



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2024

Pronounced on : 27.09.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.4589 of 2021
and
W.M.P.Nos.5217 and 5220 of 2021

P.Thiruneelakandan

... Petitioner

Vs.

1. The Secretary to Government,
Home (Police III) Department,
Fort St. George, Chennai – 9.

2. The Member Secretary,
T.N Uniformed Services Recruitment Board,
Old Commissioner's Office Building,
Egmore, Chennai – 8.

3. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the claim of the petitioner for the post of Sub - Inspector of police under the PSTM quota and further direct the respondents to call the petitioner for viva-voce examination and select and appointment him as Sub - Inspector of police and grant him all consequential service and monetay benefits.



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For Petitioner : Mr.K.Venkatramani,
Senior Counsel for
Mr.M.Muthappan

For R1 & R3 : Mr.M.Murali,
Government Advocate

For R2 : Mr.P.Kumaresan,
Additional Advocate General
assisted by M/s.Sowmi Dattan

ORDER

The petitioner herein is an Ex-Servicemen, participated in the recruitment process pursuant to the Notification No.2 of 2019 dated 08.03.2019 issued by the Respondent No.2 for filling up of 969 posts of Sub-Inspector of Police (Taluk/ AR) for the year 2019 in the category of Ex-Servicemen as well as against the 20% quota earmarked for PSTM category. Accordingly, the petitioner appeared for the written examination and the results of the written examination were published on 16.03.2020. Though initially, the petitioner was found to be not qualified for further selection process, but by virtue of award of 0.5 marks for Question No.47 by virtue of an order passed by the Madurai Bench of this Court, the petitioner became eligible for physical endurance test and certificate verification and accordingly, thereafter the petitioner secured 9 marks in the physical



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endurance test and in total 57.5 marks. However, the petitioner could not qualify for further selection process, as the cut-off marks fixed for BC category to which the petitioner belongs to is fixed as 64 marks. Thus, the petitioner lost hope of getting selected for the post in question in or around September, 2020. However, it was on 22.02.2021, the petitioner approached this Court by filing the present Writ Petition, questioning the action of the respondents in not applying the PSTM quota at every stage of selection process and applying the PSTM quota only at the final provisional stage by placing reliance on a decision of the learned Division Bench of the Madurai Bench of this Court in W.P (MD) No.19112 of 2020 and batch dated 10.02.2021. Infact, the petitioner claimed to have submitted a representation dated 19.02.2021 to the Respondent No.2 by placing reliance on a decision of this Court by an order dated 10.02.2021 and then approached this Court on the next day i.e., on 20.02.2021.

2. The issue raised in this Writ Petition as to whether the reservation meant for PSTM category is to be applied at every stage of selection or at the final provisional selection stage only, has already been decided by a learned Division Bench of the Madurai Bench of this Court in W.P (MD) No.19112



of 2020 and batch by an order dated 10.02.2021. Hence, the selection process that was undertaken by the Respondent No.2, insofar as applying the reservation earmarked for the PSTM category was already found fault by a learned Division Bench of this Court and therefore, the said issue need not be gone into once again. However, the only question that would arise for consideration in this Writ Petition is as to whether the petitioner, who on coming to know that he was not qualified for further selection process after the physical endurance test and certificate verification stage, kept quiet without raising his little finger, but approached this Court only after an order dated 10.02.2021 was passed by a learned Division Bench granting relief in favour of the petitioners in the said batch of Writ Petitions only, can also be granted the identical relief, as was granted in W.P (MD) No.19112 of 2020 or not?

3. A similar and identical Writ Petition filed by another candidate vide W.P.No.7911 of 2021 has come up for consideration before me and on considering the totality of the facts and circumstances, this Court dismissed the said Writ Petition by an order dated 02.07.2024.



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4. However, when this matter came up for consideration before this Court, Mr.K.Venkatramani, learned Senior Counsel appearing for Mr.Muthappan, learned counsel for the petitioner tried to distinguish the said order dated 02.07.2024 by placing reliance on the decisions rendered by learned Division Benches' of this Court vide W.A (MD) No.457 of 2021 dated 02.07.2021 and W.A (MD) No. 1358 of 3033 and batch dated 12.09.2023 and another decision of a learned Single Judge of this Court in W.P.No.4454 of 2021 dated 10.11.2023.

