

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10227 of 2013

V.Muthu Mariyammal

... Petitioner

Vs.

1. Principal Secretary to Government,
Home Department, Fort St. George,
Chennai 600 009.
 2. Director General of Police (L & O),
Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004.
 3. Director General of Police/Chairman,
Tamil nadu Uniformed Services,
Recruitment Board, Anna Salai,
Chennai 600 002.
- ... Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus by calling for the records relating to the proceedings of the 3rd respondent dated 02.01.2013 made in Na.Ka.No.R-3/5701/2012 quash the same and direct the respondents to revise and re-fix the petitioner's seniority after awarding one mark to the right answer marked by her in the written test and change her category from Sub Inspector of Police (Tamil nadu Special Police) to Sub-Inspector of Police (Armed Reserve) .

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.S.Thangavel, Special Gov. Pleader
(for R1 and R2)
Mr.V.Kadhirvelan, Special Gov.Pleader
(for R3)

O R D E R

This petition has been filed to quash the proceedings of the 3rd respondent dated 02.01.2013 made in Na.Ka.No.R-3/5701/2012 and to direct the respondents to revise and re-fix the petitioner's seniority after awarding one mark to the right answer marked by her in the written test and change her category from Sub Inspector of Police (Tamil nadu Special Police) to Sub-Inspector of Police (Armed Reserve) .

nadu Special Police) to Sub-Inspector of Police (Armed Reserve) .

2. The case of the petitioner in nutshell is as follows:

The petitioner has applied for the recruitment to the post of Sub Inspector of Police and she attended the examinations conducted by the Board on 20.05.2007. The petitioner is belong to Schedule Caste (SC) and she obtained 54 marks out of 100 marks and therefore, she came within the range of appointing her as an Armed Reserve Sub Inspector. The petitioner got appointment order dated 19.12.2007 and she had undergone training. When the petitioner was under training, she was issued with a revised order by the first respondent by revising the category from Armed Reserve to Tamil Nadu Special Police.

2.2. In the year 2008, a number of writ petitions had been filed by the unselected candidates stating that the key answers published by the Recruitment Board contained three wrong answers for the questions namely 11, 38, and 44 and this court allowed the said writ petitions by awarding marks to the subject matter of the questions in the writ petitions.

2.3. According to the writ petitioner, in so far as the question No.44 is concerned, the respondent ought to have awarded one mark, in the light of the orders passed by this court and if one mark is added, the petitioner will secure 55 marks and consequently, she is entitled for the posting in the Armed Reserve Police. Therefore, the writ petitioner made representation during October 2012.

2.4. A Similarly placed person i.e. one Alex, also filed a writ petition before this court and the same was allowed and in pursuant to the order of this court, his category was changed from Armed Reserve to Taluk Police. Therefore, in the light of the orders passed by this court in the Alex Case, one mark to be awarded to the petitioner for the question No.44 and her category from Sub Inspector of Police (Tamil nadu Special Police) has to be changed to Sub-Inspector of Police (Armed Reserve) . Hence the writ petition.

3. In the counter affidavit filed by the 3rd respondent, it is stated as follows.

The petitioner was a candidate for the post of Sub Inspector of Police for the year 2006 and she obtained 54 marks. The petitioner belongs to Schedule Caste community and her date of birth is 16.01.1973. The cut off mark for SC Community under department quota for Armed Reserve is 54 and the cut off date of birth is 15.06.1971. Since the petitioner did not come under the required cut off date of birth for armed Reserve, she was selected for Sub Inspector of Tamil nadu Special Police .

3.2. As far as Mr.R. Alex case is concerned, he was selected to the post of Sub Inspector of Police (Armed Reserve) on 19.12.2007 and he was sent for training on 18.01.2008. Subsequently, in view of the wrong key answers, he gave representation on 09.04.2009 and consequently filed Writ petition in W.P.No.9181 of 2009 and obtained an order. Further, the Board had also filed Writ appeal in W.A.No.1739 of 2009 against the orders passed in W.P.No.9181 of 2009. As per the direction given by this court in W.A.No.1739 of 2010 in W.P.No.9181 of 2009, the Board gave two additional marks to Mr.R.Alex and consequently, Government Order was passed in G.O.Ms.No.399 Home (Police-3) Department dated 07.06.2012 for change of his category from Sub Inspector of Police (Armed Reserve) to the Sub Inspector of Police (Taluk).

3.3. As far as the petitioner's case is concerned, she approached the court on 05.04.2013 for awarding one mark to the right answer marked by her. In the common order passed by this court in W.A.No.1719 to 1739 and 1602 to 1636 and 1933 to 1958 of 2010, in paragraph No.27, held thus.

