



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2019

Delivered on : 29.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

WEB COPY

W.P. (MD) No. 22591 of 2018

and

WMP (MD) No. 20472 of 2018

S. Palanikumar

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home (Police - II) Department,
Fort St. George,
Chennai - 9.

2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 4.

3. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the 2nd Respondent to include the name of the petitioner in the panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017-2018.

For Petitioner : Mr. Niranjana S. Kumar

For Respondents : Mr. A. Muthukaruppan

Additional Government Pleader

ORDER

This Writ Petition is filed seeking direction to the second respondent to include the name of the petitioner in the panel of Inspector of Police, fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017-2018.

2. According to the petitioner, he completed his 10th standard in the year 1982 under new education system. Thereafter, he joined as Grade II Police Constable at Armed Reserve in the year 1989. He was promoted as Inspector of Police in the year 2009 and the next promotional post of the petitioner is Deputy



Superintendent of Police. According to the petitioner, after completion of his 10th standard, he has undergone two years foundation course through Madurai Kamaraj University and thereafter, he completed B.A. Degree under distance education at the same University. According to the petitioner, as per G.O.Ms.No.528, Personnel and Administrative Reforms Department dated 18.05.1985, the foundation course undergone by the petitioner is equivalent to 12th standard and as per the existing Tamil Nadu Police Service Manual, the petitioner is entitled for promotion. But the name of the petitioner was not included in the list fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017-2018. Hence, the petitioner is before this Court with the aforesaid relief.

3.The third respondent filed a detailed counter affidavit contending *inter alia* that the post of Deputy Superintendent of Police (Category 2) is governed by the Special Rules for the Tamil Nadu Police Service (State Service) and method of appointment for the said post is by recruitment by transfer from the Inspector of Police (Armed Reserve) of the Tamil Nadu Police Subordinate Service. In sub Rule (D) of Rule 4 of the Special Rules for the Tamil Nadu Police Service, qualification for appointment as Deputy Superintendent of Police (Category 2) has been prescribed as under :

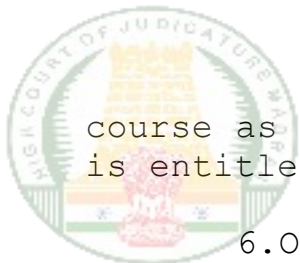
"(D)No Reserve Inspector shall be eligible for appointment as Deputy Superintendent of Police, category 2 by recruitment by transfer unless.

(i)He has completed five years of service as Reserve Inspector ; and

(ii)He is the holder of a Secondary School Leaving Certificate eligible for College course of study."

4.It is further contended that as per the above educational qualification, for appointment to the post of Deputy Superintendent of Police (Category 2), the Inspectors of Police (Armed Reserve), have to possess a pass in Secondary School Leaving Certificate (old pattern) ie., 11 years of schooling or a pass in Higher Secondary Course with 12 years (10 + 2 new pattern) of schooling, which are eligible for college course of study. But the petitioner has not possessed such qualification as prescribed in sub Rule (D) of Rule 4 of the Special Rules for the Tamil Nadu Police Service. Therefore, the petitioner is not entitled for promotion to the post of Deputy Superintendent of Police (Category 2).

<https://hcservices.ecourts.gov.in/hcservices/> According to the learned counsel for the petitioner, the Government Order in G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985 recognised the foundation



course as equivalent to 12th standard and therefore, the petitioner is entitled to get promotion to the above said post.

6. Of course, it is true that the Government in G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18.05.1985, directed that the pre-foundation course and the two years of foundation course of Madurai Kamaraj University be recognised as equivalent to 10th standard and +2 Course of the Tamil Nadu Government, for the purpose of entry into public service in the State. However, as per the subsequent Government Order in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, the degree obtained after passing 10, +2 alone will be recognised for the purpose of employment/promotion in public service and as such, the petitioner is not eligible for promotion. Further, the Government in G.O.(Ms) No.144, P & AR (M) Department, dated 20.11.2017, have confirmed that the pre-foundation course and foundation course offered by various Universities in the State are not equivalent to 10th Standard and +2 respectively.

