

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 25.02.2021
C O R A M
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.4648 of 2010

R.Sureshkumar ... Petitioner

..vs..

- 1.The Home Secretary,
Secretariat,
Chennai-600 009.
- 2.The Director General of Police,
Police Head Quarters,
Chennai-600 004.
- 3.The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-600 002.
4. The Deputy Inspector General of Police,
Social Justice and Human Rights,
Chennai-600 004 ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the Respondents to include the Petitioner's name in the list of selected candidates for the post of Grade-II, Police Constable (Men & Women) for the year 2009, in connection with the selection held during December, 2009.

For Petitioner : M/s.Prakash Goklaney

For Respondents : Mr.G.K.Muthukumar,
Special Govt. Pleader for R1, 2 and 4
Mr.V.Kathirvelu,
Special Govt. Pleader for R3

O R D E R

The Petitioner challenges his non-selection for the post of Grade II Police Constable in the year 2009. The Tamil Nadu Uniformed Services Recruitment Board invited applications vide advertisement No.1/2009, dated 27.06.2009 (the Recruitment Notification), for recruiting 4000 Grade-II Police Constables (Men and Women) for the year 2009. The Petitioner, admittedly,

applied for the post of Grade II Police Constable in the 'ward' category. For applications in the 'ward' category, the Recruitment Notification mandated that a ward certificate should be enclosed with the application. The Petitioner, admittedly, did not enclose such ward certificate with his application. In paragraphs 6 to 8 of the affidavit, the Petitioner explained the facts and circumstances relating to the inability to enclose the ward certificate with the application and also adverted to the subsequent production of a ward certificate on 27.10.2009. Eventually, by communication dated 12.01.2010, the application of the Petitioner was rejected and that resulted in the filing of the present writ petition.

2. Mr. Prakash Goklaney, learned counsel for the Petitioner, contended that the Petitioner was unable to enclose the ward certificate with his application in spite of making concerted efforts to obtain and enclose such certificate. In specific, he contends that the Petitioner's father initially applied for a ward certificate from the Police Department, Vellore, but he was informed that it should be obtained from the Police Department, Kanyakumari. Upon enquiry at Kanyakumari, he was informed that it should be obtained from the office of the Inspector General of Police (Social Justice and Human Rights), Chennai). In this manner, it is stated that the Petitioner's father was driven from pillar to post and, finally, after considerable effort, he obtained the certificate only on 21.10.2009. In these facts and circumstances, Mr. Goklaney contends that the Petitioner's candidature should not have been rejected on account of the belated production of the ward certificate. In support of the aforesaid contentions, he relies upon the following judgments of this Court:

(i) A. Gomathy v. The Secretary to Government, Home (Police IV) Department, Fort St. George, Chennai-600 009 and two others (A. Gomathy), W.P.No.1166 of 2010, order dated 19.02.2010.

(ii) The Secretary, Tamil Nadu Public Service Commission v. M. Chitra and another (M. Chithra), W.A.(MD) No.585 of 2009, judgment dated 11.11.2009.

3. Mr. Goklaney contends that the order in the case of A. Gomathy (supra) dealt with an identical issue relating to the non-production of a ward certificate. In spite of such non-production, this Court concluded that the rejection of the candidature was on hyper-technical grounds. He also pointed out that the Division Bench of this Court in the case of M. Chithra (supra) concluded that the non-production of the community certificate by the respondent therein was not a valid reason to reject her application. According to Mr. Goklaney, the

Petitioner herein is on a stronger footing inasmuch as he produced the ward certificate, albeit belatedly.

4. The learned Special Government Pleader refuted the aforesaid contentions by drawing reference to the Recruitment Notification. He relied, specifically, upon sub-paragraph (viii) of paragraph 10 and sub-paragraph (xi) of paragraph 7 of the Recruitment Notification, which prescribed, respectively, the requirement of enclosing the ward certificate with the application and that if the ward certificate is not enclosed, the candidate would not be considered under the 'wards quota', and that no new certificates would be considered at the time of certificate verification. He also pointed out that 1096 candidates were in the same position as the Petitioner and were not considered under the 'wards quota' due to non-fulfilment of the production of 'ward certificate' criterion. Consequently, he submits that the Petitioner cannot be treated differently and that any such differential treatment would amount to unjust discrimination against other similarly placed candidates.

5. With regard to the judgments cited by Mr.Goklaney, Mr.G.K.Muthukumar submits that the judgment in the case of A.Gomathy(supra) is distinguishable, inasmuch as the applicant therein enclosed a ward certificate dated 11.12.2006 along with the application and the rejection was on the basis that the certificate was not in the prescribed format. He also submits that the judgment of the Division Bench of this Court in M.Chithra (supra) is distinguishable inasmuch as it relates to a community certificate and not a ward certificate.

6. Upon considering the rival contentions, it is evident that the dispute lies within a narrow compass. The undisputed position is that the clauses in the Recruitment Notification that prescribe the requirement of producing a ward certificate are not under challenge. Therefore, the question that arises for consideration is whether the Petitioner's application should have been considered notwithstanding the non-compliance with certain conditions in the Recruitment Notification. The general principle in respect of recruitment by the Government is that such recruitment should be made in compliance with the terms and conditions specified in the recruitment notification. The sacrosanct status of the recruitment notification was affirmed in cases such as Dr.M.Vennila v. Tamil Nadu Public Service Commission, 2006 (3) CTC 449, by a Division Bench of this Court. However, this sacrosanct status has, in certain cases, been qualified by carving out exceptions. Such exceptions have been made if the requirements in such notifications have been construed as procedural, directory or non-essential as opposed to being essential or mandatory. Therefore, the test would be to examine the relevant clauses and ascertain whether the said

clauses are essential or non-essential. Sub-para (viii) of paragraph 10 of the and sub para (xi) of paragraph 7 of the Recruitment Notification are relevant for this purpose and the said clauses are set out below in the said order:

"The wards certificate should be obtained from the Superintendents of Police/Joint Commissioner of Police and Commissioner of Police. The wards certificate should be obtained for every recruitment afresh after the notification for that recruitment and before the last date for the receipt of application. The copy of the wards certificate should be enclosed along with the application. If the wards certificates are not enclosed along with the application form, these candidates will not be considered under wards quota."

