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W.P.Nos.1103 and 1889 of 2022
& 2609 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 13.06.2024

ORDERS PRONOUNCED ON : 25.06.2024

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.1103 and 1889 of 2022 & 2609 of 2024

W.P.No.1130 of 2022:

N.Senthilkumar

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government
Home (Pol.III) Department
The Secretariat, Chennai – 600 009.

2.The Chairman – cum – Director General of Police
Tamilnadu Uniformed Services
Recruitment Board, Egmore, Chennai – 600 008.

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

... Respondents

W.P.No.1889 of 2022:

1.B.Sastha Indhusekaran
2.G.Sankaranarayanan

... Petitioners

Vs.



W.P.Nos.1103 and 1889 of 2022
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1.The State of Tamilnadu
Rep.by its Secretary to Government
Home (Police) Department
Secretariat, Chennai.

2.Tamilnadu Uniformed Services Recruitment Board
Rep.by its Chairman-cum-Director General of Police
Old Commissioner Office
Egmore, Chennai – 600 008.

3.The Director General of Police (L& O)
O/o. Director General of Police
Dr.Radhakrishnan Road, Chennai – 4.

... Respondents

W.P.No.2609 of 2024:

1.M.Arumugam
2.K.Prabhakaran

... Petitioners

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government
Home (Pol.III) Department
The Secretariat, Chennai – 600 009.

2.The Chairman – cum – Director General of Police
Tamilnadu Uniformed Services
Recruitment Board, Egmore, Chennai – 600 008.

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

... Respondents



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PRAYER in W.P.No.1103 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 2 and 3 to award 1 mark to the petitioner for each of the question Nos. 11, 38 and 44 asked in the S.I. Selection for the Recruitment year 2006 as granted by the Division Bench of the Honorable Court in W.A. No. 2771 of 2019 dated 16.04.2021 besides fixing appropriate seniority of the petitioner in the said post without back wages.

PRAYER in W.P.No.1889 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records and quashing the impugned order dated 22.05.2021 passed by the 3rd respondent vide Rc.No. 678569/ Rect.2(1) /2020 rejecting the representation of the petitioners dated 14.12.2020 and 15.12.2020 respectively as against the award of 3 marks required for question Nos. 11, 38 and 44 asked in the 2006 recruitment year for the post of Sub-Inspector of Police and consequently direct the respondents to appoint the petitioners as Sub-Inspectors of Police in Category -I/ Local Police for the recruitment year 2006 with effect from 18.01.2008 by granting them 3 marks for the said questions as observed in W.A. No. 2771 of 2019 dated 16.04.2021 in addition to keeping their cut-off marks as 74 and 73 respectively besides granting them inter-seniority based on the marks secured by them at Police Training College without any back wages on a par with their batchmates within time frame.



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PRAYER in W.P.No.2609 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second and third respondents to award 1 mark to the petitioners for each of the question Nos.11, 38 and 44 asked in the S.I. Selection for the Recruitment Year 2006 as granted by the Division Bench of this Court in W.A.No.2771 of 2019 dated 16.04.2021 and as confirmed by the Supreme Court vide S.L.P.No.15062 of 2021 besides fixing appropriate seniority of the petitioners in the said post without back wages.

In W.P.Nos.1103 and 1889 of 2022:-

For the petitioners : Mr.Ravi Anantha Padmanaban
Senior Counsel
for Ms.P.Rajalakshmi

In W.P.No.2609 of 2024:-

For the petitioners : Mr.B.Thirumalai

In all the W.P's:-

For the respondents : Mr.C.Jayaprakash
Government Advocate
for RR1 & 3
Mr.P.Kumaresan
Addl. Advocate General
Assisted by
Mr.D.Swami Dattan
Standing Counsel for R2

COMMON ORDER



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These three Writ Petitions relate to the challenge to the selection to the post of Sub-Inspector of Police for the recruitment year 2006 and as such are taken up and disposed of by a common Judgment.

