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WA No.1358 of 2022 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 1358, 1359 & 1361 of 2022
and 614 to 616 of 2023

and

C.M.P. Nos. 8700,8702, 8669 & 8691 of 2022
6034, 6036, 6037, 6038 & 6039 of 2023

W.A.Nos.1358, 1359 and 1361 of 2022

The Member Secretary
Tamil Nadu Uniformed Services Recruitment Board
(TNUSRB)
Old Commissioner of Police Office Campus
Pantheon Road, Egmore
Chennai – 600 008

.. Appellant

Versus

1.A.Pavunkumar
2.P.Chandrasekar
3.P.Manojkumar
4.P.Ananthan

5.The Director General of Police
Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai – 600 004

.. Respondents



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W.A.Nos.614 to 616 of 2023

The Chairman,
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Office Campus
Egmore, Chennai 600 008.

.. Appellant in
all the writ appeals

Versus

1.B.Akkim

...1st Respondent in
WA.No.614/2023

S.M.Prabhu

...1st Respondent in
WA.No.615/2023

S.Athiyaman

...1st Respondent in
WA.No.616/2023

2.The State of Tamil Nadu,
rep. by its Principal Secretary to Government
Home Department
Fort St. George, Secretariat,
Chennai 600 009.

3.The Director General of Police,
O/o.The Director General of Police,
Mylapore, Chennai 600 004.

... 2nd and 3rd
Respondents

W.A.Nos.1358, 1359 and 1361 of 2022: Writ Appeal filed under Clause 15 of the Letters Patent against the common order dated 07.01.2022 passed by the learned Judge in W.P. Nos.9834 of 2020, 10467 of 2021 and 14538 of 2020 respectively.

W.A.Nos.614 to 616 of 2023: Writ Appeal filed under Clause 15 of the Letters Patent against the common order dated 07.01.2022 passed by the learned Judge in W.P. Nos.12833, 12835 and 4852 of 2021, respectively.



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For Appellant : Mr. P.Kumaresan, Additional Advocate General
Assisted by Mr.J.Lenin

For Respondents : Mr.G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan for R1 to R4
in W.A.Nos.1358, 1359 & 1361 of 2022

Mr.R.Singaravelan, Senior Advocate
for Mr.Sarath Chandran (R1)
in W.A.Nos.614 to 616 of 2023

COMMON JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

The appellant in all these appeals, is the Tamil Nadu Uniformed Services Recruitment Board, Chennai. They have come up with these two sets of writ appeals against the identical orders dated 07.01.2022 passed by the learned Judge in the writ petitions filed by the respondents 1 to 4 in WA Nos.1358, 1359 and 1361 of 2022 and the first respondent in WA Nos.614 to 616 of 2023.

WRIT PROCEEDINGS

2. The respondents / writ petitioners preferred the writ petitions viz., WP Nos.9834/2020, 10467 of 2021, 14538 of 2020, 12833 of 2021, 12835 of 2021 and 4852 of 2021, stating that they were entitled to be called for next stage of selection to the post of Sub-Inspector of Police pursuant to

Recruitment Notification No.2/TNUSRB/2019 dated 08.03.2019 by



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application of the Tamil Nadu Appointment on preferential basis in the services under the State of Persons Studied in Tamil Medium Act, 2010 (“the PSTM Act”, in short).

3. The respondents 1 to 4 in the first set of writ appeals, namely A.Pavunkumar, P.Chandrasekar, P.Manojkumar, and P.Ananthan jointly filed the writ petitions in W.P.Nos.9834 of 2020, 10467 of 2021 and 14538 of 2020 on the ground that the appellant Board has not adhered to Clause 15(vi) of the Recruitment Notification issued in the year 2019, which stipulates the stages of examination for open candidates.

