services Recruitment Board,
represented by its Chairman,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai-08.

3. The Tamilnadu Uniformed Services Recruitment
Board Sub Committee,
represented by its Chairman,
Khancheepuram Centre,
Office of the Superintendent of Police,
Khancheepuram.

.. Respondents

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 2nd respondent to grant special grade marks for NSS Certificate to the petitioner and consequently select him the post of Grade II Police (District and City Reserve Police-Men-Grade-II Jail Warder and Firemen and Reserve Men Constable for General Exam-2017-2018) by considering the petitioner's representation dated 31.10.2018.

For Petitioner : Mr.Ilamvazhuthi for
Mr.E.C.Ramesh

For Respondents : Mr.J.Pothiraj, Spl.G.P. For R1
Mr.V.Kathirvelu, Spl.G.P.
for R2&R3

ORDER

This Writ Petition has been filed by the petitioner, seeking for the issuance of a Writ of Mandamus, to direct the 2nd respondent to grant special marks for NSS Certificate to the petitioner and consequently select him in the post of Grade II Police (District and City Reserve Police-Men-Grade-II Jail Warder and Firemen and Reserve Men Constable for General Exam-2017-2018) by considering the petitioner's representation dated 31.01.2018.

2. The third respondent Recruitment Board invited applications from the eligible candidates in open market for the recruitment to the post of Grade II Police Constable (District and City Reserve Police-Men-Grade-II Jail Warder and Firemen and Reserve Men Constable for General Exam-2017-2018) by issuing a Notification No.217 dated 28.12.2017. The total number of vacancies notified in the Notification was 6094 + 46 (Backlog). The petitioner who responded to the Notification was considered for the selection which selection comprised in two stages, viz., i) Written Examination and ii) Interview & Physical Efficiency Test and thereafter Certificate verification.

3. The petitioner was called for written examination which was scheduled on 11.3.2018 and he came out successful by securing 52 marks in the examination. Thereafter, the petitioner was subjected to physical efficiency test and was granted 15 marks and in total, the petitioner secured 65 marks. The petitioner belongs to Backward Class community and also claims quota under PSTM (Person Studied in Tamil Medium). The petitioner opted for appointment to the post of Armed Reserve as his first preference. According to the petitioner, he had a valid NSS Certificate obtained during his earlier period of study when he acquired educational qualification. According to him, 5 special marks were earmarked for the persons possessing NSS certificate. In the circumstances, when the petitioner attended for Certificate Verification on 15.10.2018, he submitted a copy of NSS Certificate and requested for grant of special marks to him. However, his request was turned down on the ground that the said Certificate was not uploaded through OnLine by the petitioner before the due date along with the application form and therefore, the petitioner was not eligible to be allotted any special marks towards the said Certificate and finally, the petitioner's name was not found in the selection list since according to him, he missed the selection and appointment by a half mark as the cut of mark fixed for final selection and appointment in respect of his category, was 67.5 marks, whereas he obtained 67 marks. Having aggrieved by

missing the selection and appointment by a whisker, the petitioner is before this Court.

4. Mr.S.Ilamvazhuthi, learned counsel appearing for the petitioner would submit that due to inadvertence, the petitioner did not upload the NSS certificate through OnLine which was well in his possession when it was required to be uploaded as per the instructions of the Notification issued by the 3rd respondent Recruitment Board. Due to a simple mistake committed by the petitioner in not uploading the NSS certificate, he lost a valuable right of earning an appointment in public service, particularly in Police Department, for which, the petitioner has been aspiring much for so many years and finally got a chance to participate in the selection.

5. According to the learned counsel, in view of the simple inadvertence committed by the petitioner, the respondent Board rejected his candidature stating that as per the relevant Clause of the Notification, he is not entitled to produce any Certificate subsequent to the deadline published by the Recruitment Board. He would submit that but for a simple mistake, the petitioner would have earned a berth in the selection/appointment and he would therefore, implore this Court to direct the 3rd respondent Recruitment Board to consider NSS Certificate produced by the petitioner at the time of Certificate Verification and grant him appropriate marks so as to enable him to come within the zone of consideration for final selection and appointment as Armed Reserve or Jail Warder as the case may be.