The Prelude:-

2. The brief facts leading to the filing of these Writ Petitions are that the petitioners are all in-service candidates who applied for selection to the post of Sub-Inspector of Police in the year 2006. The following tabular column will depict the personal details of the Writ Petitioners:-

<i>Sl. No.</i>	<i>W.P.No.</i>	<i>Name of the petitioner</i>	<i>Date of joining into service</i>	<i>Initial appointment to the post of</i>
1	1103 of 2022	N.Senthilkumar	01.12.2003	Grade II Police Constable
2	1889 of 2022	B.Sastha Indhusekaran	01.02.2011	Sub Inspector of Police
3	1889 of 2022	G.Sankaranarayana n	01.02.2011	Sub Inspector of Police
4	2609 of 2024	M.Arumugam	05.01.2006	Grade II Police Constable
5	2609 of 2024	K.Prabhakaran	05.01.2006	Grade II Police Constable



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2.1. Out of the above five Writ Petitioners, *Mr B.Sastha Indhusekaran*, belongs to General Category; *Mr M.Arumugam* and *Mr Sankaranarayan* belong to Backward Class Category; *Mr Senthilkumar*, belong to the Backward Class Category; *Mr K.Prabhakaran*, belongs to Most Backward Class Category. According to the Writ Petitioners, the selection to the post of Sub-Inspector of Police in 2006 suffered very serious irregularities.

2.2. Firstly, the learned Single Judge of this Court in a Batch of Writ Petitions in W.P.Nos.4509 of 2019 etc., dated 04.11.2009 found that the key answers to certain questions were wrong and directed that the respondents therein to grant three marks to all the participants and re-draw the select list. When the matter was taken up by the respondents by way of Writ Appeal in W.A.Nos.1719 of 2010 etc., by a common Judgment dated 23.10.2010, while the Division Bench confirmed the findings of the learned Single Judge that the questions were erroneous and the marks have to be given, it however, restricted the relief by making a dichotomy between candidates who approached the Court earlier and the candidates who approached subsequently. The Division Bench directed that the order of the



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learned Single Judge be implemented only in respect of the candidates who approached the Court at the first instance, i.e., in the year 2007 and as far as the candidates who subsequently filed Writ Petitions in the year 2019 and 2010, etc., it had held that they were fence-sitters, watching the outcome of the case and denied the relief to them. The said order of the Division Bench was also confirmed by the Hon'ble Supreme Court of India by a Judgment dated 19.01.2015 in S.L.P.Nos.36358 of 2011, etc.,.

2.3. However, subsequent disputes arose in the matter of seniority between the selected candidates and when the matter came up for consideration, yet another Division Bench of this Court in W.A.No.2771 of 2019 considered the issue in detail and the Division Bench once again came to the conclusion with reference to the self-same recruitment stating that once the mistake is found, the Department itself ought to have rectified the error in respect of every candidate. The earlier Division Bench order was brought to the notice of the later Division Bench and the later Division Bench specifically considered the same and passed the order on 16.04.2021. The said Judgment was also carried up to the Hon'ble Supreme Court of India by way of



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23.01.2024.

2.4. Thus, it can be seen that the cause of action for these petitioners arose only upon the pronouncement of the subsequent Division Bench and therefore, the Writ Petitions were filed in the year 2022 and 2024. The delay is only on account of protracted litigation. As far as the merits are concerned, the grievance of the petitioners is that the selection is erroneously made, if one mark is to *Mr Sastha Indhusekaran*, the general category candidate, his mark is 75 and therefore, he comes within the zone of consideration since the cut off in respect of general category is 74 marks.

2.5. Similarly, as far as the Backward Class candidates are concerned, the final cut-off mark is 73.5. The petitioners, *Mr.Prabakaran* and *Senthilkumar* had secured 72 marks, while *Sankaranarayanan* secured 73 marks. If the marks as directed by the Division Bench are given, all these three Writ Petitioners will be within the cut-off marks. Likewise, in the case of the Most Backward Class candidate, *Sankaranarayanan* , if three marks are



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given, he also comes within the cut off mark.

2.6. This apart, one *Ponpandiyan* who was supposed to be shown under General Category has been awarded marks under the Sports Quota, under which he never applied and if the said candidate is taken away from the picture, the petitioners who claim the General Category, comes above the cut off mark of 73 has also to be accommodated. Therefore, the Writ Petitions are liable to be allowed.

Case of the Respondents:-

3. The Writ Petitions were resisted by filing a counter affidavit and additional counter affidavits.

3.1. According to the respondents even though the petitioners participated in the selection, they did not come within the zone of consideration and, as such were not appointed. According to the respondents, the following are the cut-off marks in respect of the General Category as well as the Police Ward Categories and within the cut-off marks, the following



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“

<i>Communi ty</i>	<i>Open</i>	<i>Date of Birth</i>	<i>Police Ward</i>	<i>Date of Birth</i>
OC	77.50	28.05.1984	71.00	29.05.1979
BC	74.00	06.05.1986	67.00	10.07.1984
MBC	73.00	16.06.1981	68.00	10.02.1983
SC	72.00	01.05.1979	68.00	17.10.1982
ST	67.50	26.07.1980	--	--

ERRATUM: The cut-off marks BC community in respect of Open candidates (Men) for lastly selected candidate with date of birth as 06.05.1986 is 74 and not 73.5 as published earlier. Hence, the mark of 73.5 is corrected as 74 against BC cut-off marks for Open candidates (Men).”