4. The first respondent(s) in WA Nos.614 and 615 of 2023 viz., B.Akkim and S.Prabhu had earlier filed writ petitions in W.P.Nos.7643 and 7620 of 2021 respectively, seeking a direction to the concerned officials to treat their candidature under the PSTM Act by considering their representations dated 16.03.2021 and 10.03.2021. By separate orders dated 24.03.2021 and 25.03.2021, the learned Judge disposed of the said writ petitions, by directing the authorities to consider their representations, after affording an opportunity of personal hearing and written submission of the writ petitioners. Pursuant to the same, the authorities rejected the claim of the writ petitioners, by separate orders dated 31.05.2021, which were challenged in W.P.Nos.12833 and 12835 of 2021.



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5. As far as the first respondent in WA.No.616 of 2023 by name S.Athiyaman is concerned, he filed W.P.No.4852 of 2021, in which, an interim order was granted on 12.05.2021, by directing the Board to reserve one post vacant, and if at all he is not eligible, the same may be directed to be vacated. Despite the said order, he was not called for the interview.

6. Further, the respondents / writ petitioners filed the aforesaid writ petitions based on the order dated 10.02.2021 passed by a Division Bench of this court in W.P.(MD).Nos.19112, 19121, 19123 and 18668 of 2020 filed by the similarly placed candidates viz., one M.Vigneshwaran and others against the State of Tamil Nadu, rep. by its Principal Secretary, Home Department, Chennai and others, challenging the very same notification dated 08.03.2019 issued by the appellant Board. In the said order, it was categorically held that the manner in which the PSTM reservation was applied by the appellant Board was against the provisions of the PSTM Act and holding so, the petitioners therein were permitted to participate in the next stage of recruitment process.

ORDERS PASSED IN THE WRIT PETITIONS

7. Upon hearing the counsel for both sides, the learned Judge allowed the writ petitions by two separate orders dated 07.01.2022, the relevant portions of which, are extracted below for ready reference:



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WP.Nos.12833, 12835 & 4852 of 2021

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“107. I am therefore inclined to quash the impugned orders dated 31.05.2021 in W.P.Nos.12833 and 12835 of 2021 and remit the case back to the second respondent allow the petitioners to be appeared for next round of selection. If they are found qualified, the respondents shall create supernumerary post and absorb them. This exercise shall be completed within a period 45 days from the date of receipt of a copy of this this Order.

108. As far as W.P.No.4852 of 2021 is concerned, it is not clear whether such exercise was carried pursuant to interim order of this Court. After comparing the total score of each of the candidates against the respective category provisional selection shall be made by applying the method in para 59 of the Saurav Yadav and Ors vs. State of Uttar Pradesh & Others (2021) 4 SCC 542.

109. In case, these petitioners are found eligible to be selected under the PSTM Quota under PSTM Act, 2010, the respondents shall create supernumerary posts on accommodate of these petitioners also and absorb them into regular services without disturbing appointments already made.

110. The respondents shall complete the exercise within a period of 45 days from the date of receipt of a copy of this order.”

W.P.Nos.10467 of 2021 and 14538 & 9834 of 2020

“18. The respondents are bound to follow the procedure and cannot unfairly exclude the petitioners contrary to the requirements of the above Recruitment Notification.

19. Therefore, I am inclined to allow these Writ Petitions by directing the respondents to permit the petitioners to participate in the next round of selection and thereafter apply the test procedure prescribed / recognized in Saurav Yadv case referred to supra. This exercise shall be carried out by the respondents within a period of four (4) weeks from the date of receipt of a copy of this order along with the petitioners in W.P.Nos.12833, 12835 & 4852 of 2021.

20. If the petitioners are entitled to be selected, following the procedure in Clause 15(vi) of the Recruitment Notification and test in Saurav Yadv case referred to supra the respondents shall absorb these petitioners into service by creating supernumerary posts and regularize their appointment. Entire exercise shall be carried out by the respondents within one eighty (180) days from the date of receipt of a copy of this order.



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21. These Writ Petitions are allowed. No cost. Consequently, connected Miscellaneous Petitions are closed."

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8. The aforesaid orders dated 07.01.2022, are challenged in the present writ appeals, at the instance of the appellant Board.

