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W.P. No.20415 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20415 of 2018

1.Dayalan.P

2.Jeevanath.P

3.Jayaseelan.M

... Petitioners

Vs.

1.Union of India Represented by
The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat,
Puducherry.

2.The Secretary to Government (Home),
Government of Puducherry,
Chief Secretariat,
Puducherry.

3.The Director General of Police, (DGP)
Office of the Director General of Police,
Government of Puducherry,
Puducherry.

4.The Inspector General of Police, (IGP),
Officer of the Inspector General of Police,
Government of Puducherry,
Puducherry.

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5.The Senior Superintendent of Police (HQ),
O/o. The Senior Superintendent of Police (HQ),
Puducherry.

6.The Superintendent of Police (HQ),
O/o. The Senior Superintendent of Police (HQ),
Puducherry.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to impugned order vide No.310/01574OSD/DE-2/SP(HQ)/POL/2017 dated 03.01.2018 issued by the 6th respondent and quash the same and consequently direct the respondent Nos.1 to 6 to issue appointment order to the petitioners for the post Home Guards (Honorary Post) with effect from 01.03.2016 with all monetary and non monetary benefits.

For Petitioners : M/s.Prakash Adiapadam

For respondent : Mr.Syed Mustaffa
Government Advocate (Puducherry).

ORDER

When the matter is taken up for consideration, it is brought to the notice of this Court by Mr.Syed Mustaffa, learned Government Advocate (Puducherry) that, under similar circumstances in the very same recruitment



process, the claim made by the person similarly situated like the petitioner, namely A.Velmurugan was considered by the learned Single Judge of this Court in W.P.No.36967 of 2016 and the claim was negated by this Court, by an order dated 29.08.2018 and the copy of the said order is also placed before this Court. The learned Single Judge in his order held as under:

“6.Appointment can never be claimed as a matter of right. Appointment to the post of Home Guard is a honorary position. Thus the petitioner cannot claim the same, as a matter of right. This apart, the appointments even to the honorary position the same is to be done only in accordance with law and by following the rules prescribed. Admittedly, the writ petitioner had secured 56 marks and the cut off marks for selection was 57, in respect of recruitment of the year 2014. This apart, the writ petitioner had not secured the required cut off marks in the selection. Mere availability of vacancy will not confer any right on the candidates to claim appointment. If at all, the vacancy arises on account of non joining of the selected candidates, the same will not construed by the non selected candidates to claim right of appointment. These are all the Administrative decisions to be taken by the Competent Authorities and the writ petitioner cannot claim that the posts are vacant, and therefore, he must be accommodated



in the post. Once a person who had not selected on account of the fact that he was not within the zone of the consideration, then he has no right to claim that the vacant posts are to be filled up and his case also to be considered for accommodating in the said vacant post. Such a proposition raised by the writ petitioner is unknown to the service Jurisprudence. Filling up of all the vacant posts are the prerogative of the administrative authorities and a decision in this regard is to be taken by the competent authorities. The authorities competent are bound to follow the rules scrupulously and without causing any discrimination. This alone to be the rule for the purpose of selection and the mere claim set out in the writ petition cannot be considered.

7. The learned counsel for the writ petitioner states that a representation submitted by the writ petitioner on 05.07.2016, was within one year from the date of the publication of the list and the respondents ought to have provided some reply in either way. Such an argument deserves no consideration, in view of the fact that mere submission of representation without establishing a legal right cannot have any cause for moving a writ petition. Even to consider the representation submitted by the writ petitioner as a precondition, the writ petitioner has to



establish a legal right. Failing which, no writ proceedings can be entertained under Article 226 of the Constitution of India. Thus, it is not as if a direction is to be given to the respondent to consider the representation. Even for that, a legal right is to be established. However, the writ petitioner has not established even a semblance of legal right so as to consider a relief as such sought for in this writ petition.”

2. The petitioner herein, who is also a person secured 56 marks like the petitioner in the above writ petition and claiming for filling up unfilled vacancies notified in the recruitment notification and the very same was considered by the learned Judge by the above order and rejected the claim made by the petitioner.

3. It is also brought to the notice of this Court that the said order dated 29.08.2018 passed in W.P.No.36967 of 2016 was also confirmed by the learned Division Bench in appeal filed by the petitioner.

4. In the light of the above, this writ petition is liable to be



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dismissed and the same is accordingly dismissed for the very same reasons assigned in the order passed in W.P.No.36967 of 2016. Consequently, connected miscellaneous petitions, if any shall stand closed. No costs.

22.07.2024

Index : Yes/No
Speaking Order : Yes/No

dpa

To:

- 1.The Chief Secretary to Government,
Union of India
Government of Puducherry,
Chief Secretariat,
Puducherry.
- 2.The Secretary to Government (Home),
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MUMMINENI SUDHEER KUMAR,J.

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