



W.P.(MD)No.9417 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 9417 of 2015

and

M.P.(MD)No.1 of 2015

R.Sheik Abdullah

... Petitioner

Vs.

1. The State of Tamil Nadu, Rep by
the Secretary to Government,
Home (Police II) Department,
Secretariat, Chennai – 9.
2. Tamil Nadu Uniformed Service
Recruitment Board,
No.807, P.T.Lee Chengaivarayan,
Naicker Building,
Anna Salai, Chennai – 2, represented
by The Chairman.
3. The District General of Police,
Mylapore, Chennai-4.

.... Respondents

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



W.P.(MD)No.9417 of 2015

WEB COPY

to the post of Sub Inspector of Police, Category - I, in the light of the decision of the Honourable Supreme Court in SLP No. 21028 of 2006 etc., in Civil Appeal No. 7887 of 2014 etc., dated 07.08.2014 in pursuance of the marks secured by the petitioner in the selection process of Written Exam and Physical Test by calling the petitioner for Viva Voce for the year 1997-1998 and consequently promote the petitioner to the post of Inspector of Police with all monetary and service benefits.

For Petitioner : Mr.R.Singara Velan, Senior Counsel
for, M/s.D.Selvanayagam

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General, assisted by
Mr.P.Thambidurai,
Government Advocate

ORDER

This Writ Petition has been filed seeking direction to the respondents to appoint the petitioner for the post of Sub Inspector of Police, Category - I, in the light of the decision of the Hon'ble Supreme Court in SLP No. 21028 of 2006 etc., in Civil Appeal No. 7887 of 2014 etc., dated 07.08.2014, in pursuance of the marks secured by the petitioner in the selection process of Written Exam and Physical Test by calling the petitioner for Viva Voce for the year 1997-1998 and consequently promote the petitioner to the post of Inspector of Police with all monetary and service benefits.



W.P.(MD)No.9417 of 2015

WEB COPY

2. The petitioner had applied for the post of Sub Inspector of Police, Category I, by direct recruitment through open market. The petitioner has participated and under gone three stages, namely; Physical Efficiency Test, Written Test and Viva voce. The petitioner belongs to Back ward community and had secured 55.37 marks in the written examination and the physical test excluding viva voce. The petitioner's name was not published in the selection list.

3. The contention of the petitioner is that the selection for the said post was made on zonal wise basis. Whereas, as per the Service Rules, it has to be conducted on State wise with single Cut off marks for each category. In Tirunelveli Range, the cut off mark prescribed was 71.68 and whereas, in Ramnad Range 65.18. Hence, alleging discrimination by fixing the different cut off marks, the persons who had participated in the recruitment process had filed writ petitions. After several litigations, ended in finality, before the Hon'ble Supreme Court in ***SLP No. 21028 of 2006 etc., in Civil Appeal No. 7887 of 2014 etc., dated 07.08.2014***, and some of the writ petitioners were successful in the litigation and they were recruited. Since the petitioner was not selected and also not filed any writ petitions, when the other candidates became successful after



W.P.(MD)No.9417 of 2015

WEB COPY

filing writ petitions, subsequently, the petitioner had filed this writ petition in the year 2015, claiming the same relief that was granted to the other candidates.

4. The respondents have filed counter affidavit stating that the petitioner has filed this Writ Petition after lapse of 17 years. Moreover, the petitioner is having only 55.37, as cut off marks. Based on latches and on the basis of cutoff marks the petitioner is not entitled. Similar petitions were also filed before the Principal Bench of this Court, wherein, the learned Single Judge has dismissed the writ petitions, which were filed belatedly. Subsequently, the same order was passed in another writ petition also. Therefore, based on three grounds the learned Additional Advocate General submitted that the petitioner is not entitled to any relief in the writ petition. If it is granted, several other persons also would come before this Court and the same will be endless litigation and prayed to dismiss the writ petition.

5. Heard Mr.R.Singaravelan, learned Senior Counsel for, M/s.D.Selvanayagam, appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General, assisted by Mr.P.Thambidurai, learned



W.P.(MD)No.9417 of 2015

WEB COPY

Government Advocate appearing for the respondents. Perused the material documents available on record.

6. The learned Senior counsel appearing for the petitioner submitted that the delay and latches cannot be held against the candidates in service jurisprudence and relied on the Judgment rendered in the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others, reported in (2015) 1 Supreme Court Cases 347***. The relevant paragraph No.22(1)(3) is extracted hereunder:

....

“22(1). The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. No doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time-to-time postulates that all similarly placed persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not



W.P.(MD)No.9417 of 2015

WEB COPY

approach the Court earlier, they are not to be treated differently.

22.3. However, this exception may not apply in those cases where the Judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated person, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C.Sharma V. Union of India). On the other hand, if the judgement of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

7. The Learned Senior Counsel had relied on the Judgment rendered by the Hon'ble Supreme Court in the case of ***K.K.Senthil Kumar and Others Vs.***



W.P.(MD)No.9417 of 2015

WEB COPY

State of Tamil Nadu and Others in SLP No. 21028 of 2006 etc., in Civil Appeal No. 7887 of 2014 etc., dated 07.08.2014 and submitted that the recruitment is for the year 1997-1998, wherein 70% vacancies were filled up from open market and 20% from in service candidates and 10% from the wards of the personal of Police department. The issue of approaching belatedly was also considered in the said Judgment and the relevant paragraph is extracted hereunder:

.....

