



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19542 of 2021

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... Petitioner

-vs-

1. Tamil Nadu Uniformed Services Recruitment Board,
Rep. by its Chairman, Egmore, Chennai 8.

2. The Inspector General of Police /
Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner Office Campus,
Egmore, Chennai - 8.

3. The Director General of Police,
Beach Road, Chennai 4.

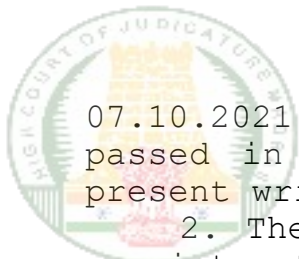
... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in C.No.L1/2129/2021 dated 04.08.2021 and the consequential impugned order in C.No.L1/2129/2021 dated 07.10.2021 on the file of the respondent No.2 and quash the same as illegal and consequently for a direction, directing the respondents to select and appoint the petitioner in the post of Sub-Inspector of Police (Taluk, Armed Reserve (Men and Women/Transgender) and Tamil Nadu Special Police (Men)) 2019 under BC (General) Category either by granting additional 3 marks for double star in 100m running or in the alternative by way of operating the reserve list in accordance with the Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 within the time period stipulated by this Court.

For Petitioner : Mr.T.ASWIN RAJASIMMAN, Advocate for
Mr.T.LAJAPATHI ROY, Advocate
For Respondents : Mr.VEERAKATHIRAVAN,
Additional Advocate General
assisted by Mr.A.K.MANIKKAM,
Special Government Pleader

O R D E R

The order impugned dated 04.08.2021 rejecting the request of the petitioner to provide a chance to test his 100 metres running skill and the consequential reply, to the representation of the petitioner, issued by the 2nd respondent in proceedings dated



07.10.2021 pursuant to the orders of this Court dated 08.09.2021 passed in W.P.(MD) No.15723 of 2021, are under challenge in the present writ petition.

2. The petitioner participated in the process of selection for appointment to the post of Sup Inspector of Police. He was successful in the written examination and participated in the physical test and endurance test. The petitioner scored 74.25 marks. However, the cut off mark for B.C. General Category is 75.50 for Taluk and 74.50 for Armed Reserve and Tamil Nadu Special Police.

3. The petitioner submitted the representation with reference to two issues. Firstly, he says that in 100 meters running event, he made a request to provide re-chance, as the digital display board was not switched on. If at all a re-chance is provided, the petitioner would have scored more marks and he will be falling within the zone of consideration.

4. Secondly, the petitioner contended that under Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as "the Act" for brevity), the rule of reservation is to be followed by preparing a reserve list of candidates, that is, 25% of the select list. However, in the present selection, no such reserve list was prepared which resulted in compliance of reservation as per the provisions of the Act. The representation of the petitioner was not considered and the writ petitioner filed writ petition and pursuant to the orders of this Court, his representation was considered and the impugned order was passed.

5. The learned counsel for the petitioner mainly relied on the fifth proviso to Section 27(f) of the Act. The said proviso reads as follows:-

"Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the reserve list."

6. Relying on the said proviso clause, the learned counsel for the petitioner contended that publication of reserve list is mandatory for the purpose of implementation of reservation and in the absence of preparation of such reserve list, the right of reservation is denied to the candidates. If at all the name of the writ petitioner is included in the reserve list and in the event of any availability of vacancy due to non-joining of candidates or cancellation of selection, the petitioner would be getting an



opportunity for selection. Therefore, the selection itself is improper, as the respondents admittedly, have not published any reserve list.

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.

8. Section 68 of the Act stipulates that "if any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act". It is needless to state that when there is a special act or rules, the same will prevail over the general Act and Rules. These being the principles to be followed, the recruitment to the post of uniformed services is separately dealt with by the Government considering the special rules applicable to the Uniformed Services granting exemption from publication of reserve list in the process of selection.

9. With reference to the other issues raised by the petitioner, the learned Additional Advocate General pointed out that the digital display board is made available only for reference and based on such digital display board, decisions are not taken. Decisions are taken based on the stop watches operated by sports officials nominated by the Sports Development Authority of Tamil Nadu. It is further contended that for each candidate, one sports official is appointed along with a stop watch to note down the timings. Therefore, the digital display board is only for reference. Video graphing is also installed to avoid certain mistakes, errors or irregularities and such procedures followed are no way connected with the stop watches exclusively operated by sports officials nominated by the Sports Development Authority of Tamil Nadu, which became final, as far as the timings for various events are concerned.

10. Considering the arguments as advanced by the learned counsel for the petitioner and the learned Additional Advocate General for the State, this Court is of the opinion that rule of



reservation is to be implemented scrupulously. As far as the reserve list is concerned, wherever the reserve lists are prepared, the question of relaxing the reserve list would arise.