3.2. Either the candidates were of lower mark or even they had the same mark as the cut off mark, their date of birth was later than the selected candidate and as such they were not selected.

3.3. On a perusal of the counter affidavit as well as the additional counter affidavits, it would be clear that the exercise of granting additional marks was not undertaken in respect of the petitioners, in view of the earlier Division Bench order of the year 2010. It is the case of the respondents that



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since the petitioners did not approach the Court in the year 2006 – 2007, in view of the earlier Division Bench pronouncement, their case cannot be reconsidered or revisited.

The Submissions:-

4. On the above pleadings, this Court heard in detail the submissions of *Mr K.Ravi Anantha Padmanaban*, learned Senior Counsel appearing on behalf of the petitioners in W.P.Nos.1103 and 1889 of 2022; *Mr.B.Thirumalai*, learned counsel appearing on behalf of the petitioners in W.P.No.2609 of 2024; *Mr.C.Jayaprakash*, learned Government Advocate appearing on behalf of the respondents 1 and 3 and *Mr.P.Kumaresan*, learned Additional Advocate General appearing on behalf of the 2nd respondent.

Submissions by the Petitioners:-

5. *Mr.K.Ravi Anantha Padmanaban*, by taking this Court through the later Division Bench Judgment of this Court in W.A.No.2771 of 2019, etc., dated 16.04.2021 to place strong reliance on paragraph No.18 of the said Judgment would contend that if the key answers were found wrong and the



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benefit has to be given, it has to be extended to all the candidates. The Division Bench has specifically held that the respondents themselves ought to have undertaken this task. As a matter of fact, the conflicting views of the earlier Division Bench, as well as the later Division Bench should be considered in view of the intervening Judgment of the Hon'ble Supreme Court of India in *State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.*¹, wherein the Hon'ble Supreme Court of India has held that it would be a normal rule that when a particular set of employees are given the relief by the Court, all other identically situated persons alike must be extended the same benefits. Given the later pronouncement of the Hon'ble Supreme Court of India, a contra view has been taken by the Division Bench that the respondents ought to have revisited the exercise in respect of all the candidates and therefore, this Court should consider the import of the second Judgment in that context and should come to the rescue.

5.1. It is his contention that when the marks as ordered by the

¹ 2015 1 SCC 347,



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Single Judge are given, all the writ petitioners certainly would come within the zone of consideration, the said fact is not denied by the respondents. Even with the existing marks, there is scope for all the writ petitioners to come within the zone of consideration. The learned Senior Counsel would point out to the various information obtained through the Right To Information Act, 2005 (hereinafter referred to as 'the RTI Act') that the action of the respondents borders on fraud in the instant case. Several erroneous information was furnished even in the matters of selection of candidates as well as the serial numbers up to which the waiting list/reserve list was operated. When the counter affidavit erroneously mentioned that the waiting list was operated only in respect of 5 candidates, the information furnished under the RTI Act demonstrates that they have gone up to Sl. No.19 in the waiting list. Thus a false counter affidavit is filed before this Court. Even among the selected candidates in respect of General Category one *Vijayakumar* who did not approach the Court earlier in the year 2007 has wrongly been given an appointment. It is yet another *Vijayakumar*, who approached the Court in the year 2007 and wilfully and fraudulently in order to show undue preference, the said *Vijayakumar* is accommodated. Similarly



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is the case of one *Ponpandiyan* , he did not even apply under the Sports Quota, whereas, he has been given one mark and considered under the said quota. Therefore, the present selection as considered by the earlier Division Bench in the year 2010 is not vitiated by irregularities alone, but of malafide action and grave illegalities.

5.2. Finally, adverting to each of the candidates, *Mr K.Ravi Anantha Padmanaban*, would make the following submissions:-

The cut-off mark for the Backward Class category was finally reduced to 73.50 marks. The petitioners, *Senthil Kumar* and *Prabakaran* both secured 72 marks, while the petitioner - *Sankaranarayanan* secured 73 marks. Admittedly, all the petitioners filed their respective Writ Petitions in the year 2009 itself, which went upto the Hon'ble Supreme Court of India. Until the Division Bench allowed the appeals preferred by the State, the respondents did not disclose or declare their individual marks, cut-off marks and the key answers on the website. However, in the writ proceedings, the respondents admitted that the key answer for the question nos. 11,38 and 44 were wrong.



