



WEB COPY

W.A(MD)Nos.1307 and 1308 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)Nos.1307 and 1308 of 2017

and

C.M.P(MD)Nos.9042 and 9043 of 2017

1.Union of India,
Rep. by Secretary to Government,
Ministry of Personnel, P.G & Pensions,
Department of Personnel & Training,
Shastri Bhawan, New Delhi.

2.The Regional Director(SR),
Staff Selection Commission,
EVK Sampath Building 2nd Floor,
College Road, Chennai - 600 006.

... Appellants in both

W.As/Respondents

Vs.

Shri.M.Thangapandi

... Respondent in W.A(MD)No.1307 of 2017
/Writ Petitioner

Shri.M.Chinnamuthu

... Respondent in W.A(MD)No.1308 of 2017
/Writ Petitioner

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 23.01.2017 passed in W.P(MD)Nos.21304 and 21306 of 2014.

Prayer in WP(MD). 21304 & 21306 of 2014 :

Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of mandamus, directing the 2nd respondent to consider the name of the petitioners for the appointment to the post of Constable (GD) in CAPFs and Rifleman (GD) in Assam Rifles for the year 2012, advertised through Employment News dated 03.12.2011.

For Appellants : Mr.D.Saravanan
For Respondent : Mr.G.Mariappan for
M/s.K.Muthumalai



COMMON JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.)

The Writ Appeals are preferred by the Staff Selection Commission challenging the order dated 23.01.2017 passed in W.P(MD)Nos.21304 and 21306 of 2014.

2. The Writ Petitioners are the unsuccessful candidates who have applied for the post of Constable (General duty) in CISF, CRPF, BSF & SSB in CAPFS & Rifle man(GD) in Assam Rifles for the year 2012. Both the Writ Petitioners are belongs to SC Category, applied for the above post giving preference to Border Security Force (BSF). After clearing the Physical Efficiency Test and Physical Standard Test, the writ petitioners attended the written examination and based on the marks scored, they were called for Medical Examination. Thereafter, the results were published, in which the Writ Petitioner in W.P(MD)No.21304 of 2014 scored '43' marks and Writ Petitioner in W.P(MD)No.21306 of 2014 scored '47' marks. The cut-off mark for the SC category for the post of Constable is '43'.

3. According to the writ petitioners, many of the candidates, who had scored lesser marks were found in the selection list. However, their names were not found. Therefore, representations were given by the writ petitioners to the second appellant, who informed them that another selection list would be published and that several of the left-out candidates like the writ petitioners will be included in the list. However, even in the said list, the writ petitioners were not added. Hence, the writ petitioners approached this Court seeking for a Writ of Mandamus directing the second respondent to consider the names of the Writ Petitioners for the appointment to the post of Constable (GD) in CAPFS & Rifleman (GD) Assam Rifles, for the year 2012.

4. The writ petitions were contested by the second respondent stating that after the qualifying list was taken, final result was processed and finalized in consultation with the Ministry of Home Affairs (MHA) as per the MHA Guidelines. It was further stated in the counter affidavit that allocation was made by the Commission to different police organizations on the basis of merit-cum-option given by the candidates for different posts subject to availability of vacancies in the State/UT concerned.

5. It was specifically pointed out that the writ petitioners had exercised their option only for the post of preferences 'A' for the State Category No.31 ie., Tamil Nadu and that they were not selected for the post of Constable (GD) in BSF preferred in



their application as they did not score sufficient marks fixed by the Commission in the written examination for vacancy type 'G'-General under SC & UR Categories in respect of Tamil Nadu.

6. The said writ petitions were disposed of by the learned single Judge directing the respondents/appellants herein to accommodate the writ petitioners/respondents in the posts, falling under 'E' and 'F' categories based on the marks secured by them in the written examinations, for which they are otherwise suitable and eligible to be appointed within a period of three months.

7. Challenging the said order, the present writ appeals are filed by the Staff Selection Commission.

8. The learned counsel appearing for the appellants pointed out that the highest marks for type 'G' under SC & UR were '74' and '75' and the lowest marks were '68' and '54' respectively. The learned counsel for the appellants further argued that the selection process is already over and several years have gone by and it was open to the respondents/writ petitioners to participate in the next examination and secure a job. It was also fairly conceded by the learned counsel for the appellants that the Court had directed to keep one post for the writ petitioners subject to the result of the Writ Petitions.

9. The argument of the learned counsel for the appellants is that, the recruitment to the post of various categories were done by the Staff Selection Commission and alphabetical codes were indicated for each post for the purpose of preference/option of the candidates. Those candidates, who have qualified in Physical Standard Test and Physical Efficiency test, were called for the written examination based on their performance and they were short-listed for Detailed Medical Examination (DME). Admittedly, the respondents/writ petitioners had not indicated the alphabetical codes for the purpose of preference, but had only opted 'A' for BSF.

10. It was pointed out on behalf of the appellants that the provisions of the recruitment notice under Para 10(iii) stated that "Allotment of CPO to the candidates selected from each State will be on merit-cum-option depending on availabilities of vacancies in each CPO for the State." As per Note-II, the candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination. The learned counsel also explained as to how the Reserve List was operated by applying the default preference list.



11. According to the appellants, the default preference clause was extended to those who had given limited options or no option at all. It was stated that vacancies were filled statewide in selection list and on all India Basis in Reserve List. The candidates selected in Reserve List did not get the allocation as per their choice and were given any of the CAPF other than what is opted by a candidate initially. Therefore, it was submitted that the respondents/writ petitioners were considered in Reserve List as per default option and that there were no vacancies to be filled in respect of Tamil Nadu.