6. Mr.V.Kadirvelu, learned Special Government Pleader appearing for the 3rd respondent Recruitment Board would strongly object to the grant of any relief as prayed for by the petitioner for the simple reason that in the Notification itself, it has been clearly mentioned vide Para XX(b) of the Information Brochure that the Certificate needs to be uploaded through OnLine and any Certificate produced at later stage, will not be entertained for awarding special marks. According to the learned Special Govt.Pleader, as per the instructions of the Notification, copies of the certificates are required to be uploaded along with the application form and original certificates are to be produced at the time of Certificate Verification. He pointed out that admittedly, the petitioner has not uploaded the copy of the NSS certificate through OnLine at the time when he applied and therefore, his subsequent production of NSS certificate at the time of Certificate Verification was not accepted in view of the specific bar in the Notification as well as in the instructions given in the

Information Brochure. However, the learned Special Govt.Pleader would accept that the cut of marks prescribed for BC General (PSTM) candidates is 67.50 for the post of Armed Reserved Constable. The various cut of marks prescribed for three categories of recruitment which took place, are stated in para 6 of the counter affidavit, which are extracted as under:

Category	Cut of marks BC-General/PSTM
AR	67.50
Firemen	73.00
Jail Warder	67.50

7. However, the learned Spl.Govt.Pleader would however admit that if the petitioner is allotted special marks, he would come within the zone of consideration as he would get the required cut of marks prescribed for Armed Reserved category, but he is not entitled to be granted special marks in view of his not uploading the copy of the NSS Certificate at the relevant time along with his application form through OnLine as per instructions. He also submitted that if the petitioner's case is allowed, it will open a pandora box wherein similar claims which were rejected, would be flooding the Recruitment Board seeking review of their rejections as well. In any event, once the instructions are clear and unambiguous issued by the Recruitment Board, the same need to be scrupulously followed by all the candidates and there cannot be any deviation from the instructions to any single candidate. Therefore, he would request this Court not to entertain the present Writ Petition at all.

8. This Court considered the submissions made by the learned counsel for the petitioner and the learned Special Govt.Pleaders for the respondents and perused the entire materials placed on record.

9. The only point for consideration before this Court is whether the petitioner is entitled to be given special marks for possessing NSS certificate issued by the competent authority in order to make him eligible to be considered for appointment in the Armed Reserve in the subject Notification?

10. No doubt, admittedly, the petitioner has not uploaded the copy of NSS certificate though it was in his possession along with the application form before the required date through OnLine. However, it is admitted that the petitioner at the time of Certificate Verification, produced the original NSS

certificate for which, he was otherwise is entitled to be granted special marks. As rightly contended by the learned counsel for the petitioner that since an innocuous and inadvertent mistake committed by the petitioner not being vigilant and not alert in uploading the copy of the certificate in his possession, he lost a valuable right to be selected and appointed in public service particularly, in the Police Department. Therefore, this Court has to see whether such inadvertence which could happen by any individual citizen, would entail far reaching consequence of denial of opportunity of being selected in public employment? The answer for this is, 'no'. Although the learned Special Govt.Pleader was right in his submission that the instructions of the recruitment Notification need to be scrupulously followed as any deviation of such instructions is not permissible, at the same time, this Court should also take into consideration the larger principle of dispensing justice to the citizens when such a simple common mistake do occur in the life time of normal citizens while uploading the application forms and certificates through the OnLine.

11. In this case, when this Court confronted with the learned Spl.Govt.Pleader about the validity of NSS certificate, the answer from the Spl.Govt.Pleader fairly was that the petitioner was in fact in possession of valid NSS certificate, which means, the petitioner was responsible for denying himself being grant of special marks for the Certificate which was in his possession. Therefore, this Court is of the view that this case ought to be treated as one of the exceptional cases wherein, this Court can step in and extend the benefit of extraordinary consideration of the request of the petitioner for grant of special marks to him in respect of NSS Certificate produced by him at the time of Certificate Verification.

12. Admittedly, the petitioner would come well within the cut of marks prescribed atleast for the post of Armed Reserve, which in any event, it is his first preference and therefore, the petitioner cannot be made to lose his valuable opportunity of being selected, but for the simple mistake for not uploading NSS Certificate through OnLine before the deadline.

