

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :
09.02.2022

Delivered on :
21.02.2022

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 28409 of 2021
and W.M.P.No. 30004 of 2021

1. M.Arumugam
2. K.Prabhakaran

..Petitioners

Vs.

1. The State of Tamil Nadu rep by its
Secretary to Government, Home (Pol.III) Department,
Secretariat, Chennai-9.
- 2.The Chairman-cum-Director General of
Police, Tamilnadu Uniformed Services
Recruitment Board, Egmore,
Chennai-600008.
- 3.The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600004.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 2 & 3 to award 1 mark to the petitioners for each of the question nos. 11,38 and 44 asked in the S.I selection for the recruitment year 2006 as granted by the Hon'ble Division Bench of this Court in W.A.No.2771 of 2019 dated 16.04.2021 besides fixing appropriate seniority of the petitioners in the said post without back wages.

For Petitioner : Mr.K.Ravi Anantha Padmanabhan

For Respondent : Mr.P.Kumaresan, AAG



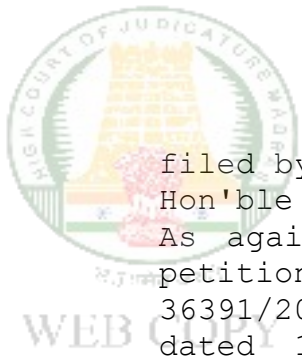
O R D E R

The writ petitioners were appointed as Grade -II Police Constables on 05.01.2006 and subsequently promoted as Head Constables on 01.02.2021. The respondent-Board has issued recruitment notification in the year 2006 for recruitment to the post of S.I. of Police under direct recruitment quota. The petitioners have applied for the post of S.I. The 1st petitioner belongs to MBC category and he scored totally 72 marks. The 2nd petitioner belongs to BC category and scored totally 72 marks.

2. According to the writ petitioners, the respondents set the wrong key answers for the question Nos. 11,38 and 44. As a result, many candidates who had answered correctly could not get the marks. The petitioners have filed writ petitions in W.P.Nos. 12032 of 2009 and 18538 of 2009 respectively. This Court by order dated 04.11.2009 directed the respondents to grant 3 marks by way of giving 1 mark for each of the questions. Challenging the said order, the respondent-Board has filed a Writ Appeal in W.A.Nos. 1719 to 1739 of 2010 etc., batch. The Hon'ble Division Bench of Court by common order dated 23.12.2010 had set aside the order passed in the writ petitions and allowed the aforesaid writ appeals. Challenging the order passed in the writ appeal, some of the individuals have preferred SLP before the Hon'ble Supreme Court and the same were dismissed at the admissions stage itself vide S.P. No. 365358 to 36391 of 2011. The Review Petitions (Civil) Nos. 2877 to 2890 of 2015 filed against the above SLPs were also dismissed by a common order dated 05.10.2015.

3. According to the learned counsel appearing for the writ petitioners, subsequently, the writ petitioners' batch mate one Suthakar who was also in the same situation has filed a writ petition in W.P.No. 8016 of 2013. The said writ petition was dismissed by this Court on ground of delay and latches. On filing of Writ Appeal in W.A.No. 2771 to 2019 as against the said dismissal, the Hon'ble Division Bench has allowed the appeal and directed the respondents to grant 3 marks for the questions nos. 11,38 & 44. Therefore, similar relief has also to be granted to the petitioners by awarding 3 marks and to select for the post of Sub Inspector of Police besides fixing appropriate seniority of the petitioners in the said post without back wages.

2. Mr.P.Kumaresan, learned Additional Advocate General takes notice for the respondent-Board and submitted that the writ appeals in W.A.No 1719 to 1739 of 2010 filed by the respondent-Board as against the order passed in the batch of writ petitions



filed by the petitioners and other candidates was allowed by the Hon'ble Division Bench of this Court by order dated 23.12.2010. As against the said order of the Hon'ble Division Bench, the petitioners & others have filed common SLP in (C) Nos. 36358-36391/2011 before the Hon'ble Supreme Court, which by its order dated 19.01.2015 dismissed the SLPs. The subsequent Review Petitions in Review Petition (C) Nos. 2877-2890/2015 was also dismissed through a common order dated 05.10.2015 and observed that 'We do not find any ground therein warranting reconsideration of the order impugned.'

