



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.9388 of 2019

and

W.M.P.(MD) No.7403 of 2019

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S.Meenakshi Sundaram

... Petitioner

vs.

The Tamil Nadu Uniformed
Services Recruitment Board
rep.by its Member Secretary
Pantheon Road
Egmore, Chennai-600 008

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondent herein to appoint the petitioner as Sub-Inspector of Police (Finger Print) under Backward Community category in the subsequent vacancy arisen due to non-joining of candidates out of the 162 posts allotted for Open quota.

For Petitioner : Mr.E.V.N.Siva
For Respondent : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to direct the respondent to appoint the petitioner as Sub-Inspector of Police (Finger Print) under Backward Community category in the subsequent vacancy arising due to non-joining of candidates out of the 162 posts allotted for open quota.

2. The grievance of the petitioner is that he was successful in the written examination for selection and appointment to the post of Sub Inspector of Police and he was allowed to participate in the physical verification test and endurance test. Though the petitioner was selected, his name was not included in the waiting list for the purpose of providing an opportunity in the event of the selected candidate not joining in the post of Sub Inspector of Police.



3. The learned counsel appearing for the petitioner reiterated that the waiting list procedure has not been followed by the respondent and in the event of following such procedure, the petitioner would be in a position to get an opportunity for appointment to the post of Sub Inspector of Police

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4. The learned Additional Advocate General appearing for the respondent objected the above contentions of the learned counsel for the petitioner by stating that the practice of preparing waiting list has been dispensed with and therefore, the very claim made by the petitioner is untenable.

5. This Court has elaborately considered the issue of dispensing with the waiting list by the respondent - Board by order dated 22.03.2022 in W.P.(MD) No.19542 of 2021 and the relevant portion of the said order are extracted hereunder:

"7. The learned Additional Advocate General in respect of the above two issues, made a submission that the Government has invoked the powers under Section 68 of the Act and granted relaxation for publication of reserve list in G.O.Ms.No.958, Home (Police-III) Department, dated 10.11.2009. The drawal of waiting list was dispensed with on certain special circumstances, as far as the Tamil Nadu Uniformed Services are concerned. The Government Order is applicable exclusively to the Police Department more specifically, for recruitment to Uniformed Services. The special circumstances and the spirit of the special rules applicable for Police Department were submitted for consideration before the Government by the Director General of Police and accepting the said proposal, the Government issued orders in G.O.Ms.No.958, dispensing with the drawal of waiting list in the process of selection for Uniformed Services. The said Government Order is not applicable to other Departments or even for the Ministerial Services in the Police Department. Therefore, the procedure of preparation of reserve list is not applicable to the recruitment to the post of Sub Inspector of Police and thus, the contention of the petitioner is to be rejected.

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12. Perusal of the above clause reveals that qualified and suitable candidates are not available for selection for appointment by recruitment by transfer or by promotion in the



turns allotted to them. Section 27 generally deals with reservation and sub-clause (f) specifically deals with recruitment by transfer or promotion. Therefore, the Act contemplates method of reservation to be adopted for appointment for various methods of appointments. Appointments are made on different modes viz., direct recruitment, appointment by transfer of service, appointment by promotions or otherwise. Therefore, the said sub-clause (f) may not be directly applicable with reference to the direct recruitment made to the post of Sub Inspector of Police in Uniformed Services. Even presuming that the reserve list is to be prepared for direct recruitments, it is not generally dispensed with by the Government and the order was passed dispensing with the drawal of waiting list only for the Uniformed Services by invoking Section 68 of the Act.

13. Let us consider the special circumstances in the Police Department for granting relaxation from publishing reserve list. The Director General of Police submitted a proposal to the Government to dispense with the waiting list.

