



W.P.(MD)Nos.19655 and 19656 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.04.2022

PRONOUNCED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.19655 and 19656 of 2017

N.Balamurugan

... Petitioner in
W.P(MD).No.19655 of 2017

D.Krishnakumar

... Petitioner in
W.P(MD).No.19656 of 2017

-Vs-

1.The Government of Tamilnadu,
Rep., by its Secretary to Homes Department
Fort St.George, Chennai -09.

2.The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai -04.

3.The Commandant,
T.S.P.-VI Battalion,
Madurai -625 014.

... Respondents in
both petitions



W.P.(MD)Nos.19655 and 19656 of 2017

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COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order Ref.No.A2/7755/2016 dated 16.03.2017 on the file of the third respondent and quash the same as illegal and consequently to direct the respondents to include the petitioners' name in the select list for the year 1992-93 along with their batch mates recruited in the year 1992-93 with due seniority and award all consequential service benefits within the time stipulated by this Court.

In both petitions

For Petitioners : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.P.Thambidurai
Government Advocate (Civil side)

COMMON ORDER

These Writ Petitions are filed to quash the impugned order Ref.No.A2/7755/2016, dated 16.03.2017, on the file of the third respondent and to quash the same as illegal and consequently, to direct the respondents to include the petitioners' name in the select list for the year 1992-93 along with their batch mates recruited in the year 1992-93 with due seniority and award



W.P.(MD)Nos.19655 and 19656 of 2017

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all consequential service benefits within the time stipulated by this Court.

2.The brief facts of the case are as follows:-

(i) The petitioners appeared for the enlistment of Grade-II Police Constable which was conducted by the Tamil Nadu Uniformed Service Recruitment Board in the year 1992-93 and the petitioners were among 10,376 persons, who were selected by Tamil Nadu Uniform Service Recruitment Board. The contention of the petitioners is that out of 10379 candidates, 10,000 of them were appointed and the remaining 376 including the petitioners were left out without giving the appointment order. While the left out persons were eagerly awaiting for the appointment orders, further recruitment was conducted by the Tamil Nadu Uniform Service Recruitment Board in the subsequent years 1995, 1999 and even though several recruitments were conducted after the petitioners' selection, appointment orders were issued to the left out candidates i.e., remaining 376 persons only in the year 2000. The petitioners were appointed as Grade II Police Constable only on 15.05.2000 without restoring any service benefits, even though the



W.P.(MD)Nos.19655 and 19656 of 2017

petitioners were selected as Grade II Police Constable during the year 1992-93. After undergoing training at Tuticorin, the petitioners joined on 15.02.2001 at VI Battalion, Madurai and later they were promoted as Havildar (HC) on 18.04.2005 and retained at VI Battalion and posted at Motor Transport Groups, Madurai and the petitioners are still in service.

(ii) The petitioners are aggrieved, since their selection was in the year 1992-93 but they were granted appointment order in the year 2000 and their seniority is fixed from the year 2000. The petitioners submitted various representations to the respondents and it was informed by the Chairman vide his letter dated 27.10.1997 that the final list of Grade II Police Constable was sent to the Director General of Police, for further action. Despite repeated representations, the appointment orders were issued only in the year 2000 without giving any service benefits from the year 1992-93. The petitioners relied on the judgment, dated 16.06.2008 rendered in WP(MD) No.37815 of 2007 in the case of R.Mathan Vs The Secretary to Government Home (Pol.3) Department, Chennai, stating that in accordance with the observations made by the Hon'ble Supreme Court of India the respondent was directed to include



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

the name of the petitioners in the selected list of the year, in which, they were selected and also to count the service period of the petitioners for all purposes with effect from the date of appointment of their junior in the said batch, but the monetary benefits will be from the actual date of joining into service. Aggrieved over the same, the Government has preferred W.A.No.211 of 2009 and the same was dismissed. Accordingly, the Government has implemented the order in G.O.No.665 Home (Pol.3) Department, dated 28.07.2009 by giving notional promotion by revising the seniority list in the year 1994-95 while the date of appointment was 02.06.1997.

