

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.03.2021

Judgment Delivered on : 16-04-2021

Coram :

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 2771 of 2019

S. Suthakar ... Appellant/Petitioner

Versus

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

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 24.10.2018 passed by the learned Single Judge, in Writ Petition No.8016 of 2013 on the file of this Court.

Prayer in WP.No.8016 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to revise and re-fix the petitioner's seniority after awarding three mark to the right answer marked by him in the written test and change his category from Sub Inspector of Police (Armed Reserve) to Sub-Inspector of Police (Taluk).

For Appellant : Mr. Venkatakrishnan
for Mr. M. Devaraj
For Respondents : Mrs. A. Srijayanthi
Special Government Pleader
for R1 and R2
Mr.V.Kathirvelu,
Additional Government Pleader
for R3

JUDGMENT

R. SUBBIAH, J

This Writ Appeal has been filed as against the Order dated 24.10.2018 passed by the learned single Judge in WP No. 8016 of 2013, dismissing the writ petition filed by the appellant/writ petitioner herein along with two other writ petitions.

2. Writ Petition No. 8016 of 2013 was filed by the appellant to quash the impugned proceedings dated 18.04.2011 of the fourth respondent and to consequently direct the respondents to revise and re-fix the appellant's seniority, after awarding two marks to the right answers marked by him in the written test and change his category from Sub-Inspector of Police (Armed Reserve) to Sub-Inspector of Police (Taluk).

3. The facts which gave rise to the filing of the Writ Petition are necessary for examination for disposal of this appeal and they are dealt with hereunder.

4. The Tamil Nadu Uniformed Services Recruitment Board (TNUSRB) issued a Notification dated 19.07.2006 inviting applications for appointment to the post of Sub-Inspector of Police. In response, the appellant herein applied for the said post. During the selection process, a physical test was conducted by the Recruitment Board and the appellant/writ petitioner successfully completed the test. Following the physical test, a written examination was conducted on 20.05.2007 as well as viva-voce. He successfully passed the written test as well as viva-voce and secured 77.5 marks out of 100. Hence, the appellant/writ petitioner was issued with an appointment order dated 20.12.2007. In the appointment order, it has been specifically stated by the Deputy Inspector General of Police (Armed Police) that basic training programme would be conducted and the same would commence on 18.01.2008. In the appointment order, it has been further stated that the appellant/writ petitioner will be imparted with one year institutional training at the Police Training College, Ashok Nagar, Chennai and thereafter, he has to undergo three months practical training in Armed Reserve Police Unit. After commencing his training successfully, the appellant was posted in Armed Reserve, Chennai and he is discharging his duties as Sub-Inspector of Police (Armed Reserve).

5. In the meanwhile, in the year 2009, number of writ petitions have been filed before this Court by the unselected candidates stating that, key answers published by the Recruitment Board contains wrong answers for Questions Nos.11,

38 and 44. On knowing this, the appellant/writ petitioner approached the Information Officer under the Right to Information Act and sought for a copy of the key answer published by the recruitment board. After receiving the copy of the key answer, the appellant found that the key contain three wrong answers for Question Nos.11, 38 and 44. In fact, the appellant has marked correct answer for Question No.11. So far as Question No.38 was concerned, all the four answers given for that question, are not correct. Therefore, the Recruitment Board decided to give one mark to all those who have answered question No.38. However, the appellant/writ petitioner has marked "B" as the answer for Question No.38, which is more or less correct, but not exactly correct, for which the appellant/writ petitioner was not awarded mark for question No.38. As per the key supplied, for Question No.38, the correct answer given was (C). Therefore, as far as question No.38 is concerned, the appellant was not given one mark as decided by the Recruitment Board later on. So far as Question No.44 is concerned, the appellant has marked the correct answer but he was not given mark as the key provided by the Board contained wrong answer.