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5.4. One *Ponpandian* had secured 72 marks under the Most Backward Class category. He applied under open quota only and not under the sports quota. When he filed W.P. No. 9779 of 2007 before this Court, the same was dismissed. The respondents filed the counter affidavit confirming that he was not entitled to any special marks either under NCC or under the NSS. But by an appointment letter dated 01.02.2011, he was awarded 1 mark under the sports quota, under which he never applied at all. Be that as it may, the awarding of 2 marks to the said *Vijayakumar* and 1 mark to *Ponpandian* are on record and the respondents cannot deny it. As stated supra, none of these 5 petitioners have so far been awarded even with one mark. Hence, they are very much entitled to be awarded with three marks for the said questions. Thus, it becomes clear that behind the back, the respondents have committed gross illegality in giving marks to chosen candidates while denying the same benefit to deserving candidates like the petitioners.

5.5. In W.A.No. 2771 of 2019, the Division Bench of this Court



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had held that such marks, especially when it is admitted that the key answers were wrong, shall be given to one and all without any discrimination. As held by the Hon'ble Supreme Court of India in *Arvind Kumar Srivastava's case* (cited supra), when the judgment mandates that the relief should be given to all concerned, then the question of delay takes a back seat and laches will not apply at all. The observation in para 18 of the order in W.A.No. 2771 of 2019 that

"....when three marks are awarded to set of candidates, who have approached this court, then it will have a cyclic and cascading effect that such a benefit has to be extended to one and all..."

would prove the intention behind the said order of the Division Bench of this Court. Hence, it applies to these petitioners also.

5.6. *Mr K. Ravi Anantha Padmanaban*, the learned Senior Counsel would further submit that the respondents deny appointment to the 1st petitioner - *Sastha Indusekaran* on twin grounds. The first reason is that though he secured 74 marks in the Open Category, which is also the cut-off mark for Open Category, yet he could not be appointed as his batchmate,



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older and shown as against the Sl.No. 5 in the wait list. The second reason is that even though persons from the wait list were appointed under this category, they required only 5 candidates with 74 marks. Since the petitioner *Sastha Indusekaran* stands in the 6th position on the wait list, he could not be accommodated. This is precisely the reason for rejecting his candidature.

5.7. He would further submit that both the reasonings are factually wrong and legally not maintainable. As it could be seen the 1st petitioner *Sastha Indusekaran* originally secured 73 marks only. All the candidates were given one mark in addition to what they secured originally, except the 1st petitioner - *Sastha Indusekaran* . Thus, it was assumed that his original score $73 + 1$ additional mark = 74. But since the same mark is secured by a candidate older in age, it is not possible to accommodate him.

5.8. On the contrary, as per the information furnished under the RTI Act, the said *Sastha Indusekaran* originally secured 74 marks. It is also an admitted fact that till today not even 1 mark was given to any of these 5 petitioners. Therefore, if at least 1 mark is given to him, he will secure 75



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marks. In this case, the question of the person in older age securing the same 74 marks does not arise at all. When it is done, he will be within the zone of consideration.

5.9. Secondly, it can be seen that in a disciplined force like the police department, a blatant lie has been uttered in the additional counter affidavit, stating that they were required to recruit only 5 persons from the waitlist. The enclosed list would clinchingly prove that they disqualified 8 Open Category candidates on account of medical unfitness, criminal case pending and so on. Therefore, they have to recruit 8 Open Category candidates and 1 from the Backward Class community from among the waiting list. In reality and while so doing, the respondents somehow omitted the name of the petitioner - *Sastha Indusekaran*, who was placed at SI. No. 6 on the wait list.

5.10. *Mr K. Ravi Anantha Padmanaban*, the learned Senior Counsel would submit that in any event the petitioners are entitled to be



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appointed from the year 2006 itself. The Hon'ble Supreme Court of India in the case of *A. Raghu Vs. Govt. of Andhra Pradesh*² has also held that for seniority, only the date of selection is material and not the date of appointment. For *inter se* seniority, it shall be based on marks secured at Police Training College. By a recent order dated 22.2.2024, the Hon'ble Supreme Court of India had granted notional seniority without backwages from the year 2004 to an unselected constable candidate vide **Civil Appeal No. 5902 of 2012**³. Also, by G.O.No.556 dated 31.12.2020, 20 years after the selection, the Department itself revised the seniority position of 1997-1998 Sub Inspector of Police selectees.