9. The learned Additional Advocate General appearing for the appellant Board submitted that the benefits of the order dated 10.02.2021 passed in W.P.(MD).No.19112 of 2020 etc. batch were extended only to the petitioners therein and not to any other candidates. The appellant Board has also complied with the said order and undertook the exercise of allowing the petitioners therein alone, as the recruitment process was still going on, while the said relief to others was denied. Adding further, the learned Additional Advocate General submitted that the appellant Board during the hearing of the said writ petitions, committed to implement 20% reservation to PSTM candidates in future recruitment at every stage and accordingly, they issued subsequent Notification bearing No.1 of 2022 mentioning that PSTM preference is available at every stage of selection.

9.1. The learned Additional Advocate General also submitted that the writ petitions in W.P.(MD).Nos.3307 of 2021, 6093 of 2020 and 6014 of 2021 challenging the very same notification dated 08.03.2019, were dismissed, vide



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orders dated 19.02.2021, 03.03.2021 and 17.03.2021 respectively, by observing that the petitioners therein may not be in a position to claim the benefits as granted in the order dated 10.02.2021 passed in WP(MD)No.19112 of 2020 etc. batch, since the said order restricts the relief only to the petitioners therein.

9.2. It is further submitted that following the order dated 10.02.2021 passed in WP (MD) No.19112 of 2020 etc, batch, WA (MD) No.457 of 2021 filed by similarly placed candidate by name Pravin Kumar, came to be allowed *vide* judgment dated 27.07.2021, against which, the appellant Board preferred an appeal in SLP (Civil) No.21029/2021 before the Hon'ble Supreme Court.

9.3. The learned Additional Advocate General appearing for the appellant also submitted that the appellant Board has completed the entire recruitment process and published the provisional selection list on 15.04.2021 for the notified vacancies and that, the training for the selected candidates has also started on 01.09.2021. Therefore, allowing the respondent candidates to undergo further selection process, would not only lead to endless litigation, but also open a floodgate to the similarly disqualified candidates to approach this Court for the similar relief, which would in turn, affect the selected candidates at large.



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9.4. The learned Additional Advocate General appearing for the appellant further submitted that the respondents / writ petitioners had approached this Court belatedly and were fence sitters. They having allowed the issue to get lapsed due to efflux of time and in view of the completion of the recruitment process, the relief cannot be granted to them. Without considering all these aspects, the learned Judge erred in allowing the writ petitions filed by the respondents / writ petitioners. Therefore, the learned Additional Advocate General prayed this Court to allow these writ appeals by setting aside the orders passed by the learned Judge.

10. The learned senior counsel appearing for the respondents / writ petitioners at the outset, jointly, submitted that the impugned orders do not require any interference by this Court as the learned Judge, after proper consideration of the facts and circumstances, had allowed the writ petitions. They further reiterated that the balance of convenience lies in favour of the respondent candidates and hence, these writ appeals preferred by the appellant Board will have to be dismissed.

10.1. It is further submitted on the side of the respondents / writ petitioners that if the preferential reservation was applied at each stage of



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selection, the writ petitioners would have been called for next stage of selection to the post of Sub-Inspector of Police, but they have been denied such opportunity. In this regard, the learned senior counsel appearing for the respondent candidates in WA.Nos.614 to 616 of 2023 referred to the observation made by the learned Judge in the impugned orders that if the procedure adopted by the Hon'ble Supreme Court in *Saurav Yadav and Others Vs. State of Uttar Pradesh and Others [(2021) 4 SCC 542]* was followed, the respondents / writ petitioners may have stood a chance for being appointed on preferential basis and that, the cumulative marks obtained upto the final stage of test is relevant for provisionally short-listing and selecting the candidates under 20% preferential quota under the PSTM Act.

10.2. It is also submitted on the side of the respondents / writ petitioners, separate cut-off marks will have to be prescribed for the persons, who studied in Tamil Medium at each stage of selection, which was not done by the appellant Board. Taking note of the same, the learned Judge observed that the respondents / writ petitioners cannot be found fault with that and the appellant Board as a recruiting body, is required to follow the law as laid down by the Court.