"The copies of the certificate enclosed along with the application is only admissible for verification during certificate verification. No new certificates will be entertained and will not be taken into consideration."

7. Upon examining sub-paragraph (viii) of paragraph 10, it is evident that it specifies that the ward certificate should be obtained from officers holding specific posts in the Police Department. It also specifies that the certificate should be obtained afresh after the recruitment notification was issued and before the last date of receipt of the application. More importantly, it records that the certificate should be enclosed along with the application and that, in the event of non-compliance, the candidate would not be considered under the wards quota. Sub-paragraph (xi) of paragraph 7 prescribes that no new certificate will be entertained at the time of verification and that the certificate verification is only intended to verify the genuineness of certificates, if copies thereof were produced along with the application.

8. The test to be applied to determine whether a requirement is essential or non-essential is to pose the question: is it a matter of form or substance? In the case at hand, the application was rejected on account of non-production of the ward certificate and, therefore, the test would be: would the applicant qualify for selection without taking into consideration the ward certificate? The undisputed answer, in this case, is that the Petitioner would not qualify inasmuch as he did not secure the specified qualifying marks for a person who does not belong to the ward category. The answer could be different if a ward certificate had been produced, albeit in a different format, as was the case in A. Gomathy, or if it was obtained from a police officer of a comparable but different

rank and there is no reason to doubt the genuineness of the certificate. In the latter illustrations, it would be a matter of form and not substance and, therefore, the prescription could be construed as non-essential. Such is not the situation in this case.

9. As regards the judgments cited by Mr.Goklaney, it is clear from paragraphs 6 to 8 of the order in A.Gomathy(supra) that the applicant therein had obtained and enclosed, along with his application, a certificate dated 11.12.2006 from the Superintendent of Police, Tiruvannamalai. However, the candidate was rejected because the certificate was not in the new format. In the said facts and circumstances, the Court concluded that the stand taken by the official respondents therein was hyper-technical. This is clear from paragraph 8, which is set out below:

"8. In my view, the stand taken by the second respondent is hyper-technical. Admittedly, the petitioner is a ward of a policeman, who retired from service as Head Constable from Thiruvannamalai District. She had applied under the wards category for selection to the post of Grade II Police Constable during the previous selection, but was unsuccessful, since she did not secure the required cut off marks. In the present selection, she has produced the certificate dated 11.12.2006 issued by the Superintendent of Police, Thiruvannamalai district. This certificate clearly states that she is a ward of policeman and she is also entitled for being considered for appointment under 10% reserved category, as ordered by the Government in G.O.Ms.No.834, Home (Po.III) Department, dated 10.09.2001 and Government Letters dated 12.04.2002 and 26.03.2002. Therefore, the status of the petitioner as being a ward of a policeman cannot be disputed. If that be the case, the next question which has to be considered is as to whether the petitioner can be denied being considered under the wards category, merely because she did not furnish the certificate of the current date in the revised format. It is to be noted that though at the time of applying for the said post, the petitioner had produced a certificate dated 11.12.2006. But at the time of certificate verification, the petitioner had produced the certificate

dated 08.12.2009 certifying her status as ward of policeman and this certificate in the new format is accepted to have been produced at the time of certificate verification held on 11.12.2009."

10. The judgment of the Hon'ble Division Bench of this Court in the case of the M. Chithra (supra) also turned on the specific facts and circumstances thereof. This is very clear from paragraph 20 of the said judgment, wherein the Hon'ble Division Bench records that, ordinarily, upon application of the relevant principles, the Court would have rejected the claim of the first respondent therein. However, the claim was accepted on account of the peculiar circumstances. Paragraph 20 of the said judgment is set out below:

"20. It is true that the first respondent did not produce the Communicate Certificate before the provisional list of selected candidates was finalized. On this score, in normal course, applying the principles stated above, this Court would have held that the claim of the first respondent for consideration under the reserved quota for Scheduled Tribe should be rejected. But, we do not propose to do so, for the simple reason, as we have elaborately narrated above that the first respondent cannot be blamed for the belated issuance of Community Certificate. As we have already stated, the request of the first respondent for issuance of Community Certificate was pending before the Revenue Divisional Officer for more than a decade. It is only in these special and peculiar circumstances, we are inclined to sustain the Order of the learned Single Judge."

11. Thus, upon considering the material facts and the law applicable to the case on hand, I find that the official respondents were fully justified in rejecting the application of the Petitioner on account of failure to comply with essential conditions of the Recruitment Notification. Consequently, Writ Petition No.4648 of 2010 is dismissed. However, there will be no order as to costs. The connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Home Secretary,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Police Head Quarters,
Chennai-600 004.

3.The Chairman,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-600 002.

4. The Deputy Inspector General of Police,
Social Justice and Human Rights,
Chennai-600 004.

+1 cc to Mr.Prakash Goklaney Advocate sr11823

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