5. In support of his submissions, the learned Senior Counsel would rely upon the following Judgments:-

6.

S. No.	Case Name	Citation	Dated
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2 (2015) 14 SCC 221

3 2024 SCC Online SC 180



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1	P. Thangavel V. The State of Tamilnadu and Ors	W.P.No. 8909 of 2024	04-04-2024
2	The Secretary to Government &Ors V. K. Maheshwari	W.A. No. 1168 of 2012	17-04-2023
3	D. Baskaran &Ors V. The state of Tamilnadu <u>and</u> Ors	W.P.No. 15379 of 2022	21-06-2022
4	The sate of Tamilnadu&Anr V. S. Ponnuthai&Anr. Etc	SLP (Civil) Diary No(s). 26469 of 2020	29-04-2022
5	M. Arumugam &Anr V. The State of Tamilnadu&Ors	W.P.No. 28409 of 2024	21-02-2022
6	S. Suthakar V. Principal secretary to Government &Ors	W.A. No. 2771 of 2019	16-04-2021
7	State of Uttar Pradesh V. Arvind Kumar Srivastava and Ors	(2015) 1 SCC 347	17-10-2014
8	V. Tharani V. The State of Tamil Nadu and Ors	REV. APLW. (MD) No.153 of 2019	19-09-2019
9	The Secretary to Government &Ors V. A. Eswaramoorthy&Ors	W.A. No. 1719 to 1739 and 1602 to 1636 and 1933 to 1953 of 2010	23-12-2010
10	A. Eawaramoorthy&Ors V. The Secretary to Government & Ors	W.P. Nos. 4509, etc., of 2009	04-11-2009
11	Union of India and Ors V. R. Reddappa and Anr	(1993) 4 SCC 269	05-09 -1993



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5.12. Finally adverting the Judgment of this Court in W.P.No.8909 of 2024 dated 04.04.2024, the learned Senior Counsel would submit that when this Court decided the case of ***P.Thangavel*** above, this Court did not specifically consider the issue from the perspective of the Judgment passed by the Supreme Court of India, of the year 2015 having come in between the earlier Division Bench and the second Division Bench and therefore, he would dissuade this Court from following the earlier Judgment dated 04.04.2024 in ***P.Thangavel's case*** (cited supra) and would submit that the cases of the petitioners be considered on their merit position and the relief be granted to them. He would finally conclude by submitting that the petitioners are all in-service candidates, who have been kept in the dark from the year 2006 and they have been running from pillar to post making applications under the RTI Act and making representations etc. While several of the candidates were granted the relief in various contexts by this Court, the writ petitioners alone were denied the relief. He would submit that given the efflux of time, this Court may even consider granting notional relief alone to the petitioners with the monetary benefits being conferred prospectively.



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Submissions of the respondents:-

6. Per contra, *Mr Kumaresan*, the learned AAG would submit that in respect of the very same selection, when the Division Bench has concluded that the revision of the marks in respect of the said erroneous questions have to be restricted only to the candidates who approached this Court at the earliest point of time and the said order being confirmed by the Hon'ble Supreme Court and when the respondents restricted the relief, only in respect of the candidates who approached this Court earliest point of time alone and the relief has been rejected even in respect of the candidates who filed the Writ Petitions in the year 2009 – 2010, the same cannot be now extended to the writ petitioners who have filed the writ petitions only in the year 2022 and 2024. He would submit that even the respondents are not in a position to effectively counter the many submissions made by the learned Senior Counsel by obtaining different information over a while under the RTI Act, because of the huge lapse of time of about 18 years from the date of selection. According to him, the writ petitions of the petitioners are hit by latches and delays. In any event, no relief can be granted to the writ petitioners given the



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pronouncement of the earlier Division Bench in the year 2010. According to the learned Additional Advocate General, the second Division Bench is about the *inter se* seniority of the selected candidates. The ultimate direction of the second Division Bench was only to revise the seniority and nothing else. Therefore, no new right accrues to the petitioners concerning the second Division Bench Judgment and therefore, he would submit that this Court had already decided the issue by considering both the Judgments of the Division Bench, by deciding the W.P.No.8909 of 2024 dated 04.04.2024. There are no different grounds which are raised in the present writ petitions as that of the earlier case of ***P.Thangavel's case*** (cited supra). Therefore, he also would submit that there is no fraud or willful irregularities committed in the matter. He would submit a list of Writ Petitions to justify the inclusion of *Mr.Vijayakumar* by citing the Writ Petition of the year 2007, which is said to be filed by the said candidate. Therefore, according to him, he was not a fence sitter.