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WEB COPY 10.3. The learned Senior Counsel for the respondents / writ petitioners in WA.Nos.1358, 1359 and 1361 of 2022 submitted that though this Court in W.P.(MD).No.19112 of 2020 etc., batch has found fault with the method adopted by the appellant Board while applying the provisions of the PSTM Act, yet, it has given protection only to few persons, who had filed the said writ petitions. Such course adopted is not a correct position of law in the light of the decision of the Hon'ble Supreme Court in *State of Karnataka and others v. C. Lalitha [(2006) 2 SCC 747]*, wherein it was pointed out that all similarly situated persons should be treated similarly irrespective of the fact that only one person who had approached the Court. It is also submitted that the order passed in W.P.(MD).No.19112 of 2020 etc., batch dated 10.02.2021, was also followed by another Division Bench in W.A.(MD).No.457 of 2021 *vide* judgment dated 27.07.2021.

With these submissions, the learned senior counsel prayed for dismissal of these appeals filed by the appellant Board.

11. Heard the learned senior counsel on either side and perused the materials available on record, carefully and meticulously.



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12. Before the writ court, the respondents / writ petitioners sought a direction to the appellant Board to permit them to participate in the next stage of recruitment process to the post of Sub Inspector of Police, by applying 20% reservation at each stage under PSTM category. They claimed such relief, on the strength of the order dated 10.02.2021 passed by this court in W.P.(MD).No.19112 of 2020 etc. batch, the relevant passage of which, reads as follows:

“9. As rightly submitted by the learned Senior Counsel appearing for the petitioners, unfortunately, the object and rationale behind the enactment has not been brought to the notice of the Court. The enactment, in its specified terms, justifies the classification sought to be made. This is, by taking note of the inequality, which is inherent in treating a candidate coming within the same communal roster having studied in English medium and Tamil medium. Therefore, there is no violation to Article 16 of the Constitution of India, nor the reservation policy of the State qua vertical reservation. Thus, we are inclined to hold that the Act by itself clearly thinks of a valid reservation, despite being a horizontal one.

10. Section 2 of the Act defines a preferential vacancy. These vacancies would only mean such vacancies available for Persons Studied in Tamil Medium. Therefore, these vacancies ought to be filled up through Direct Recruitment only with the Persons Studied in Tamil Medium alone. The mere fact that such persons are entitled to compete for the vacancies other than the preferential vacancies would not make them to the extent of considering them along with the others, for the vacancies specifically earmarked for them. As per Section 6 of the Act, the others are entitled for such vacancies earmarked for the PSTM candidates only when they are unfilled. Therefore, Sections 2, 3(1), 5 & 6 of the Act are to be read in consonance. In this connection, we may note that Section 5 of the Act clearly states that reservation has to be made as per the law in force.

11. As stated, these provisions are not only in consonance with each other, but with respect to the roster point fixed. The State of Tamil Nadu has got its own unique roster point system. This is with respect to both horizontal and vertical reservation. In every reserved category coming under vertical reservation, there is a horizontal reservation such as Widow, Disabled and PSTM. These are all the disadvantaged class of persons forming a distinct



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category among the vertically reserved categories. The roster point has been fixed in the vertical category to be filled with such horizontal category candidates. As stated, this aspect has not been brought to the notice of the Hon'ble Division Bench in the earlier cases. Even otherwise, the law laid down by the Division Bench, though relied upon by the respondents, is not even being followed.

12. In fact, the respondents are actually following the rule of reservation, but at the final stage. In other words, there is no question of two identical persons being considered and the one with PSTM being preferred among the vertically reserved candidates. That has never been done even in this case. Now what the respondents are doing is that, they take the finally selected candidates in each category and then trying to fix 20% for PSTM. Therefore, even the respondents have understood the object of the Act, but the mistake lies in its implementation. If 20% of the vacancies will have to be filled up, as per the roster point and in accordance with law, the starting point would be at the initial selection, namely, the written examination. When once the Act itself says that these persons cannot be treated on par and categorized along with the other candidates, who can be considered as per the vertical reservation, this approach of the respondents is obviously against the very Act itself.

13. The aforesaid observation, we give, as in future, no such anomalies should occur and as rightly being followed by the other instrumentalities of the State, namely, Tamil Nadu Public Service Commission and Teachers Recruitment Board, and in view of the fair submissions made by the learned Advocate General and the learned Additional Advocate General.