" Para 27. As stated earlier, there was a considerable long delay on the part of the petitioners even for applying under RTI Act which enable them to file the writ petitions from March, 2009 onwards before this court. Petitioners are required to approach this court without any delay and it is well settled law that delay defeats the rights. The entire process was already over and the selected candidates already were appointed. Apart from that, another recruitment for the post of Sub Inspector was made in 2010 and it is informed that about 1091 + 4 candidates were provisionally selected. In P.C.Sethi and others Vs. UOI reported in AIR 1975 SC 2164, it was held that petitions could not be dismissed on the ground of delay, as there were hopes given by the government to the petitioners therein and believing the same they did not approach the court in time. Therefore, the facts of the case are different. In state of karnataka Vs. Y.Moideen Kunbi (Dead) by L.Rs and others reported in 2009 AIR SCW 4491 and in Collector Land Acquisition Anntnaq and another Vs. ms.katiji and others reported in 1987 (1) LLJ 500 SC, the point for consideration was condonation of delay in Lan Acquisition proceedings and therefore, they are not useful to the petitioners. However, in Solocana Chandrakand Galande Vs. Pune Municipal Transport and others reported in 2010 (B) SCC 467, it has been held that those who approached the court belatedly, could not be permitted to get the same benefits when similarly placed diligent

people got the benefits. The Hon'ble Supreme Court in P.S.Sathasivasamy Vs. State of Tamil nadu reported in AIR 1974 SC 2271 dealt with a service matter in which promotion was challenged and held that a person aggrieved by the promotion of his juniors should approach within or in a year. It was further held that it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary power under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for the relief and who stand by allow things to happen and then approach the court to put forward stale the claim and try to unsettle settled matters. In LState of Orissa and others Vs. Prajaparamita Samanja and others reported in 1996 7 SCC 106, it was held that only those who are diligent and approach the court in time can be given relief. Therefore, discretionary relief sought for belatedly by the petitioners under Article 226 cannot be granted on the ground of delay.".

3.4. He also relied upon paragraph No.30 of the judgment rendered by this court in the writ appeals (stated supra), wherein, it is stated as follows.

" No doubt, the petitioners had legitimate expectation about the selection and they are also not responsible for th problem. However, the petitioner approached the court only in 2009 for the first time. The Hon'ble Supreme Court in Shiba Shankar Mohapatra and Others Vs. State of Orissa and others reported in 2010 SC 706 held as follows.

It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the latches. The court exercising public law jurisdiction does not encourage agitation for stale claims where the right of third parties crystallizes in the interregnum. (vide Aflatoon and others V. Lt.Governor, Delhi and others. NANU/SC/0437/1974: AIR 1974 SC 2007: State of Mysore V.V.K.Kangan and others, Manu/S/0429/1975: AIR 197 SC 2190: Municipal Council, Ahmednagar and Anr. V. Shah Hyder Beig and others MANU/SC/0022/2000: AIR 2000 SC 671; Inderjit Gupta V. Union of India and Others.

MANU/SC/0447/2001; (2001) 6 SCC 637; Shiv Dass V. Union of India and ors. Manu/SC / 7032/2007, AIR 2007 SC 1330: Regional Manager. A.P.SRT V. N.Satyanarayanan and Others Manu/SC 8097/2007 (2008) 1 SCC 210 and City and Industrial Development Corporation V.Manu/SC/81250/2008 (2009) 1 SCC 168.)"

Hence, the petitioners who approached the court for the first time are definitely " fence sitters". Inview of that the writ petitions filed by those petitioners who approached the court for the first time in 2009 are dismissed on the ground of delay."

The petitioner has approached the court for awarding one mark only on 05.04.2013. Therefore, the petitioner has not approached the court within the reasonable and hence, the writ petition filed by the petitioner is not maintainable.

4. Heard the learned counsel appearing for the petitioner as well as the respondents. I have perused the materials on record.

5. It is an admitted fact that the petitioner was selected to the post of Sub Inspector of Police in the Tamil nadu Special Police Service and after completion of training, she joined duty as Sub Inspector of Police in the Tamil Nadu Special Police at Kovaiputhur, Coimbatore District. The petitioner is relying upon the orders passed by this court in the case of Tr.R. Alex by awarding two marks for the question No.38 and 44 and inview of the same, his category was changed from Armed Reserve to the Taluk, as per the Special Rules. But, the above said contention of the petitioner is denied by the respondent stating that the petitioner has not challenged the change of the Category from Sub Inspector of Police (Armed Reserve) to Sub Inspector of Police (Taluk) and she has made representation to the respondents only on 05.04.2013 to award one mark, on the light of the orders passed in the Alex case in W.P.No.9181 of 2009 etc. (batch case) dated 04.11.2009. However, as per the decision rendered by this court in the writ appeals in W.A.No.1719 to 1739 and 1602 to 1636 and 1933 to 1958 of 2010, the petitioner's claim to award one mark to the Question No.44, cannot be entertained, since the petitioner has not claimed such relief within the reasonable time. The petitioner has filed this writ petition only in the year 2013 that too without challenging the revised order passed by the respondent by revising her category from the Sub Inspector of Police (Armed Reserve) to Sub Inspect of Police (Tamil nadu Special Police). Hence, this writ petition is liable to be dismissed.

6. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

mst

To

1. The Principal Secretary to Government,
Home Department, Fort St. George,
Chennai 600 009.
2. The Director General of Police (L & O),
Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004.
3. The Director General of Police/Chairman,
Tamil nadu Uniformed Services,
Recruitment Board, Anna Salai,
Chennai 600 002.

+1cc to Mr.K.Rajasekaran, Advocate SR.No.10264

+1cc to Government Pleader SR.No.10384, 10849

W.P.No.10227 of 2013

SSD(CO)
GMY(19/03/2020)

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