3. The learned Additional Advocate General has further submitted that now the writ petitioners requested to grant relief by relying upon the order passed by the Hon'ble Division Bench passed in Writ Appeal in W.A.No. 2771 of 2019 dated 16.04.2021 filed by one Suthakar, who was selected as Sub Inspector of Police during the year 2006. The said writ appeal was challenged by the department before the Hon'ble Supreme Court in SLP (C) No. 15062 of 2021 and the Hon'ble Supreme Court has granted interim stay and the same is pending. Therefore, it is contended by the learned Additional Advocate General that in view of the interim stay granted by the Hon'ble Supreme Court, the petitioners cannot claim any benefits and the same is liable to be rejected.

4. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials available on record.

5. Admittedly, the writ petitioners namely M.Arumugam belonging to MBC community and K.Prabhakaran belonging to BC community were participated in the recruitment process for selection to the post of Sub Inspector of Police held in the year 2006 and both had secured 72.00 marks. Since the cut off marks in the final provisional selection list for medical examination and police verification for MBC & BC community is 74.00 marks & 73.00 marks respectively, the petitioners were not selected for further process. The candidates who were selected in the said recruitment were sent for training.

6. Though the writ petitions filed by the petitioners and other non selected candidates are allowed by this Court by order dated 04.11.2009, giving directions to the respondents to award marks for question nos. 11,38 & 44 and to conduct recruitment process in respect of the candidates who would get the eligible cut off marks as per their communal roster, in the writ appeal filed by the respondent-Board challenging the said order, the Hon'ble Division Bench of this Court had allowed the



same and set aside the order passed in the writ petitions on the ground of delay. The subsequent review petition before this Court and SLP before the Hon'ble Supreme Court were also dismissed..

7. The writ petitioners strongly relied upon the order passed by the Hon'ble Division Bench of this Court in W.A.No. 2771 of 2019 filed by one Suthakar who is one among the candidates participated in the said recruitment process.' The relevant paragraph relied upon the petitioners' is extracted hereunder;

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.

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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."

8. As against the said order of the Hon'ble Division Bench, the respondent-Board has filed a SLP in SLP (C) No. 15062 of 2021 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has granted interim stay and the same is still pending.

9. Though, the learned counsel for the petitioner has relied upon the various G.Os and the decisions rendered by the Hon'ble Supreme Court in similar matters, in addition to the aforesaid order of this Court passed in W.A.No. 2771 of 2019, the learned Additional Advocate General submitted that the Hon'ble Division Bench of this Court has granted relief to all the candidates appeared for the recruitment for the said period and the said order passed by the Hon'ble Division Bench of this Court is stayed by the Hon'ble Supreme Court, therefore the instant writ petition is not maintainable.

10. In view of the submissions made by the learned Additional Advocate General and taking note of the fact that the Hon'ble Supreme Court has stayed the operation of the aforesaid judgment of this Court relied upon by the petitioners, the



relief sought for by the petitioners cannot be entertained, at this stage and the same is liable to be rejected as not maintainable.

11. In view of the above facts, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Pol.III) Department,
Secretariat, Chennai-9.
- 2.The Chairman-cum-Director General of
Police, Tamilnadu Uniformed Services
Recruitment Board, Egmore,
Chennai-600008.
- 3.The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600004.

+2cc to Mr.K.Ravi Anantha Padmanaban, Advocate SR.No.10933
+1cc to the Government Pleader, SR.No.9053

W.P.No.28409 of 2021
and W.M.P.No. 30004 of 2021

GPL(CO)
CB(17/03/2022)