(iii) The petitioners have also relied on the judgement rendered in WP(MD) Nos.41271, 41272 and 41273 of 2006, dated 25.02.2011, wherein, direction was given to the respondent to include their names in the selected list for the year 1992-93 for the purpose of seniority and all other admissible service benefits. In a very similar case in WP.No.31551 of 2016 in V.Paramasivam Vs. the Government of Tamil Nadu, Madras High Court has passed an order on 09.09.2011 granting the same benefits. The writ petitioners are seeking the same relief that was granted in the similar writ



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

petitions and the Government has also implemented two Government orders.

Hence, the petitioners have prayed to quash the impugned order and include the petitioners' name in the selected list for the year 1992-93 and grant new seniority with consequential relief.

3. The respondents have filed counter affidavit stating that the Tamil Nadu Uniformed Service Recruitment Board in the year 1992-93 conducted Grade-II Police Constable. The petitioners were among the 10,376 candidates who were selected by TNUSRB. Out of 10,376 candidates, 10,000 candidates were appointed for training in the year 09.06.1993, 16.06.1993, 25.10.1993, 16.03.1994, 01.03.1995 and 01.11.1995 and the remaining 376 candidates including the petitioners herein were left out without giving them the appointment order. The said 376 posts were reserved for SC/ST candidates, while preparing the selection list on communal rotation. In other words, the said vacancies cannot be filled up due to non-availability of SC/ST candidates. Further, a special recruitment was conducted by TNUSRB in subsequent years 1995-96 and 376 backlog vacancies earmarked for SC/ST candidates were filled up. Later, the Hon'ble Chief Minister announced while moving "Police



W.P.(MD)Nos.19655 and 19656 of 2017

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Demand” for the year 1999-2000 on the floor of Assembly on 10.05.1999 that the candidates selected over and above the required number in the year 1992-93 selection of list of Grade-II Police Constable would be absorbed in future recruitment of Grade-II Police Constable by relaxing the age whenever necessary.

4. Based on the announcement, 329 candidates were found fit and appointed as Grade-II Police Constable on 15.05.2000 by relaxing the Rules relating to the age, communal rotation, sports quota and 30% reservation for women, as one time measure, as per G.O.Ms.No.1339, Home (pol.3) Department, dated 01.10.1999. As per the Government Order, the petitioners herein among 329 candidates were also appointed as Grade-II Police Constable on 15.05.2000 with a condition that the candidates should not claim any seniority for the year 1992-93 and their seniority was fixed at the bottom of 1997-98 batch Grade-II Police Constable (Men) appointed on 25.04.1999. In the appointment order itself, it was mentioned that the petitioners herein among 329 candidates were appointed by relaxing the age and the rule of reservation as one time measure. The petitioners themselves have given an



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY written undertaking that they will not claim any seniority for the year 1992-1993 and accepted to fix their seniority at the bottom of 1997-98 batch Grade-II Police Constable (Men) and appointed on 25.04.1999. Hence, their contention about the restoration of service benefit based on the selection list of Grade-II Police Constable for the year 1992-93 is baseless and after undergoing training at Tuticorin, the petitioners have joined services on 15.02.2001. Thereafter, they were promoted as Havildar (HC). The case of the petitioners and other candidates were considered by the Government as a special case and based on the police demand, the Hon'ble Chief Minister announced it on the floor of legislature. Thereafter, the grievance were considered. One of the batchmate of the petitioners namely Mr.S.Saranvan had filed a writ petition in W.P. No.4050 of 2009, wherein, this Court vide order, dated 14.07.2011, passed the following observations:-

“Since the petitioner never entered into service during 1992-93 and having accepted the order of appointment made in the year 2000 and got his seniority fixed from the batch of 1997-98, this Court is not inclined to entertain the writ petition. Reliance placed upon the Division Bench Judgment and the consequential Government Order is based upon peculiar circumstances of that case and it cannot be quoted as precedent in such matters. Even, if the Government implements an order of the Court and issue a consequential G.O., that by itself cannot be a precedent in such matters”



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

Therefore, the petitioners cannot claim the original seniority. Hence, the respondents prayed to dismiss the writ petition.