14. The order passed in G.O.Ms.No.958 dated 10.11.2009 categorically provides reasons for dispensing with the waiting list in paragraphs 5 and 6, which read as under:-

"5.The Director General of Police has also stated that the same procedure will be followed in the recruitment of Sub-Inspector of Police, (Men and Women) for Tamil Nadu Special Police, Armed Reserve and Taluk Police, in view of the following reasons:-

i) The Sub-Inspectors of Police (Men and Women) selected by direct recruitment are allotted to Taluk/Armed Reserve/Tamil Nadu Special Police category as per their aggregate marks and communal rotation as follows:-

"The highest rank holders to be appointed to the Taluk Police, the next in rank to the Armed Reserve and the last in the Tamil Nadu Special Police."

ii) Appointment order will be issued to them after causing Police Verification and Medical Examination to the candidates, who are placed in the provisional select list.



iii) If any person(s) found unfit during Police Verification and Medical Examination, equal No. of person(s) will be moved from Waiting List to Tamil Nadu Special Police category. In such case, the Sub-Inspector of Police Cadet who got higher marks in Tamil Nadu Special Police category will be moved to Armed Reserve and similarly, the Cadet who got highest marks in Armed Reserve will be moved to Taluk Police.

iv) The Cadet, who was found unfit during Police Verification and Medical Examination may subsequently be appointed as Sub-Inspector of Police (Taluk) after getting 2nd Medical option/acquittal of criminal case etc. by this time, the Sub-Inspector of Police Cadets will be undergoing training. In this case, the cadet who got lowest marks in Taluk Category has necessarily to be moved to Armed Reserve in order to fit the provisionally selected cadet in that category. While doing this practice, the cadet, who got lowest marks in Armed Reserve Category will be moved to Tamil Nadu Special Police category and that those who are reverted from the higher category to lower category may approach Court to safeguard their higher post. This will create a great problem to the Department as well as to Government. Care should also be taken, while moving the candidates from waiting list by strictly applying communal rotation.

6. In order to overcome these difficulties, the provisional select list without any waiting list may be prepared. Whenever any vacancy arises during Police Verification/Medical Examination (or) in other circumstances, those vacancies may be carried over to the next recruitment, since the Government have ordered for recruitment for every year."

15. Question arises whether the reservation is implemented in respect of the direct recruitment to Uniformed Services. It is clarified that if the required number of post in a particular reserve category is not filled due to want of eligible candidates or otherwise, then the said vacancy will be treated as backlog vacancy and during the next process of direct recruitment, the number of vacancies left will be added for further selection. In other words, backlog vacancies are carried out in the next process of



selection by adopting the restore system as per the provisions of the Act. Therefore, the reservations are completely implemented and the required number of vacancies to be filled up through the reserve candidates are filled up, if not in one recruitment during the next recruitment. Therefore, the reservations are implemented in all respects without compromising the rules and dispensing with the waiting list would not be a ground to raise that reservations are not implemented by the respondents.

16. The peculiarity in the process of selection to the Uniformed Services was considered by the Government and the drawal of waiting list was dispensed with. However, such dispensation would not cause any infringement of right of the reserved candidates for selection to the post of Sup Inspector of Police in Uniformed Services. If at all required number of candidates in a particular reserve category is not available, such number of posts are carried on to the next recruitment process, as the processes for recruitment to Uniformed Services are conducted periodically. If such procedures are followed by carrying on the backlog vacancies to the next recruitment process, then this Court is of the considered opinion that the rule of reservation has been implemented and there is no infringement of right of reservation of the candidates who all are eligible to avail the benefit of reservation under the provisions of the Act and Rules.

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21. In the present case, the petitioner has raised the ground based on certain expectation or presumption. If at all a reserve list is prepared and his name is included in the reserve list and if any of the candidates are not joined or selection is cancelled, then he would be getting an opportunity. All such claims are hypothetical in nature and the Courts cannot consider the future events or otherwise in this regard.

22. Section per se would not confer any right on the candidate. The process of selection can be questioned only on certain limited grounds. A candidate, who participated in the selection knowing the fact that there is no procedure for



reservation at the time of submitting application, cannot turn around and challenge after completion of selection that reserve list ought to have been published.

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23. When the recruitment notification indicates that there is no procedure for drawal of wait list, the petitioner, who was a candidate accepted the said condition and participated in the process of selection, cannot now make a complaint that no reserve list was prepared for the benefit of the candidates.

6. In view of the above facts and circumstances, the relief sought for in this writ petition cannot be granted. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

The Member Secretary,
Tamil Nadu Uniformed
Services Recruitment Board,
Pantheon Road,
Egmore, Chennai-600 008.

+1 CC to M/s.SPL.GP (SR-19365[F] dated 19/04/2022)

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RD(22.04.2022) 6P 3C