



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.18088 of 2019

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S.Subramanian

...Petitioner

vs.

1.The State of Tamil Nadu
rep.by Secretary to Government
Home (Police II) Department
Fort St.George, Chennai-9

2.The Chairman
T.N.Uniformed Services Recruitment Board
No.807, Anna Salai, Chennai-2

3.The Director General of Police
Office of Director General of Police
Post Box No.601
Dr.Radhakrishnan Salai
Mylapore, Chennai-600 004

...Respondents in all W.Ps.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to appoint the petitioner in the post of Sub Inspector of Police based on the decision of the Hon'ble Supreme Court in SLP No.21828 of 2006 etc., in Civil Appeal No.7667 of 2014 etc., dated 07.08.2014 with all consequential service and monetary benefits in the interest of justice within the time frame fixed by this Court.

For Petitioner : Mr.A.Edwin Prabakar

For Respondents : Mr.Veera Kathiravan

Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

O R D E R

This writ petition is filed seeking a direction to the respondents to appoint the petitioner in the post of Sub Inspector of Police based on the decision of the Honourable Supreme Court in S.L.P.No.21828 of 2006 etc., in Civil Appeal No.7667 of 2014 etc., dated 07.08.2014 with all consequential service and monetary benefits in the interest of justice, within the time frame fixed by this Court.



2. The petitioner states that he is working as Head Constable in Tamil Nadu Police Department. The Tamil Nadu Uniformed Services Recruitment Board invited applications from the eligible candidates for appointment to the post of Sub Inspector of Police Category-I under 20% quota from departmental candidates. The petitioner submitted his application and participated in the process of selection in Chennai Range in all the three stages, namely, physical efficiency test, written test and viva voce.

3. The grievance of the petitioner is that the similarly placed persons, whose cases were not considered for appointment to the post of Sub Inspector of Police, approached the Tamil Nadu Administrative Tribunal and thereafter High Court and thereafter the Honourable Supreme Court. The Apex Court passed an order directing the Department to extend the benefits granted by the High Court to all the similarly placed persons, if they are otherwise eligible and qualified based on the marks secured by them in the selection process. The Apex Court further held that the benefits granted to the similarly placed persons need not be restricted to the persons, who approached the Court, but it is to be extended to the persons, who have not approached the Court, but eligible for selection and appointment.

4. The learned Additional Advocate General appearing for the respondents contended that the claim of all those persons was considered and in some cases, the Department rejected the claim of those persons and second round of litigations were filed by them before the High Court and the claim of those persons were directed to be considered and they were appointed accordingly.

5. This Court is of the considered opinion that the persons, who were all along waiting till the disposal of all these litigations, filed fresh writ petitions in the year 2014-2015. In other words, third batch of writ petitions was filed belatedly after the disposal of cases by the Honourable Supreme Court. All such cases were tagged together and a common Judgment was passed by this Court by elaborately considering the issues on 27.01.2016. This Court has dealt with Category-III, which all are falling under the category of delay and latches. In this regard, this Court observed as follows:

"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 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 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:

"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)



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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. In the penultimate portion of the order, this Court has held as follows:

"(ix) The writ petitions in respect of Category III, are dismissed. No costs."

7. The present writ petition was filed in the year 2019 even beyond those writ petitions were decided by this Court in the year 2016 and after a lapse of 22 years from the date of selection i.e.1997-1998. In view of the fact that the petitioner has slept over his right and filed the present writ petition after a lapse of 22 years, the relief as such sought for cannot be considered as the issues were settled by the Honourable Supreme Court long back and such settled issues cannot now be unsettled and in the event of any such appointment based on the selection of the year 1997-1998, the services of many other candidates will be affected and therefore, the present writ petition is liable to be dismissed on the ground of delay and laches.

8. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Secretary to Government,
Home (Police II) Department,
State of Tamil Nadu,
Fort St.George, Chennai-9.



2.The Chairman,
T.N.Uniformed Services Recruitment Board,
No.807, Anna Salai, Chennai-2.

3.The Director General of Police,
Office of the Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

+1 CC to M/s.SPL.GP. (SR-18957[F] dated 18/04/2022)

W.P. (MD) No.18088 of 2019

13.04.2022

MGJ(26.04.2022) 6P 5C