5. Heard Mr.T.Aswin Rajasimman, learned counsel for the petitioners and Mr.R.Baskaran, learned Additional Advocate General assisted by Mr.P.Thambidurai, Government Advocate (Civil side) appearing for the respondents and perused records.

6.The said 376 candidates after they have been taken into service have submitted several representations, in which, one Krishnakumar and Balamurugan have submitted a representation and also filed a writ petition. In the said writ petition, this Court directed the respondents to consider the representation and pass orders. The respondents had passed a detailed order vide order, dated 08.11.2016, in which, it has been clearly stated that the said 329 candidates were allowed to contest in the recruitment and they were found not eligible. In the selection process for the year 1992-93, the vacancy was shown as 10,000 posts and the respondents have taken all the 10,000 posts.



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

For 379 vacancies reserved for SC/ST candidates, since there were no candidates for SC/ST, the said vacancies were considered as backlog vacancies and were carry forward in the subsequent years and were filled up in the subsequent recruitment process conducted in the year 1995-96. The petitioners have claimed that since the SC/ST candidates were not available, the names of the petitioners ought to be considered in the backlog vacancies and they should be granted appointment order in the said vacancies. Since in the subsequent recruitment process for the year 1995-96, the said backlog vacancies earmarked for SC/ST candidates were filled up, in the said circumstances, there is no available vacancy at all. From 1992-93 onwards the said 376 candidates had repeatedly represented before the authority and various forums to consider their cases, but the same was declined for want of vacancy, moreover the said 376 persons were considered as not eligible on merits. During the year 1999-2000, the Government has considered the plea of the 376 candidates and from 376 candidates, 329 candidates were found eligible and were taken into service. However, the said concession was granted to 329 candidates on condition that their appointment would be from 15.05.2000 onwards and they cannot claim any seniority from the year



W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

1992-93 and the said 329 candidates have accepted the same and executed an undertaking letter and thereafter, they have joined the service. Having accepted so, now the petitioners cannot go back and seek seniority from the year 1992-93.

7.The learned Additional Advocate General has produced G.O.Ms No.1399, dated 01.10.1999, wherein, under Clause 6, it has been clearly stated that these 329 candidates shall be subjected to police verification again. Their seniority will be reckoned by placing them below the 4000 Grade II Police Constables (men) selected during 1997-98 recruitment. The respondents have also circulated a model form of appointment order.

8.The petitioners are seeking to keep the seniority in the 1992-1993 batch. If this plea is accepted, then the petitioners would be granted seniority even before the petitioners joined the service. All the monetary benefits and service benefits would follow from the date of appointment and not prior to the appointment and granting service benefits even without appointed in the service is absolutely illegal and unknown to service jurisprudence. Moreover,



W.P.(MD)Nos.19655 and 19656 of 2017

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9.Taking all these factors into consideration, especially, the sympathetic approach of the Government, this Court is of the considered view that the petitioners cannot claim any seniority from the batch of 1992-93. Now, the Government has relaxed the said condition and has also granted age relaxation and has appointed them in the year 1997-98. Having accepted the appointment order without any protest, now the petitioners cannot come forward with a plea to consider them in the batch of 1992-93. Hence, the writ petitions fail and impugned order is legally sustainable.

10.In the result, these Writ Petitions are dismissed. No costs.

07.07.2022

Index : Yes / No
Internet : Yes / No
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W.P.(MD)Nos.19655 and 19656 of 2017

WEB COPY

To

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Government of Tamilnadu,
Fort St.George, Chennai -09.
- 2.The Director General of Police,
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- 3.The Commandant,
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W.P.(MD)Nos.19655 and 19656 of 2017

S.SRIMATHY,J.

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**Pre-delivery order made in
W.P.(MD)Nos.19655 and
19656 of 2017**

**Dated:
07.07.2022**