



W.P.No.31005 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31005 of 2019

M.Joselin Arul Selvi

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home Police II Department,
Fort St. George, Chennai-9.
 2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
 3. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore, Chennai-8.
 4. The Inspector General of Police /
Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore, Chennai-8.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to quash the impugned communication vide C.No.D1/0452/ 2017 dated 22.5.2017 received from the 4th respondent and direct the respondents to select the petitioner for



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appointment as Sub Inspector of Police in pursuance of cut off marks secured by the petitioner in the recruitment process conducted in the year 1997-98 following the judgement dated 7.8.2014 passed by the Honorable Supreme Court in India in Civil Appeal No. 7667 of 2014 and extend the benefit of petitioner's seniority at the bottom of the regularly appointed Sub Inspectors as of 7.8.2014 and grant her all consequential service and monetary benefits.

For Petitioners : M/s.S.Buveneswari

For Respondents :

for R1 & R2 : Mr.S.Rajesh

Government Advocate

for R3 & R4 : Mr.P.Kumaresan, AAG, assisted by
Mrs.Sowmi Dattan

ORDER

The relief sought in the present writ petition is to call for the records, pertaining to the order impugned, issued in proceeding C.No.D1/0452/ 2017 dated 02.05.2017 and to direct the respondents to select and appoint the petitioner to the post of Sub Inspector of Police.

2. The petitioner states that pursuant to the recruitment notification dated 02.04.1998, she had submitted an application to participate in the process of selection for direct recruitment to the post of Sub Inspector.



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554 posts for men and 240 posts for women were notified. The petitioner participated in the process of selection and was successful in the written test and was allowed to participate in the physical verification tests.

3. The petitioner scored 45 marks and the cut-off mark for the BC Open quota candidate for the post of Sub Inspector of police, at Tirunelveli Range was 53.37, thus, the petitioner was not selected. However, the cut-off mark for BC candidates in the Ramnad range was 40.37 and therefore, the petitioner states that she is eligible for selection and appointment to the post of Sub Inspector of Police.

4. The learned Additional Advocate General appearing on behalf of the respondents brought to the notice of this Court that the issues are no more *res integra* and decided by the Hon'ble Supreme Court of India. This Court also considered the issues and dismissed the writ petitions in W.P.No.9875 and 9876 of 2016 on 12.09.2022, specifically on the ground of delay in approaching this Court. The selection notified in the year 1998 is sought to be questioned by filing a writ petition in the year 2019 after a lapse of about 21 years. Thus, the writ petition is liable to be rejected on the ground of delay and latches.



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5. The present writ petitioner was the fence-sitter, waited till the disposal of the issue by the Hon'ble Supreme Court, and thereafter, filed the present writ petition in the year 2019, after a lapse of about 21 years from the recruitment notification. The Hon'ble Supreme Court of India considering the issues passed the order on 27.01.2016, holds that category III are falling under the category of delay and latches. Accordingly, the following observations are made:

“Issue No.III

39. In Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC 359] it has been held that if the judgment of the High Court has come up to the Supreme Court by way of a special leave, and special leave is granted and the appeal is disposed of with or without reasons, by affirmative or otherwise, the judgment of the High Court merges with that of the Supreme Court. In that event, it is not permissible to move the High Court by review because the judgment of 63 the High Court has merged with the judgment of the Supreme Court. It has been further held that dismissal of SLP by the words “dismissed on merits” would remain a dismissal by a non-speaking order where no reasons have been



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assigned and no law has been declared by the Supreme Court; the dismissal is not of the appeal but of the special leave petition and even if the merits have been gone into, they are the merits of the special leave petition only and neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order.

40. This Court, while answering Issue No.I has dealt with the case of Mr.M.Muthukumar/petitioner in W.P.No.25146 of 2014 and S.L.P(C)No.3950-3951 of 2014, which came to be dismissed on the ground of delay with costs and in the light of the ratio laid down in the above cited decisions, it cannot be said that the order of dismissal in W.P.No.27969/2007 on the ground of laches merge with the order of dismissal passed by the Hon'ble Supreme Court in the Special Leave Petitions.

41. Therefore, Issue No.3 is answered accordingly.

Issue No.IV

42. In the light of the findings/answers given to Issue Nos.I to III, the petitioners in Category I and II, both in Principal Bench as well as Madurai



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*Bench, are entitled to succeed. Insofar as the petitioner in 64 W.P.No.25146 2014 is concerned, if records are available he has to undergo viva-voce test; otherwise the findings rendered by the Hon'ble Supreme Court in paras 5 and 6 of the decision in **K.K.Senthil Kumar's** case would come into operation.*

*43. This Court has to deal with Category III cases where the petitioners approached this Court by filing writ petitions during the years 2014 and 2015 respectively, after the above cited judgment rendered by the Hon'ble Supreme Court of India in **K.K.Senthil Kumar's** case. It is to be noted at this juncture that the petitioners were fence sitters and waited on the side lines as to the result of the litigation and after becoming aware of the judgment in **K.K.Senthil Kumar's** case referred to supra, has jumped into the fray by filing writ petitions during the years 2014 and 2015 respectively and pray for their appointment as Sub-Inspectors of Police.*

*44. In **Rup Diamonds and Others v. Union of India and Others** [AIR 1989 SC 674 = (1989) 2 SCC 356], the Hon'ble Supreme Court observed as follows:*



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*"Petitioners are re-agitating claims which they had not pursued for several years. **Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided.** Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring 65 the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal." (emphasis supplied)*

45. The petitioners in Category III cases has



*approached the Court only after the judgment in **K.K.Senthil Kumar's** case and did not agitate their grievance for quite longtime. On account of such a lapse of time and belated approach, they are not entitled to get the relief of parity with petitioners with regard to Category I and II, though they are similarly placed. In the considered opinion of the Court, the claim of the petitioners are hit by delay and laches in the facts and circumstances of their case and hence, equitable jurisdiction of this Court cannot be exercised in their favour."*

6. The learned Additional Advocate General appearing for the respondents drew the attention of this Court that in the event of considering this writ petition, the repercussion would be large, and therefore, at this length of time, the case of the writ petitioner cannot be considered. In this regard paragraph 17 of the counter affidavit reads as under:

17. It is submitted that the Hon'ble Justice in Para 37 of the order in WP.No.26325/2015 and others had stated that, following the K.K. Senthil Kumar's order in SLP (C) No.21828/2006 in Civil Appeal No, 7667/2014, the petitioners under category-I and II therein shall be placed at the last, after the directly recruited candidates for the year 2015. The government, in compliance to the



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said order, passed G.O(Ms) No.760 Home (Police.3) Department dated 16.10.2017 to issue appointment orders to the petitioners therein as Sub- Inspectors of Police and directed that they shall be placed below the directly recruited Sub-Inspectors of Police of the year 2015. This petitioner, Tmt. Joselin Arul Selvi, having been recruited in 2004 as Sub-Inspector of Police has already been promoted as Inspector of police in 2019 and is serving as Inspector of Police in District Crime Records Bureau, Tenkasi.

7. The present writ petition was filed on 31.10.2019, after a lapse of 21 years from the year of selection i.e., 1997-98. In view of the fact that the petitioner has slept over her right and instituted the writ proceedings after 21 years, she is not entitled to the relief as such sought in the present writ petition.

8. Accordingly, the writ petition stands **dismissed**. There shall be no order as to costs.

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Index : Yes
Speaking order



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S.M.SUBRAMANIAM.J.,

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To

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