14. The incidental question is with respect to the relief to be given. We are in respect and agreement with the learned Senior Counsel appearing for the petitioners that there is no question of estoppel, as there is a fundamental error in following the law and therefore, a mere notification cannot be put against the Act. However, we are not dealing with a public interest litigation. Now, much water has flown under the bridge. We are at the final stage of viva-voce, which is actually going on. Therefore, the relief cannot be extended to all others. The learned Advocate General and the learned Additional Advocate General fairly submitted that the petitioners' case can be considered, provided they come within the cutoff marks, if they are treated as a separate category at every stage by following 20% reservation of PSTM category. Therefore, they may not be treated on par with the other candidates, who would otherwise come under the reserved category or open category, as the case may be.

15. In view of the above, the respondents are directed to undertake such exercise, insofar as the petitioners before us alone are concerned and if they are otherwise eligible, by following the roster point for PSTM category



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within the other general category or reserved category, as the case maybe, they should be considered for the next stage of the recruitment process. After undertaking the said exercise, if the petitioners are entitled to, they should be given the appointments accordingly.

16. The writ petitions are allowed in the above terms. We place on record our appreciation for the fair submission made by the learned Counsel before us. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

After detailed analysis of the PSTM Act and the case of the respondent candidates and also following the decisions of the Hon'ble Supreme Court, the learned Judge allowed all the writ petitions and directed the appellant Board to allow the respondents / writ petitioners to participate in the next round of selection and create supernumerary posts to accommodate the respondents / writ petitioners, if they are found eligible to be selected under the PSTM quota under the PSTM Act and also absorb them into regular services without disturbing appointments already made, by the orders impugned herein. Therefore, the appellant Board is before this court with the present appeals.

13. The main contentions of the learned Additional Advocate General appearing for the appellant Board, assailing the orders passed by the writ court, are as follows:

(i)The benefits of the order dated 10.02.2021 passed in W.P.(MD).No.19112 of 2020 etc. batch were extended only to the petitioners therein and hence, the same cannot be applicable to any other similarly placed candidates.

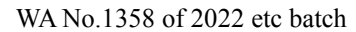


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(ii)The appellant Board had completed the entire recruitment process to the post of Sub Inspector of Police, pursuant to the notification dated 08.03.2019 and published the provisional selection list on 15.04.2021 for the notified vacancies and that, the training for the selected candidates had started from 01.09.2021. Therefore, the relief sought by the respondents / writ petitioners cannot be feasible for consideration. It is also submitted that the respondent candidates were fence-sitters and they approached the court belatedly.

(iii)The cases filed by similarly placed persons on the basis of the order dated 10.02.2021 made in WP (MD) No.19112 of 2020 etc, batch, were dismissed by this court, on the ground that the benefit granted in the said order was restricted to the petitioners therein. The judgment dated 27.07.2021 passed in W.A.(MD).No.457 of 2021 allowing the claim of the writ petitioner therein, following the order dated 10.02.2021 passed in W.P.(MD)No.19112 of 2020 etc. batch, was challenged by the appellant Board, by filing SLP (Civil) No.21029/2021 before the Hon'ble Supreme Court.

14. On the other hand, the learned senior counsel appearing for the respondents / writ petitioners submitted that the respondents / writ petitioners were not awarded separate cut off marks as per the roster points fixed for



15. Admittedly, the order dated 10.02.2021 passed in WP (MD) No.19112 of 2020 etc. batch, was not challenged and the direction issued therein was also complied with by the appellant Board. That apart, having pointed out that the PSTM Act was enacted with twin object of promoting Tamil language and to give priority in employment on preferential basis to PSTM candidates, the ruling laid down in the said order that the starting point for applying the PSTM reservation would be at the initial selection and not at the final stage, was accepted by the appellant Board and an undertaking was also given by them at the time of disposal of the writ petitions that they would implement 20% reservation for PSTM category at every stage in future recruitment and accordingly, they issued the subsequent notification no.1/2022 stating that PSTM preference is available at every stage of selection. It is also crystal clear from the said order that the appellant Board did not follow proper selection process to the post of Sub Inspector of Police, pursuant to the notification issued on 08.03.2019.