11. Section 27 of the Act contemplates reservation of appointments. Sub-clause (f) to Section 27 reads as follows:-

"27(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation."

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:-

<https://hcservices.ecourts.gov.in/hcservices/>



"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



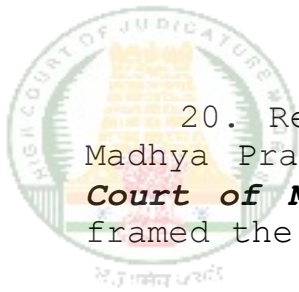
by adopting the restore system as per the provisions of the Act. Therefore, the reservations are completely implemented and the required number of vacancies to be filled up through the reserve candidates are filled up, if not in one recruitment during the next recruitment. Therefore, the reservations 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.

17. As far as 100 meters running event is concerned, as rightly pointed out by the learned Additional Advocate General, video graphing of the event cannot be the final authority to take a decision. Video graphing of the events is made in order to avoid unnecessary disputes and to identify the errors, mistakes if any apparently committed. However, the events are conducted specifically by appointing Sports Officials nominated by the Sports Development Authority of Tamil Nadu, who had monitored the events by using the stop watches and for each candidate, one sports official was engaged to calculate the timings and therefore, this Court do not find any infirmity in the procedures.

18. The power of judicial review of the High Court under Article 226 of the Constitution of India is to verify the procedures and its fairness adopted by the competent authorities and not the decision by itself. If the procedures are transparent and fair in all respects, the same would meet requirements of the principles and High Court cannot make a comparative study or otherwise in respect of the events or the timings calculated and recorded by the individual sports official nominated by the Sports Development Authority of Tamil Nadu. Therefore, the digital display board or video graphing of the event are no way connected with the conduct of events by the authorities specifically engaged by the Selection Committee.

19. In the present case, the timings are calculated by the sports officials by using stop watches and such a decision and the procedure cannot be found fault with and this Court is of the opinion that fairness in all respects has been adopted during the conducting such sports events.



20. Regarding the process of selection, the Full Bench of the Madhya Pradesh High Court in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and others** reported in **2018 (1) CTC 353**, framed the following questions of laws:-

"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?

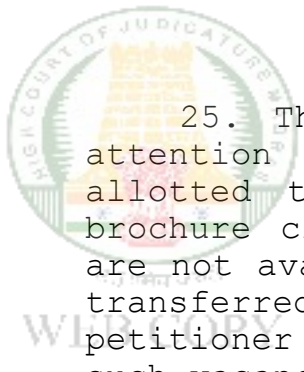
3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

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.

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.

24. Selection being a process, Court has to find out the procedures followed and the fairness adopted. However, High Court cannot go into the decision taken by the authorities on merits or the decision regarding the suitability, eligibility and assessment of the candidates. Such assumptions are the prerogative of the Selection Committee and the scope of judicial review is undoubtedly limited.



25. The learned counsel for the petitioner finally drew the attention of this Court with reference to 20% departmental quota allotted to the in-service candidates. As per the information brochure clause 16(iii) "in case of required number of candidates are not available in the Departmental Quota, the vacancies would be transferred to the open quota of the same community". However, the petitioner could not able to establish is there any vacancy arose or such vacancies were transferred to the open quota for the purpose of considering the candidates from the open quota. In the absence of specific proof to establish such facts, Court cannot issue any direction based on certain presumptions or otherwise. The petitioner contends that if at all there is a vacancy in departmental quota, more specifically under B.C. Category and if such a post is transferred to the open quota and if the petitioner is falling within the zone of consideration, then he will be getting an opportunity. It is entirely a hypothetical event which is a futuristic one which cannot be considered by the High court in the absence of any relevant materials on record to establish such a ground. In this regard, the sincere efforts, made by the learned counsel for the petitioner to put forth the case of the writ petitioner, stand appreciated.

26. For all the above reasons, this Court is of the considered opinion that the petitioner was not within the zone of consideration in the particular category, as he scored lesser marks than that of the cut off marks fixed by the Department, which is 74.50 and therefore, the petitioner is not entitled for the relief as such sought for in the writ petition and accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Egmore, Chennai 8.
2. The Inspector General of Police /
Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner Office Campus,
Egmore, Chennai - 8.



3. The Director General of Police,
Beach Road, Chennai 4.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-14001[F] dated
24/03/2022)

+1 CC to M/s.SPL GP (SR-14265[F] dated 24/03/2022)

W.P. (MD) No.19542 of 2021

Date:22.03.2022

SA(31.03.2022) 9P 6C