13. No doubt, the 3rd respondent Recruitment Board would have rejected similar claims of the various candidates, nevertheless, on that plea alone, justice cannot be denied to the petitioner who thought it fit to approach this Court seeking intervention of this Court in extraordinary circumstances of the case. This Court does not know whether such similar claims can come so close as that of the petitioner herein, in the opinion

of this Court, has missed the bus by a whisker of a half mark for which, he is otherwise entitled to, but for committing a simple mistake of not uploading the copy of the Certificate OnLine along with the application. Moreover, this Court is informed that after completion of the exercise of selection and process, there are more than 200 vacancies still available in various categories and therefore, no harm would be done to the recruitment if the petitioner's request is considered today for grant of special marks and after all eventually, a person who has a valid claim for appointment alone would have to be selected. In this case, if special marks are given even to the extent of half mark, the petitioner became eligible to be considered for appointment as Armed Reserve Constable even as per averments found in the counter affidavit, in which case, this Court does not think that the petitioner cannot be turned away from this Court from imparting justice to him after all being a Writ Court, this Court shall consider and grant the relief not only on the basis of legal principle, but also on the basis of equity, fair play and good conscious. Even there is an infraction which could be noticed on the part of the petitioner in uploading the Certificates, such infraction ought to be condoned while applying the large principle of equity. In such circumstances, this Court is of the considered view that the petitioner is entitled to the relief as prayed for.

14. For the above said reasons, the Writ Petition is allowed and the second respondent is directed to consider and grant special marks to the petitioner towards possessing NSS Certificate and on the basis of such grant of special marks, if the petitioner comes within the zone of consideration, he shall be considered and given appointment in the existing vacancies, in any post as per his entitlement based on the total marks obtained by him as against Armed Reserve Grade II Police Constable, Jail Warder or Fireman as the case may be. The second respondent is directed to pass appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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1. The Director General of Police,
Tamil Nadu, Santhome,
Chennai-600 004.

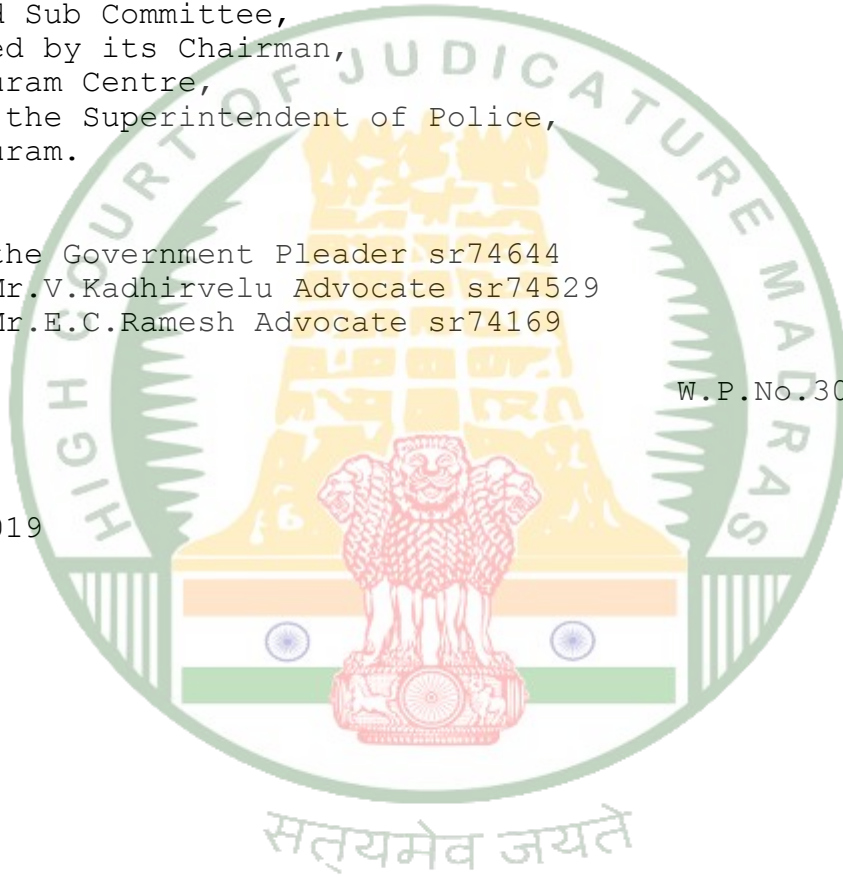
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Office of the Superintendent of Police,
Khancheepuram.

+1 cc to the Government Pleader sr74644
+1 cc to Mr.V.Kadhirvelu Advocate sr74529
+1 cc to Mr.E.C.Ramesh Advocate sr74169

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