



W.P(MD)Nos.1455 to 1458 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.1455 to 1458 of 2022

and

W.M.P.(MD)Nos.1270, 1271, 1274, 1285 to 1293 of 2022

In W.P.(MD)No.1455 of 2022

M.Rajadurai

... Petitioner

Vs.

1.The Tamil Nadu Uniform Service Recruitment Board,
Rep. by its Chairman,
Old Commissioner of Police Office,
Pantheon Road,
Chennai-600008.

2.The Member / Inspector General of Police,
Old Commissioner of Police Office,
Pantheon Road,
Chennai-600008.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records and to quash the impugned final provisional selection list dated 25.11.2021 published by the second respondent and consequently, direct the respondents to appoint the petitioner in vacancy reserved for ex-service men category.



W.P(MD)Nos.1455 to 1458 of 2022

For Petitioner : Mr.M.Iqbal

For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

2. The writ petitioners are ex-servicemen. They applied in response to the recruitment notification issued by the respondent board calling for applications for the post of Grade-II Police Constables. The recruitment notification was published in vernacular dailies on 17.09.2020. Though eligible to be appointed to the said post, they were however not selected. Challenging their non-selection, these writ petitions have been filed.

3. The learned counsel appearing for the petitioners took me through the averments set out in the affidavit filed support of these writ petitions.

4. His pointed contention is that the Government of Tamil Nadu has provided for 5% horizontal reservation for ex-servicemen and that this rule was not properly applied. If only the rule of horizontal reservation had been



W.P(MD)Nos.1455 to 1458 of 2022

correctly applied, the petitioner would have definitely been selected. He called for quashing the impugned selection list dated 25.11.2021 and for directing the respondents to appoint them as Grade-II Police Constables under the Ex-service men category.

5. The respondents have filed a detailed counter affidavit. The learned Additional Advocate General took me through the averments set out therein. He pointed out that applying 5% reservation for ex-servicemen, 529 vacancies were allocated. Since the Government of Tamil Nadu had also provided for horizontal reservation for sports persons to the extent of 10%, out of the aforesaid 587 vacancies, 58 were allotted to ex-service men falling under the sports category.

6. The learned Additional Advocate General placing reliance on the decision of the Hon'ble First Bench made in W.P.Nos.6201 of 2013 etc, batch dated 07.09.2022 submitted that no interference is called for. When the policy of the Government granting horizontal reservation for the sports persons has been implemented in letter and spirit, the question of petitioners' feeling aggrieved does not arise. He also incidentally raised an objection that since the selected candidates have not been impleaded as parties, the writ petition has to be dismissed for non-joinder of necessary parties.



W.P(MD)Nos.1455 to 1458 of 2022

7. I carefully considered the rival contentions and went through the materials on record. Section 27(c) of the Tamil Nadu Government Servants (conditions of service Act) 2016 reads as follows:-

Section 27(c) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five per cent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in Schedule-VII:

Provided that if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d).

8. In the counter affidavit, it has been stated that 529 vacancies were allotted for ex-servicemen. Now the only question that arises for consideration is whether this was correctly implemented. The issue is *no longer res integra*. The Hon'ble Supreme Court in the decision reported in **Anil Kumar Gupta Vs. State of Uttar Pradesh (1995 SCC (5) 173)** had set out the manner in which the reservation has to be implemented and the same was followed in **K.R. Shanthy v. State of Tamil Nadu reported in (2012) 7 MLJ 241**. Paragraph No.14 of the Judgment reads as follows:-



“14. A perusal of the above judgments would keep at least two things beyond any pale of doubt. Firstly, the roster is not vacancy based, but the same is only post based. It identifies the number of posts earmarked for various categories under the vertical reservations and posts left behind for open quota as well as special reservations. Secondly, after so identifying the posts, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection. If once the number of vacancies earmarked for each category in the current selection is identified by using the Roster, thereafter the Roster will have no further role to play in the matter of selection. After identifying the number of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below:

First Step:

- (i) As against the number of vacancies identified for open quota, irrespective of caste, sex, physically challenged, etc., everyone should be allowed to compete based on merits.
- (ii) The meritorious candidates should be first selected as against the above vacancies under open quota.

Second Step:

- (iii) After completing the first step, moving on to the vertical reservation categories, selection has to be made for each category from amongst the remaining candidates belonging to the particular reserved category (vertical) based on merits.

Third Step:

- (iv) After completing the second step, horizontal reservation which cuts across the vertical reservation has to be verified as to whether the required number of candidates who are otherwise entitled to be appointed under the horizontal reservation have been selected under the vertical reservation.
- (v) On such verification, if it is found that sufficient number of candidates to satisfy the special reservation (horizontal reservation) have not been selected, then required corresponding number of special reservation candidates shall have to be



W.P(MD)Nos.1455 to 1458 of 2022

taken and adjusted/accommodated as against social reservation categories by deleting the corresponding number of candidates therefrom.

(vi) Even while filling up the vacancies in the vertical reservation, if, sufficient number of candidates falling under the horizontal reservation have been appointed, then, there will be no more appointment exclusively under the horizontal reservation.

Caution:

(vii) At any rate, the candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations.”

9. It is obvious that the respondents have not adhered to the steps delineated above. The error committed by the respondent board is mixing up two streams of horizontal reservation. 5% horizontal reservation meant for ex-servicemen should have been independently applied. The board ought not to have sliced away 10% out of the said 5% for sports persons. G.O.Ms.No.1819, dated 05.12.1995 provides for horizontal reservation for the sports persons. It clearly states that the said reservation shall be horizontal and it shall be accommodated within the overall limitation of 69%. A mere reading of the aforesaid G.O.Ms.No.1819, dated 05.12.1995 indicates that the horizontal reservation meant that sports persons must be applied across the spectrum excluding the open category. It is applied across social reservation categories. In other words, 10% horizontal reservation for sports persons could not have been applied within another horizontal reservation category. On account of the improper understanding and erroneous application of the horizontal reservation



W.P(MD)Nos.1455 to 1458 of 2022

for sports persons, the petitioners have been excluded.

WEB COPY

10. Even while I declare that the respondents have erred in applying 10% horizontal reservation for sports persons, I do not deem it fit and appropriate to quash the selection list on that ground. Before me, only four persons have filed these writ petitions challenging the selection. Therefore, even while not interfering with the impugned selection list, I direct the respondents to accommodate the writ petitioners against any of the existing / future vacancies in the post of Police Constable Grade-II. Orders appointing the writ petitioners as Police Constables Grade-II shall be issued as expeditiously as possible. Since the petitioners are already ex-servicemen, they would obviously be enjoying certain exemptions. The endeavour of the Government as well as the Department should be to induct the writ petitioners as Police Constable Grade-II at the earliest.

11. These Writ Petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

23.09.2022

Index : Yes / No
Internet : Yes/ No
rmi

G.R.SWAMINATHAN, J.



W.P(MD)Nos.1455 to 1458 of 2022

rmi

WEB COPY

- To
- 1.The Tamil Nadu Uniform Service Recruitment Board,
Rep. by its Chairman,
Old Commissioner of Police Office,
Pantheon Road,
Chennai-600008.
 - 2.The Member / Inspector General of Police,
Old Commissioner of Police Office,
Pantheon Road,
Chennai-600008.

W.P(MD)Nos.1455 to 1458 of 2022

23.09.2022