6.1. Similarly, he would also submit that as far as the submissions



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relating to *Ponpandiyan* by placing the records, he would submit that the contention of the learned Senior Counsel is factually incorrect. The grievance was raised earlier and a considered order has been passed by the Recruitment Committee headed by the then Director General of Police on 08.09.2010. In the said Committee, it has been found that the said *Ponpandiyan* had produced a Form II certificate issued by the Secretary-General, Tamil Nadu Handball Association, for having participated in the Federation Cup held at *Haldia (West Bengal)*. As far as *A. Vijayakumar* is concerned, he had first filed W.P.No.29272 of 2007 and therefore, he has been entitled to the benefit of the order of the learned Single Judge and his name is included in the list. In any event, the learned Additional Advocate General would contend that in the absence of the challenge to the selection of these persons, the Writ Petitions cannot be entertained now after the huge lapse of time. The petitioners cannot indulge in a fishing expedition perpetually in respect of the selection which happened in the year 2006 and be permitted to raise new grounds.

Consideration of the Court:-

7. I have considered the rival submissions made on either side and



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perused the material records of the case.

7.1. Before advertng to the specific allegations of facts that are raised in the present Writ Petitions, the question to be decided is whether in respect of selections that took place in the year 2006, the Writ Petitions which are filed in the year 2022 and 2024 can be entertained at this stage ?.

7.2. The learned Senior Counsel would submit that after the Division Bench Judgment of the year 2010, the Hon'ble Supreme Court of India laid down the law in *Arvind Kumar Srivastava's case* (cited supra), in the year 2015. Therefore, in view of the subsequent pronouncement of the Hon'ble Supreme Court, when the law has been correctly laid down by the later Division Bench, this Court had not considered the issue in the earlier Judgment made in W.P.No.8909 of 2024 dated 04.04.2024 and would therefore urge upon this Court to reconsider and come to a different conclusion. Therefore, let me consider the issue from that perspective also. The Hon'ble Supreme Court in *Arvind Kumar Srivastava's case* (cited supra) held in paragraph Nos.22 to 22.3 as follows:-



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“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 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 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



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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.”

7.3. Thus, it can be seen that if a Judgment of the Court is a *Judgment in rem*, the principles of delay and laches will not apply, as the respondents themselves have to implement the *Judgment in rem* on their own and therefore, the candidates cannot be non suited on the ground of delay and laches. In the instant case, when the Writ Petitions were allowed by a coordinate bench in the batch of Writ Petitions, certainly it was a *Judgment in rem*, however, the same was modified by the Division Bench as *Judgment in personam*.

7.4. Secondly it can be seen that the principles as laid down by the Hon'ble Supreme Court of India in *Arvind Kumar Srivastava's case* (cited supra) is not a changed view or a new proposition. The Hon'ble Supreme Court of India itself had categorically laid down in paragraphs Nos.22.1, 22.2, and 22.3 the principles that would emerge from the reading of the earlier Judgments. The earlier Judgments referred to by the Hon'ble Supreme Court



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of India were before 2010 also. Therefore, the legal position even before 2010 was that normally the relief of awarding of marks for erroneous questions should be granted in respect of all the candidates and only in exceptional cases on the ground delay and acquiescence the same can be refused. When in the instant case, the Division Bench had considered the delay and acquiescence and termed them as fence-sitters, this Court cannot come to a contra conclusion which would amount to overruling the Division Bench Judgment and therefore, I am unable to persuade myself to accept the contentions of the learned Senior Counsel, in this regard and therefore, there is no necessity to change the view taken in the case of ***P.Thangavel*** (cited supra). When already this Court concluded given the pronouncement in respect of the very same selection to the post of Sub Inspector of Police of the year 2006, the Writ Petitioners cannot be granted the reliefs at this point in time.

7.5. As far as the contentions regarding *Ponpandiyan* are concerned when the grievances have already been raised and a speaking order having been passed by the Recruitment Committee and when his appointment



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remains unchallenged till date, the contentions on behalf of the learned Senior Counsel for the petitioners cannot be gone into at this stage. As far as the question of fraud in the matter of the appointment of *Vijayakumar* is concerned, it is the contention of the learned Senior Counsel for the petitioners that the person who filed the Writ Petition of the year 2007 was some other *Vijayakumar* .

