



W.P.No.25742 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.25742 of 2010 and
MP.No.1 of 2010

P.Pon Pandian

... Petitioner

Vs.

1.The Secretary to Government,
Home (Police IV) Department,
Fort St.George,
Chennai 600 009

2.The Director General of Police/Chairman,
Tamilnadu Uniformed Services
Recruitment Board,
Anna Salai, Chennai 600 002

3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the second respondent to add adequate marks to the petitioner making him eligible for recruitment to the Post of Sub Inspector of Police in Uniformed Services under 2nd respondent for 2006.

For Petitioner : M/s.V.V.Sathya



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For Respondents

For R1 & 3 : Mr.M.Muthusamy,
Government Advocate

For R2 : Ms.J.Sudeksha
for
Mr.Sowri Dattan,
Standing Counsel

ORDER

This writ petition has been filed for direction to the second respondent to add adequate marks to the petitioner making him eligible for the recruitment to the post of Sub Inspector of Police in Uniformed Services.

2. The petitioner is now working as Grade I Constable. As per the notification issued by the Tamil Nadu Uniformed Service Recruitment Board, invited applications for recruitment to the post of Sub Inspector of police. The petitioner applied for and had written examination. After examination, he was called for interview. He ultimately scored 71 marks in total. The petitioner being Most Backward Class community, the cutoff mark for selection was 73 and as such shortage of 2 marks.

3. The learned counsel for the petitioner contended that the



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petitioner was allotted only one mark in the viva, that too 0.25 for the certificate produced by him and 0.5 marks awarded in the interview.

4. On perusal of records, the exam was conducted in the year 2007 and interview was also over in the year 2007. The entire selection process was over in the year 2007 itself. After period of 3 years, the petitioner filed this writ petition. Therefore, the petitioner failed to file this writ petition immediately after publication of results. He had been watching the proceedings in a batch of writ petitions filed by the candidates challenging the wrong answer given in the answer key. Those writ petitions ended in favour of the writ petitioners and subsequently it was set aside in the writ appeal. Therefore, the action of the petitioner is definitely treated as fence sitter as per the decision of the Hon'ble Delhi High Court in the case of ***Union of India Vs. Sandeep Kumar*** dated 01.09.2017, wherein it is held as follows:

45. Recently, the Supreme Court in State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347 had examined this issue on the question of judgments in service law which lay down a



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principle and, therefore, are treated as judgments in rem in the second sense. Several decisions on both sides were referred to and the following legal principles were set out:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

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. Not 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 situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays



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as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

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 persons, 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](#) [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that



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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."

5. Therefore, delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied 'equal treatment'. Therefore, the direction sought for in this writ petition cannot be considered. As such, this writ petition is devoid of merits.

6. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

29.08.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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4. The Government Advocate,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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