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16. Undoubtedly, the respondents / writ petitioners are similarly placed persons as that of the petitioners in WP (MD) No.19112 of 2020 etc, batch. It is true that the benefits of the order dated 10.02.2021 passed in W.P.(MD).No.19112 of 2020 etc. batch were extended only to the petitioners therein and not to any other candidates. In the present case, the writ petitioners / respondents herein approached the court before filing of the writ petition in WP (MD) No.19112 of 2020 etc. batch., and they also obtained an interim order to keep one post vacant in the writ petitions and thus, there was no delay or laches on their part in seeking such relief. In such circumstances, the restriction made in the order passed in WP(MD)No.19112 of 2020 etc. cannot be applicable to the respondents / writ petitioners, as it was held by the Supreme Court in *State of Karnataka and others v. C. Lalitha, (cited supra)*, that all similarly situated persons should be treated similarly, irrespective of the fact that only one person had approached the Court.

17. With respect to the contention that the appellant Board had completed the entire recruitment process and had published the provisional selection list on 15.04.2021 for the notified vacancies and hence, the claim of the respondents / writ petitioners is not feasible for consideration, the same cannot be countenanced by this Court, as it is an admitted fact that the



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appellant Board did not conduct the selection process in proper mode as per law and that, there was no delay or laches on the part of the respondents / writ petitioners in approaching this court. When the respondents / writ petitioners have obtained qualifying marks on merit to be included in the list of selected candidates for participating in the next stage, they have been deprived of such opportunity, in view of the improper method of selection adopted by the appellant Board. Consequently, they would have to undergo another selection process afresh right from the beginning. Due to no fault on part of the respondents / writ petitioners, they cannot be made to suffer. Therefore, this court is of the opinion that the learned Judge is justified in directing the appellant Board to permit the respondents / writ petitioners to participate in the next selection process and thereafter, create supernumerary posts by following due procedure, for the purpose of accommodating the respondents / writ petitioners, if they are found eligible to be selected under the PSTM quota and also absorb them into regular services without disturbing the appointments already made.

18. It is also to be pointed out that SLP (Civil) No.21029/2021 filed by the appellant Board before the Hon'ble Supreme Court against the judgment dated 27.07.2021 passed in W.A.(MD)No.457 of 2021, came to be dismissed, by order dated 26.07.2022, with the following observation:



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“No doubt that there is substance in the submission made by Mr.Hegde, learned senior counsel that when another Division Bench vide order dated 10.02.2021 had made observations that the relief granted therein is restricted only to the petitioners therein, the same observation should have been given due consideration by another Division Bench.

However, we find that the Division Bench vide order dated 27.07.2021 had considered all the aspects and found that even if the petitioners in the said petition was granted the relief being sought, there would be no disturbance in the selection process and even otherwise, the respondent-writ petitioner was found to be meritorious.

As such in the peculiar facts and circumstances of the case, we do not find that this is a fit case to invoke our jurisdiction under Article 136 of the Constitution of India.”

Further, the cases filed by similarly placed persons referring to the order dated 10.02.2021 passed in WP (MD) No.19112 of 2020 etc, batch, were dismissed, only on the ground that the selection process was completed by the appellant Board, which is not accepted by this court for the reasons stated in the earlier paragraph of this judgment.

19. In view of the foregoing discussions, we do not find any reason to interfere with the orders passed by the learned Judge in the writ petitions. Accordingly, the writ appeals fail and are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) (M.S.Q., J.)
12.09.2023

Index : Yes / No
Internet : Yes / No



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WA No.1358 of 2022 etc batch

R.MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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To

- 1.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Office Campus
Egmore, Chennai 600 008.
- 2.The Principal Secretary to Government
Home Department
Fort St. George, Secretariat,
Chennai 600 009.
- 3.The Director General of Police,
O/o.The Director General of Police,
Mylapore, Chennai 600 004.

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