7.6. A perusal of the records of the Court would show that the person who filed the WP in the year 2007 is described as follows:-

“A. Vijayakumar
Grade-II Police Constable 796
Chinna Nagarlur
Sarakkapillaiyur Post
Omalur Taluk
Salem 636 305.

.....
.....

MEMORANDUM OF WRIT PETITION

The petitioner is A. Vijayakumar, son of Angamuthu, Hindu, aged about 32 years, working as Grade-II Police Constable 796, Armed Reserve, Kumarasamy patti, Salem-7 residing at Chinna Nagalur, Sarakkapillaiyur Post, Omalur Taluk, Salem-63.6305.”



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Whereas the person who filed the subsequent W.P.No.10752 of 2009 and the respondent in W.A.No.1625 of 2010 was,

“AVijayakumar
S/o Aathinarayanan
726 Pillayar Kovil street
Keerapalayam
Chidambaram Taluk
Cuddalore District 637017

.....
.....

AFFIDAVIT OF THE PETITIONER

I, A.Vijayakumar S/o Aathinarayanan, Indian, Hindu, aged about 26 years serving as Grade II Police Constable Tamilnadu Special Police IInd Battalion, Avadi and residing at 726, pillayar kovil street, Keerapalayam, Cuddalore District, temporarily come down to Chennai and do hereby solemnly affirm and sincerely state as follows:-”

7.7. Though both the *Vijayakumar* are different persons, in the absence of the said *Vijayakumar* being a party, this Court refrains from giving a final finding in the matter. However, the respondents will look into the matter in accordance with law by affording an opportunity to the said *Vijayakumar*. .

7.8. In respect of the very same selection, after hearing *Mr K.Ravi Anantha Padmanaban*, the learned Senior Counsel, who also appeared in the



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case of ***P.Thangavel*** (cited supra), this Court had already concluded that it has to go by the directions of both the earlier Division Benches. Both the Judgments are not set aside, nor the later Division Bench concluded that the earlier Division Bench was erroneous.

7.9. Upon a reading of both the Division Bench Judgments, it can be clear that the order of the learned Single Judge concluding that the key answers to certain questions were wrong and that the candidates who marked their answers have to be given the marks has been affirmed. While the earlier Division Bench, in the year 2010 held that the entire selection need not be redone and marks can be given in respect of the petitioners who approached this Court in the year 2006 – 2007 alone, while rejecting the relief to all the candidates, including the candidates who filed Writ Petitions belatedly in the year 2009, the Division Bench held that all the other candidates are fence sitters and therefore, the relief need not be extended to them.

7.10. The later Division Bench considered that the issue of *inter se* seniority between the selected candidates. If some of the candidates were



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subsequently selected by adding three marks and if they sought to be placed above in the seniority list, the Division Bench found that the exercise should have been done and three marks should have been granted to all of them and directed the seniority to be re-fixed. Therefore, even though the later Division Bench held that the respondents should have carried out the exercise in respect of all the candidates, it dealt with the *inter se* seniority of all the selected candidates, it did not specifically hold that the earlier Division Bench of the year 2010 to be incorrect or that relief should be granted to all the unsuccessful candidates by redoing the selection. The relevant portion of the Judgment of this Court in W.P.No.8909 of 2024 dated 04.04.2024 in paragraphs Nos.16 to 21 has to be extracted which reads as follows:-

“16. Admittedly, there is no dispute as to the facts that the petitioner participated in the selection of the year 2006 and he scored 71 marks and even if one mark is additionally granted, he would be within the zone of consideration. However, the petitioner did not approach the Court at the earliest point of time and has now approached this Court only in the year 2024 after the dismissal of the Special Leave Petition by the order, dated 23.01.2024. In this regard, the question to be decided is whether the petitioner should be granted the relief or should be denied the relief on the grounds of delay and laches.

17. It can be seen that even though the petitioner has lost the race by one mark, he did not approach the Court in the year 2006. When a batch of Writ Petitions was thereafter



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filed in the year 2009, even then also, the petitioner did not approach the Court. The Division Bench of this Court, while dealing with the self-same selection, in the judgment, dated 23.12.2010, has bifurcated the beneficiaries and has held that the relief granted by the learned Single Judge for the award of marks should be restricted only to those of the petitioners who approached the Court earlier and expressly denied the benefit to the rest of the candidates by holding that they were fence-sitters. An appeal filed by the individuals as against the said judgment was also dismissed.

18. Thereafter, the second round of litigation is only concerning the service candidates for fixing *inter se* seniority. The learned Senior Counsel argues that the said judgment in the second round is a judgment in rem and as such, should be applied in the case of the petitioner also. But, I am afraid that the same cannot.