6. Thus, on the whole, the appellant was not awarded three marks for the written examination for Question Nos.11, 38 and 44, though he has marked correct answers. Because of this, the appellant was able to secure 59 marks in the written examination and his total mark was 77.5. Had the correct answers been given in the key, the appellant/writ petitioner would have been given three more marks in the written examination, taking his total to 80.5. Since he has secured 77.5 marks he was given posting at Armed Reserve Unit. Had he been given three more marks for the right answers marked by him, he could have secured 80.5 marks and in that event, he would have been allotted to Taluk Police Station, as the cut off mark was 80 for the purpose of seniority and appointment and/or allotment to Taluk Police Head Quarters. It means all the BC candidates who obtain 78 marks have been posted as Sub-Inspector of Police in Taluk Police Station and were given independent charge of the police station. But due to the mistake committed by the Board, he was denied three marks, which had not only affected his seniority, but he was posted to Armed Reserve Unit instead of Taluk Police Station. In this regard, the appellant made a representation but the said representation has not been considered. The appellant/writ petitioner came to know that when similar representations were given by two other candidates, who are similarly placed like the appellant/writ petitioner, they were rejected by strongly placing reliance on the judgment of this Court dated 23.05.2010 in Writ Appeal Nos. 1719 to 1739 and 1602 to 1636 and 1933 to 1958 of 2010, and hence, he has come forward with the writ petition.

7. The said writ petition was opposed by the respondents by filing a detailed counter.

8. The writ petition was dismissed on the reasoning that the writ petitioner cannot claim any additional marks for the purpose of seniority in respect of the selection conducted during the year 2007. The ranking list published by the Department became final long back and the seniority also was fixed in accordance with the ranking list. Thus, the settled ranking list, pursuant to the selection list, cannot be now unsettled, after a lapse of more than six years from the date of selection. More specifically, the process of selection reached its finality in the year 2007 itself and therefore, the learned Single Judge dismissed the writ petition.

9. When the Writ Appeal is taken up for hearing, the learned counsel appearing for the appellant submitted that the Uniformed Recruitment Service Board issued a notice for selection of 82 candidates for the post of Sub-Inspector of Police. The appellant was selected as he was found eligible. His application was admitted with Code No.2940440 and he was called for selection process. He was provisionally selected as a Sub-Inspector of Police (Category-III) on the basis of the marks and communal rotation under the Tamil Nadu Police Subordinate Service Rules/Adhoc Rules for Women Police. In this regard, the learned counsel for the appellant/writ petitioner invited the attention of this Court to the counter affidavit filed by the third respondent in the Writ Court and the same which reads as follows:-

"6. I submit that the cut off marks for BC Community under Open Quota is as follows:-

S.No.	Category	Cut off mark	Cut off DoB
1.	SI of Police (Taluk)	78	29.11.1979
2.	SI of Police (Armed Reserve)	74	11.05.1985
3.	SI of Police (TN Special Police)	74	06.05.1986

7. I further submit that the petitioner secured 15 marks in Physical Efficiency Test, 59 marks in written Test, 3 marks in Viva Voce and 0.5 marks in Special Marks totally 77.50 marks."

10. Originally, as per the provisional appointment list prepared on the basis of communal rotation, the appellant was allotted category III. Subsequently, it was found that the list prepared on the basis of communal rotation is not correct. Hence, the Chairperson of the TNUSRB furnished the revised provisional selection list by following the communal rotation,

in consultation with TNPSC. The revised provisional list and selection list with communal rotation issued by the TNUSRB, was reviewed by the Director General of Police and found to be correct. As per the revised provisional selection list, the communal rotation/modification orders were issued to 269 candidates with regard to the allocation to wings i.e., Taluk/AR and TSP. The modification order was challenged before this Court by some of the candidates in W.P.Nos.11181 and 11182 of 2008. The said writ petitions were allowed on 09.07.2008 on the ground that the impugned order was not passed by the competent authority as provided under Rule 5 of the Tamil Nadu Police Subordinate Service Rules, 1953. Hence, again, show cause notices were issued pursuant to the direction given by this Court, objections received and considered by the Director General of Police, Chennai and rejected. Thereafter, the Government issued G.O.Ms.No.305, Home (Police-3) Department dated 15.04.2011 approving the revised selection list with communal rotation. As per the modified order, the appellant was appointed provisionally as Sub-Inspector of Police (Armed Reserve), instead of Sub-Inspector of Police (Tamil Nadu Special Police) on 15.04.2008.