“The above appellants before us, have admittedly been denied the right of appointment, merely on account of having approached the High Court belated. Having given our thoughtful consideration to the issue in hand, we are satisfied, that it was the bounden duty of the State Government to implement the Judgment rendered by the Administrative Tribunal in the letter and spirit. More so, after the same had been attained finality. Not doing so would result in some meritorious candidates being ignored, despite their higher merit, than those appointed while implementing the order of the Administrative Tribunal. Had the aforesaid onus and responsibility been discharged by the State Government, there would have been no need for the appellants either to approach the High Court or Government, there would have been no



W.P.(MD)No.9417 of 2015

WEB COPY

need for the appellants either to approach the High Court or this Court. There is no doubt that 11 of the appellants before this Court, namely; A.Sethuraman, E.Ramesh Babu, V.Jayabalan, K.Sivakumar, S.Chandran, R.Ravi, K.K.Senthil Kumar, O.Dayalan, P.Paulraj, M.Sundarapandian and K.Moovendhan, who ought to have been appointed in terms the Judgments passed by the Administrative Tribunal (dated 19.07.2001/12.07.2001) have a right of being appointed in terms of their acknowledged/admitted position in the merit list.

...

In our considered view, delay alone could not be a valid justification to deprive these meritorious candidates, the right to be appointed. We therefore, hereby direct the State Government to appoint all the aforesaid 11 appellants as Sub-Inspectors”

When the same recruitment was challenged before the Hon’ble Supreme Court in the case of K.K.Senthil Kumar’s case, the Supreme Court has categorically held that, it is a bounden duty of the State Government to implement the Judgment in letter and spirit and hence the Learned Senior Counsel prayed to allow the petition.



W.P.(MD)No.9417 of 2015

WEB COPY

8. However, this submission was refuted by the learned Additional Advocate General, by relying upon the judgment dated 06.01.2015 rendered by the Learned Single Judge of this Court in W.P.No.26325 of 2015 batch, wherein, the learned Single Judge has declined the benefits to persons who had approached this Court belatedly. In the said Judgment, the candidates were separated under three categories. The Candidates who have approached before this Court in time were considered as Category-I. The candidates who have approached before this Court and the same was dismissed, subsequently, based on the case of **K.K.Senthil Kumar**, they have approached the Court by filing writ petitions were considered as Category-II. And the Category-III have approached the Court belatedly, after the order passed by the Hon'ble Supreme Court in **K.K.Senthil Kumar's** case. The learned Single Judge has dismissed the Category- III candidates. The category III candidates are 12 in numbers and the learned Single Judge has dismissed the 11 writ petitions. The one petition which is pending and the same is the present writ petitioner. If this writ petition is allowed in favour of the writ petitioner, then the 11 candidates will again approach this Court and it will be an endless litigation and prayed to dismiss the writ petition. The learned



W.P.(MD)No.9417 of 2015

WEB COPY

Additional Advocate General further relied on the Judgment rendered in ***W.P.No. 35180 and 35181 of 2014, dated 18.11.2022***, wherein, it is stated after lapse of 17 years, the writ petitioner thereunder had approached the Court for relief and hence the Learned Single Judge had declined the relief sought for.

9. After considering the rival submissions made by the Learned Senior Counsel and the Learned Additional Advocate General, this Court is of the considered opinion that when the Courts have held that “zonal wise cutoff” mark is illegal and directed to recruit on the basis of “state wise cutoff” mark, then it is applicable to all the candidates who participated in the recruitment process. Then the State Government ought to have revised the list based on the “state wise cutoff” mark and published the list. The State Government failed to do so. If the State Government had approached without any discrimination, then all the candidates ought to have been called even though they did not approach the Court and granted selected the candidates. The Hon'ble Supreme Court has categorically held, there would have been no need for the candidates either to approach the High Court or Government, if the order is implemented in letter and spirit. In



W.P.(MD)No.9417 of 2015

WEB COPY

such circumstances the delay cannot be a ground to deny the benefit.

10. Moreover if the plea of the respondents is accepted and then it would amount to allow the respondents to follow zonal wise cutoff mark, but the zonal wise cutoff mark is held illegal, then the respondents would be allowed to perpetuate the illegality.

11. As far as the plea of the respondents that the issue is decided by the Learned Single Judge, this Court is of the considered opinion that, based on the Law of precedents, the Hon'ble Supreme Court is binding. Since in the same recruitment process in the case of K.K.Senthil Kumar's case the Hon'ble Supreme Court has held delay alone could not be a valid justification to deprive these meritorious candidates, the right to be appoint. Accordingly, this Court is following the Judgment rendered by the Hon'ble Supreme Court in ***K.K.Senthil Kumar's*** case and passing the following order:

- (i). Since the petitioner is not attended any Viva voce, he is entitled for conducting Viva voce.
- (ii) This Court issues direction to the respondents to



W.P.(MD)No.9417 of 2015

WEB COPY

conduct Viva voce and if the petitioner is selected in the Viva voce and reaching cutoff mark of 65.25, the respondents shall grant an appointment to the petitioner.

(iii) If the petitioner is successful in Viva voce and in selection process, the petitioner is entitled to place as the junior most in the Seniority list for year 2022.

12. With the above directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
ksa

25.11.2022



W.P.(MD)No.9417 of 2015

WEB COPY

To

1. The Secretary to Government,
The State of Tamil Nadu,
Home (Police II) Department,
Secretariat, Chennai – 9.
2. The Chairman,
Tamil Nadu Uniformed Service
Recruitment Board,
No.807, P.T.Lee Chengaivarayan,
Naicker Building,
Anna Salai, Chennai – 2.
3. The District General of Police,
Mylapore, Chennai-4.



WEB COPY



W.P.(MD)No.9417 of 2015

S.SRIMATHY, J

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**Order made in
W.P.(MD)No.9417 of 2015**

25.11.2022