7. According to the petitioner, he has passed two years foundation course through Madurai Kamaraj University in the year 1991, but, the said foundation course has become unrecognised vide G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009. Thus, the petitioner's name was not recommended for inclusion in the panel of Deputy Superintendent of Police (Category 2) for the year 2017 - 2018 on the ground of educationally not qualified.

8. According to the learned counsel for the petitioner, the petitioner was eligible for the promotional post in the year 2014 itself, but list was not prepared at that point of time. Now, the respondents have not included the name of the petitioner in the promotion panel for the year 2017-2018, citing the Government Order in G.O.(Ms)No.144, P & AR (M) Department, dated 20.11.2017, which has been passed only in the year 2017.

9. The learned Additional Government Pleader appearing for the respondents submitted that though the petitioner has completed five years of service as Inspector of Police (Armed Reserve) during the year 2014, as per availability of vacancy in the post of Deputy Superintendent of Police (Category 2), the petitioner's name was reached the zone of consideration for the first time for appointment to the post of Deputy Superintendent of Police (Category 2) for the panel year 2017-2018 only and the crucial date for drawal of the panel to the aforesaid post is 01.06.2017.

10. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner had possessed the foundation course, which is equivalent to Higher Secondary Course (+2) and the same is the eligible qualification as on the crucial



date viz., on 01.06.2017 for inclusion of the name of the petitioner in the promotional list.

11.The aforesaid contention of the petitioner cannot be sustained for the simple reason that the Government in G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 itself has ordered that the degree obtained after passing Secondary School Leaving Certificate (10th standard) and Higher Secondary Course Certificate (+2) alone will be recognised for the purpose of employment/promotion in public service.

12.The learned counsel for the petitioner has relied upon a decision of this Court in W.P.No.2303 of 2014. In the aforesaid decision, the petitioner therein viz., Pichandi had sought appointment to the post of Assistant Commandant (Category 3) in the Special Rules for the Tamil Nadu Police Service. This Court, by order dated 05.02.2014, allowed the said writ petition on technical grounds. Learned counsel appearing for the petitioner submitted that following the said order of this Court, the case of the petitioner can be considered.

13.At this juncture, the learned Additional Government Pleader relied upon the the decision of the Hon'ble Supreme Court in the case of Basawaraj and Ors. V. The Special Land Acquisition Officer in Civil Appeal Nos.6974 and 6975 of 2013. The relevant portion of the aforesaid decision is extracted hereunder:

" 8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party cannot entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would



make functioning of administration impossible."

14. Citing the aforesaid decision, the learned Additional Government Pleader submitted that the petitioner is not entitled to get the same relief as granted by this Court in W.P.No.2303 of 2014 under Article 14 of the Constitution of India.

15. The learned Additional Government Pleader would also draw the attention of this Court to the judgment of a Division Bench in **Chairman, TRB and another Vs. Kanimozhi**, wherein, the Division Bench has held that unless the candidate had obtained a Bachelor's Degree by going through regular education under the 10+2+3 system he/she will not be qualified for appointment as secondary grade teacher.

16. As stated earlier, the petitioner has not possessed the qualification as prescribed in sub Rule (D) of Rule 4 of the Special Rules for the Tamil Nadu Police Service as well as the regular stream of education ie., 10, +2, +3 system. Therefore, the petitioner is not entitled for promotion to the post of Deputy Superintendent of Police (Category 2). Further, the petitioner has undergone two years foundation course and the same is against the aforesaid Government Orders and the same cannot be recognized as one of regular stream for including the name of the petitioner in the panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-II) for the year 2017-2018. Thus, the relief sought by the petitioner cannot be granted.

17. In the light of the discussions made earlier, this Court finds no merit in the writ petition and the same is liable to be dismissed.

18. In fine, this writ petition is dismissed. No costs. Consequently, WMP(MD)No.20472 of 2018 is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

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Chennai - 9.



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3.The Superintendent of Police,
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Virudhunagar.

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