11. While so, some of the non-selected candidates have approached this Court on 04.11.2009 seeking to issue a Writ of Mandamus to the Board to add marks to the wrong key answers and fix appropriate seniority to them. In the said writ petition, the Board had accepted the mistakes with regard to Question Nos.11,38 and 44, hence the writ petitions were allowed. A selected candidate namely Mr. R. Alex has also filed a Writ Petition seeking to award marks and consequential re-fixation of the seniority list in WP No. 9191 of 2009 and the said writ petition was also allowed.

12. When the appellant came to know about the order, he had also applied for copy of the key answer under the Right to Information Act and the information requested was furnished on 24.09.2009. Thereafter, he submitted a detailed representation dated 29.01.2010 to the Principal Secretary to the Government, Home Department and requested for re-consideration on the basis of the marks and modification to Category I, instead of Category 2. In the meantime, the Government of Tamil Nadu has filed Writ Appeal as against the order passed by the learned Single Judge, allowing the Writ Petitions filed by the unselected candidates as well as the Writ Petitions filed by Thiru. Alex, who is the selected candidate. The Division Bench has allowed the Writ Appeal filed by the Government in respect of non-selected candidates except W.A. No. 1739 of 2010 filed against the order passed in the writ petition filed by Mr.R.Alex, selected candidates, seeking re-fixation of seniority on the basis of added marks. Pursuant to the said Order, the Government also

issued G.O.No.399, Home (Police-3) Department dated 07.06.2012 directing the change of category of Mr.R.Alex from Armed Reserve to Taluk Police. Hence, the appellant, who has also answered correctly, to Question Nos.11, 38 and 44 is also eligible for the same benefits and he has also filed the writ petition. But the learned Single Judge dismissed the instant writ petition on the ground that the appellant/writ petitioner cannot claim seniority after a long time in respect of the recruitment initiated in the year 2006.

13. The learned counsel for the appellant/writ petitioner submitted that the appellant was in training at the time when the writ petition was allowed by this Court. Immediately, when he came to know about the wrong answers given to the key answers, he gave a representation and he has also filed the writ petition immediately in the year 2013. But the said writ petition was dismissed by the learned single Judge in the year 2018. During the pendency of the writ petition, on 18.09.2018, one month prior to the order passed by the learned Single Judge, the Additional Director General of Police, Chennai, notified the seniority list of directly recruited Sub-Inspectors of Police (Taluk) (Armed Reserve) (TSP), and hence, the finding of the learned Single Judge that seniority has reached finality long back is not factually correct. When it was admitted by the respondents that key answers for Question numbers are wrong and the appellant answered correctly, the benefits which were given to similarly placed person by name Mr.Alex has to be extended to the appellant also. In this regard, the learned counsel for the appellant/writ petitioner relied on the judgment of the Supreme Court in the case of State of Uttar Pradesh and others Vs. Arvinth Kumar Srivatsa, reported in 2015 (1) SCC 347, wherein it was held that normal rule is when a particular set of employees is given relief by the Court, all other identically situated persons alike must be extended the benefits. The learned counsel for the appellant/writ petitioner therefore prayed for setting aside the order of the learned single Judge.

14. Countering the above submissions of the counsel for the appellant, the learned Special Government Pleader appearing for the respondents submitted that pursuant to the order passed by this Court in W.P.No.11181 of 2008, which was filed by the successful candidate challenging the provisional selection list with communal rotation issued by TNUSRB, a revised category of list was displayed in the Unit office as per the direction of the Director General of Police. Out of 255 Sub-Inspectors who were selected, all of them have accepted the revised select list. Out of 255, 76 candidates have given objections and requested to allot them to their previous category of allotment. But the appellant herein has not given any such objection regarding the allotment of category-II. Therefore, at this