12. It is also objected by the learned counsel for the respondents/writ petitioners that this argument was raised by the appellants for the first time only in the writ appeals.

13. An additional affidavit is filed on behalf of the appellants wherein in Paragraph No.6, it is stated that left over vacancies of one year are carried over to the next recruitment cycle and that after Constable (GD) Examination 2012, two more recruitment cycles were completed. Further, it is stated, "therefore it may be presumed that left over vacancies of the year 2012 if any may have been carried forward to the years 2013 and 2015. However, factual position whether any vacancy in the State of Tamil Nadu in respect of Constable (GD) Examination 2012 still exists or not, is not known to the appellants."

14. From the argument made by the learned counsel appearing for the appellants, it is clear that it is only on the satisfaction of the eligibility conditions, the merit list will be prepared. Admittedly, the merit ranking is by pre-programmed computer software based on the data/information given by the candidates. Therefore, allocation of services to the qualifying candidates would be made only based on their merit. Merely because the candidates had not indicated the Organization, it cannot be said that he/she is disqualified. In the absence of such indication of preferences, it is open to the Commission in its discretion to allocate the candidates to any of the organizations.

15. In the case of ***the Chairman, Staff Selection Commission and another vs. V.Venkateswaran***, (W.A.(MD)No.200 of 2014 dated 22.01.2016) the similar issue has been considered. It is relevant to extract the following paragraphs as follows:

"4. *The respondent approached the Court by filing a writ petition under Article 226 of the Constitution of India seeking a direction against the appellants to select him for Sub Inspector of Police in Indo Tibetan Border Police (ITBP) as the candidates who obtained*



marks below the respondent, had been so selected. This writ petition has been allowed by the impugned order dated 17.04.2013.

5. The relevant clause 22 and the note under that clause, reads as follows:

"22. PREFERENCE(S):

A candidate must indicate at Sl.No.18 in the Application Form, the preference of Organisations/Service for which he/she would like to be considered for appointment in the order of preference in case he/she is recommended for appointment by Staff Selection Commission. Note: The candidate is advised to be very careful particularly about various standards laid down by various Police Organisations for determining their eligibility/considerations while indicating the order of preferences for appointment as Sub-Inspector in various Organisations. The candidate is also advised to indicate all the Organisations in the order of preference in his/her application form. In case he/she does not indicate any of services/posts, it will be assumed that he/she does not want to be considered for those services and the Commission will have the discretion to allocate such candidates to any Cadre/Organisation as per the availability of vacancies, without corresponding with the candidates. Allocation of services to the candidates selected would be made strictly, keeping in view their position in merit and the order of preference for various services."

6. We may notice at this stage that at the inception of the writ petition, one post was directed to be kept vacant for the respondent and at the stage of hearing, it was pointed out that the post was accordingly kept vacant.

7. The findings of the learned Single Judge are predicated on a reasoning that clause 22 as read, did not amount to a complete bar for consideration of the case of the candidates, like the respondent. But, on the other hand, such candidates at the discretion of the appellants be posted in any one of the five Organisations. This is apparent from the second part of the Note under clause 22 of the notification as this discretion was vested with the appellants.

8. The learned Single Judge has, thus, found that it is a fit case for the exercise of such discretion by the appellants as the respondent is above the cut-off marks and desirous of being recruited where the

<https://hcservices.ecourts.gov.in/hcservices/> who secured lower marks have been



recruited, coupled with the fact of the post having been kept vacant.

9. We see no reason why the impugned order should call for any interference, in view of the aforesaid facts that it was, at best, a technical lapse on the part of the respondent in not specifying the last two options and there is, option available with the appellants to appoint a candidate in such a situation.

10. The writ appeal is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is dismissed."

16. Therefore, we are also in agreement with the opinion of the Division Bench that the respondents cannot be non-suited on technical grounds.

17. It is also stated that pending writ petitions two of the posts were kept vacant. In view of the specific statement made in the additional affidavit filed by the appellants, the appellants can exercise its discretion and accommodate the respondents.

18. The learned counsel for the respondents also specifically stated that the respondents/writ petitioners are ready to forego the monetary benefits and also the seniority and they may be considered for appointment prospectively.

19. The said statement is recorded and the writ petitioners are not entitled to any monetary benefit and cannot claim seniority.

20. In the light of the above discussions, the writ appeals are dismissed confirming the order of the learned Single Judge. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

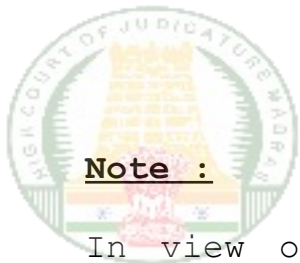
Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Secretary to Government,
Union of India,
Ministry of Personnel, P.G & Pensions,
Department of Personnel & Training,
Shastri Bhawan, New Delhi.

2.The Regional Director(SR),
Staff Selection Commission,
EVK Sampath Building 2nd Floor,
College Road, Chennai - 600 006.

+1 CC to M/s.K.MUTHUMALAI, Advocate (SR-13360[F] dated 24/03/2021)

+1 CC to M/s.D.SARAVANAN, Advocate (SR-13384[F] dated 24/03/2021)

W.A(MD)Nos.1307 and 1308 of 2017

and

C.M.P(MD)Nos.9042 and 9043 of 2017

24.03.2021

SGS (CO)

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