

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.59 of 2018

T.Malaithai
W/o N.Karuppasamy

.. Petitioner

vs

1. The Hon'ble Central Information
Commissioner,
Central Information Commission,
R.No.326, C-Wing, 2nd Floor,
August Kranthi Bhavan,
Bhikaji VCama Placa,
New Delhi - 110 066.

2. The State Information Commissioner,
Tamil Nadu Information Commission,
No.2, Theagaraya Salai,
Near Aalai Amman Koil,
Teynampet,
Chennai - 600 018.

3. The Public Information Officer cum
Commissioner of Police,
Palayamkottai,
Thirunelveli.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 2nd respondent in Second Appeal in S.A.No.1629/F/2015 dated 19.08.2016 and quash the same as illegal, incompetent and ultravires and consequently direct the 3rd respondent to provide the petitioner with the information sought for in the petitioner appeal u/s 19(3) of Right to Information Act, 2005, dated 04.09.2017.

For Petitioner : Mr.R.Jayaprakash

For Respondents: No appearance for R1
Mr.Niranjan Rajagopalan,
Standing Counsel for R2
Mr.D.Suriyanarayanan,
Additional Government Pleader for R3

O R D E R

This writ petition is filed challenging the order of the second respondent dated 19.08.2016, dismissing the Second Appeal filed by the petitioner under the Right to Information Act. Consequently, the petitioner seeks for a direction to the third respondent to provide with the information ought for in her appeal dated 04.09.2017

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

Her husband participated in the selection process for the post of Police Constable Grade II in the year 1989-1990. Though he passed all the tests, no appointment order was issued to him. She filed an application under Right to Information Act, 2005 dated 16.02.2015 before the 3rd respondent seeking for the list of candidates selected in the test conducted by the Police Department for the batch 1989-90 and the list of candidates who attended Police training on 31.10.1997 and the information thereto. The 3rd respondent rejected her claim stating that the information sought for is 25 and 17 years old and the limitation period to seek such information expired and all the information in that regard have been erased. The petitioner preferred an appeal before the 2nd respondent under Section 19(1) of Right to Information Act, 2005. Since the said Appeal was not considered, the petitioner preferred Second Appeal before the 1st respondent under Section 19(3) of the said Act. The 1st respondent passed the impugned order rejecting her appeal. Hence, the present writ petition.

3. Learned counsel appearing for the petitioner contended that the 1st respondent is not justified in rejecting the appeal as the information sought for by the petitioner are the information liable to be furnished.

4. On the other hand, the learned counsel appearing for the 2nd respondent submitted that already the petitioner's husband sought those information and his request was rejected by issuing a communication on 17.10.2015. It is on the reason that he had

not passed the test, no appointment order was issued to him, also by stating that the other information sought for by him are not available as the same were destroyed in view of the fact that they are referable to the proceedings taken 25 and 17 years ago. Therefore, the learned counsel submitted that the very same information sought for by the writ petitioner could not be furnished and she was also informed that her husband was informed to that effect through proceedings dated 07.10.2015.

5. Heard both sides. Perused the materials placed before this Court.

6. The petitioner sought certain information before the Information Commission. It is seen that the very same informations sought by her were already sought by her husband through application dated 11.02.2015 and 20.07.2015 and the office of the Superintendent of Police, Tirunelveli District, rejected the said request on the reason that he had not duly passed the examination and that the other informations sought for by him are the informations relevant to the period 25 and 17 years ago and since those documents were destroyed by that time, the same could not be furnished. When such being the information furnished to the petitioner's husband and the facts stood thus, the petitioner cannot seek for the same information. It is to be noted at this juncture that an information, only when it is available, can be sought for and obtained under R.T.I. Act, if there is no impediment or bar under the said Act in providing such information. On the other hand, an information though originally existed and however, either destroyed later or lost due to passage of time, cannot be insisted upon to be furnished with. An act impossible to be performed, cannot be expected to be performed, merely because the right confirmed under the R.T.I. Act entitles to seek such performance. Therefore, the order passed by the 2nd respondent does not warrant any interference. Accordingly, the writ petition fails and the same is dismissed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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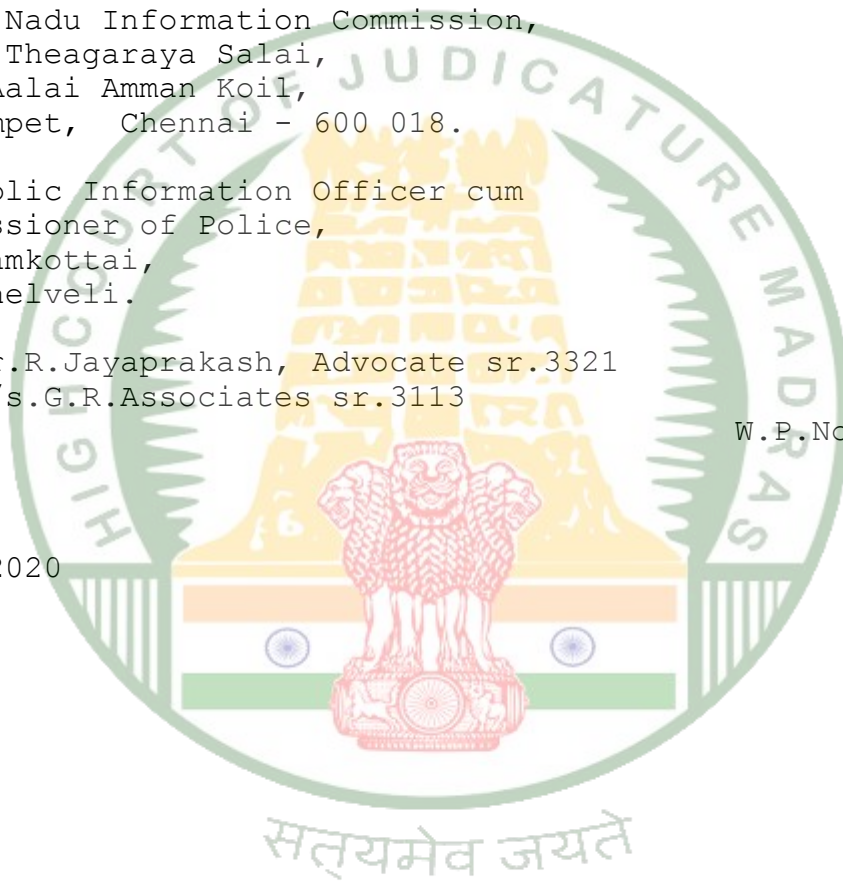
To

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+1cc to Mr.R.Jayaprakash, Advocate sr.3321
+1cc to M/s.G.R.Associates sr.3113

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