5. Out of the above said decisions, this Court has already considered the order in W.A (MD) No.457 of 2021 dated 25.07.2021, while dismissing the W.P.No.7911 of 2021. The relevant portion of the said decision in W.P.No.7911 of 2021 reads as under:-

“10. From the above, it is evident that in the facts and circumstances of the said case, the learned Division Bench thought it fit to pass appropriate orders on concluding that the petitioner therein had been vigilant in approaching the Court and also pursued the matter with all seriousness. But, in the instant case when the petitioner was disqualified as early as on 16.03.2020, the petitioner approached this Court after a



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lapse of one year and no interim order was passed reserving any post under PSTM category for him to seek appointment in the event of his success in the Writ Petition.

11. No doubt by an order dated 29.03.2021, this Court made it clear that any appointment made will be subject to the result of the Writ Petition. But, as contended by learned Additional Advocate General, all the posts that were notified under the notification in question were already filled-in long back and none of the persons selected and appointed were impleaded as party respondents to the Writ Petition. Thus, this Court is of the considered view that the petitioner is not vigilant in agitating his rights and is only a fence-sitter and approached this Court only after a learned Division Bench passed orders under the similar circumstances on 10.02.2021. Further, it is also brought to the notice of this Court that after filing this Writ Petition, the petitioner has already got selected to the very same post of 'Sub-Inspector' in the subsequent recruitment and he has been working as such as on date."

In the light of the above, for the very same reason as above, the said decision in W.A (MD) No.457 of 2021 has no application to the case on hand.



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6. Then, coming to the orders passed in W.A.Nos.1358 of 2022 and batch dated 12.09.2023, the learned Division Bench, having taken note of the fact that the order passed in W.P (MD) No.19112 of 2020 and batch dated 10.02.2021, have consciously restricted the relief only in favour of the petitioners before the Court has been pleased to extend the very same relief in favour of the parties before it on the ground that the petitioners approached the Court even before filing of W.P(MD) No.19112 of 2020 and batch and they also obtained appropriate interim orders to keep the posts vacant for them and thus, concluded that there was no delay and laches on the part of the petitioners therein. The relevant paragraph from the said order of the learned Division Bench reads as under:-

“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



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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.”

7. Then, coming to the order dated 10.11.2023 passed in W.P.No.4454 of 2021 by a learned Single Judge of this Court is concerned, the learned Single Judge was considering the relief sought for i.e., for application of the reservation for PSTM category at the stage of viva-voce in terms of G.O (Ms) No.145 dated 30.09.2010 and the same has no application to the facts of case on hand. The petitioner herein, on coming to know that he became disqualified for further consideration after physical endurance test and certificate verification kept quiet and approached this Court only after an order was passed by the Madurai Bench of this Court on 10.02.2021 in W.P



(MD) No.19112 of 2020 and batch. Thus, the petitioner has to be treated as a fence-sitter and approached this Court belatedly. Whether the benefit of the order dated 10.02.2021 passed by a learned Division Bench of this Court can be extended to the persons like the petitioners in the present case or not is required to be considered.

8. In this regard, it would be relevant to refer to a decision of the Hon'ble Apex Court, relied upon by Sri.Kumaresan, learned Additional Advocate General in the case of ***“State of Uttar Pradesh and others -vs- Arvind Kumar Srivastava and others”*** reported in **2015 (1) SCC 347**. The Hon'ble Apex Court, after having examined the entire case law available by then, observed as under:-

“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 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.”*

From the above principles laid down by the Hon'ble Apex Court, if applied to the facts of the case on hand, a learned Division Bench of this Court, while



deciding the issue as early as on 10.02.2021 in W.P (MD) No.19112 of 2020, having considered as to whether the relief granted in the said Writ Petition can be granted to all the similarly situated persons or not, has taken a stand consciously to restrict the relief only to the petitioners, who came before the Court and observed as under:-

“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



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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 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.”

9. In the light of the above, this Court does not see any reason to deviate from the view already taken in W.P.No.7911 of 2021 by an order



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dated 02.07.2024. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.4589 of 2021

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