length of time, he cannot question the fixation of seniority. He cannot come forward after lapse of so many years to award marks which has been done in the case of Mr.Alex when the entire issue has become final. At the time of lowering the category after preparation of revised list, the appellant/writ petitioner did not raise any objection. When most of the candidates filed writ petition(s) to include the additional marks for the wrong key answer, the appellant/writ petitioner did not choose to implead himself in those writ petition(s). After the entire dispute was settled and after watching all the proceedings, the appellant/writ petitioner has come forward with the present writ petition. The appellant is a fence sitter and he cannot seek additional marks and revise or alter the seniority list at a belated stage. The learned Single Judge considered all the aforesaid aspects and dismissed the instant writ petition, which calls for no interference by this Court.

15. We have heard the learned counsel for both sides and perused the materials placed on record. Though very many contentions have been raised, the only question that is required to be decided is as to whether the appellant/writ petitioner has to be extended the benefit of awarding 3 marks as has been done in the case of similarly placed persons, as in the case of Mr.R.Alex (a selected candidate) and to consequently revise his seniority.

16. It is not in dispute that the key answers for 3 questions in the written examination held on 20.05.2007, are wrong. The appellant answered those questions correctly. It is the contention of the respondents that the appellant/writ petitioner approached this Court belatedly and therefore he is not entitled to the benefit of awarding 3 marks.

17. We find that when the appellant/writ petitioner came to know about the mistake which crept in the key answer, he immediately applied for copy of the key answer as early as on 18.02.2009. He has also submitted his representation on 29.01.2010. The said Mr.Alex, one of the successful candidates, has filed Writ Petition stating that he has answered all the answers correctly and it was allowed. The writ appeal filed there-against was dismissed by the Division Bench of this Court. Thereafter, the Government issued G.O. Ms. No.399, Home (Police-3) Department dated 07.06.2012, directing the change of category. On 10.07.2013, the appellant has filed the instant writ petition, which was dismissed by the learned single Judge on 24.10.2018. Just one month prior to the order of dismissal passed by the learned Single Judge, the revised seniority list was published on 18.09.2018 by re-fixing the seniority list of directly recruited Sub-Inspectors of Police (Taluk) (Armed Reserve) and (T.S.P.) indicating that the candidates were

provisionally appointed till 2014 in compliance with the order passed by this Court. Therefore, it is not as though the appellant has approached this Court after a long time to assert his right. In fact, the appellant has filed the writ petition in the year 2013 itself. In such circumstances, it cannot be said that there is delay or laches on the part of the appellant in asserting his service right. The appellant has, in our opinion, approached this Court at the earliest point of time and he cannot be denied the relief.

18. The mistake has been committed by the Department. They themselves ought to have undertaken the task of awarding 3 marks to all the eligible persons who have written the question correctly, as that of the appellant. They cannot wait for the individual candidate to approach this Court with a Writ Petition and obtain an order thereof. Even in the absence of filing writ petition, when it was the mistake of the department in setting the key answers and it was also admitted by them, the appellant/writ petitioner cannot be individually expected to approach this Court to get an order in his favour. In a case of this nature, the Department ought to have undertaken the task of re-fixing the seniority by themselves without driving the candidate to approach this Court for relief. When three marks are awarded to a set of candidates, who have approached this Court, then it will have a cyclic and cascading effect that such a benefit has to be extended to one and all. When a particular service benefit is given in favour of one of the employees in the Department, such benefit had to be equally extended to all those who are entitled for the same, without any discrimination. The Department cannot expect the individual employee to approach this Court to get an order in his or her favour to get the relief. The Department had shirked its responsibility in doing so, which had resulted in multitude of proceedings. In such circumstances, we are inclined to interfere with the impugned order passed by the learned Single Judge and to allow this appeal.

19. In the result, we set aside the order dated 24.10.2018 passed in WP No. 8016 of 2013. The writ appeal is allowed. No costs.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

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
Chennai - 600 004
3. The Director General of Police/Chairman
Tamil Nadu Uniformed Services Recruitment Board
Anna Salai, Chennai - 600 002

+1cc to The Government Pleader Sr.No.23377

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