19. It is essential to extract paragraph Nos.17 and 18 of the said judgment which reads as follows:-

"17. We find that when the appellant/writ petitioner came to know about the mistake which crept in the key answer, he immediately applied for copy of the key answer as early as on 18.02.2009. He has also submitted his representation on 29.01.2010. The said Mr.Alex, one of the successful candidates, has filed Writ Petition stating that he has answered all the answers correctly and it was allowed. The writ appeal filed there~against was dismissed by the Division Bench of this Court. Thereafter, the Government issued G.O. Ms. No.399, Home (Police-3) Department dated 07.06.2012, directing the change of category. On 10.07.2013, the appellant has filed the instant writ petition, which was dismissed by the learned single Judge on 24.10.2018. Just one month prior to the order of dismissal passed by the learned Single Judge, the revised seniority list was published on 18.09.2018 by re-fixing the seniority list of directly recruited Sub~Inspectors of Police



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(Taluk) (Armed Reserve) and (T.S.P.) indicating that the candidates were provisionally appointed till 2014 in compliance with the order passed by this Court. Therefore, it is not as though the appellant has approached this Court after a long time to assert his right. In fact, the appellant has filed the writ petition in the year 2013 itself. In such circumstances, it cannot be said that there is delay or laches on the part of the appellant in asserting his service right. The appellant has, in our opinion, approached this Court at the earliest point of time and he cannot be denied the relief.

18. The mistake has been committed by the Department. They themselves ought to have undertaken the task of awarding 3 marks to all the eligible persons who have written the question correctly, as that of the appellant. They cannot wait for the individual candidate to approach this Court with a Writ Petition and obtain an order thereof. Even in the absence of filing writ petition, when it was the mistake of the department in setting the key answers and it was also admitted by them, the appellant/writ petitioner cannot be individually expected to approach this Court to get an order in his favour. In a case of this nature, the Department ought to have undertaken the task of re-fixing the seniority by themselves without driving the candidate to approach this Court for relief. When three marks are awarded to a set of candidates, who have approached this Court, then it will have a cyclic and cascading effect that such a benefit has to be extended to one and all. When a particular service benefit is given in favour of one of the employees in the Department, such benefit had to be equally extended to all those who are entitled for the same, without any discrimination. The Department cannot expect the individual employee to approach this Court to get an order in his or her favour to get the relief. The Department had shirked its responsibility in doing



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so, which had resulted in multitude of proceedings. In such circumstances, we are inclined to interfere with the impugned order passed by the learned Single Judge and to allow this appeal."

Thus, it can be seen that the directions were given only in respect of the re-fixation of seniority alone.

20. Therefore, even if the said judgment is implemented as such, no benefit would enure to the petitioner. Both the judgments of two Division Benches are binding on this Court and it is a duty cast upon this Court to read the judgments of both Division Benches completely as a whole and decide accordingly.

21. On a reading of both the Division Bench judgments, it would be clear that firstly, it has been held that the marks should be given only in respect of the selected candidates or the candidates who approached this Court at the earliest. Secondly, when the candidates who approached the Court at the earliest point of time were given the marks and were selected, then, obviously, the seniority has to be re-fixed for everyone by awarding marks to all the selected candidates. This would be the correct position of reading the earlier litigations in this case. In view thereof, I hold that by virtue of the judgment of the Division Bench in W.A.Nos.1719 of 2010 etc., I have no other option than to hold the petitioner as a fence sitter and deny him the relief."

In view thereof, this Court has to follow its earlier Judgment on the self-same subject matter and there are no grounds to take a contra view in the present Writ Petitions.

The Result:-



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8. Accordingly, the Writ Petitions are dismissed, subject to the above observations that are made above. No costs. Consequently, the connected miscellaneous petitions are closed.

25.06.2024
(¹/₂)

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Neutral citation : Yes
To

- 1.The Secretary to Government
State of Tamil Nadu
Home (Pol.III) Department
The Secretariat, Chennai – 600 009.
- 2.The Chairman – cum – Director General of Police
Tamilnadu Uniformed Services
Recruitment Board, Egmore, Chennai – 600 008.
- 3.The Director General of Police
Dr.Radhakrishnan Road, Mylapore, Chennai – 600 004.

D.BHARATHA CHAKRAVARTHY, J.,

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Pre-Delivery Order made in
W.P.Nos.1103 and 1889 of 2022
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25.06.2024