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W.P.No.8909 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8909 of 2024

P.Thangavel

.. Petitioner

Versus

1. The State of Tamilnadu rep. by its
Secretary to Govt., 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

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the 2nd and 3rd respondents 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 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, dated



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23.01.2024 besides fixing appropriate seniority of the petitioner in the said post without back wages.

For Petitioner : Mr.Ravi Anantha Padmanaban,
Senior Counsel,
for Mr.B.Thirumalai

For Respondents : Mr.C.Jayaprakash,
Government Advocate,
for RR-1 and 3

: Mr.Kumaresan,
Additional Advocate General,
Asst. by M/s.D.Sowmi Dattan,
Standing Counsel, for R2

ORDER

This Writ Petition is filed for a Writ of Mandamus directing respondent Nos.2 and 3 to award one mark each for questions No.11, 38 and 44 in respect of the selection for the post of the Sub-Inspector of Police in respect of the recruitment in the year 2006 and consequently, fix the seniority of the petitioner in the said post.

2. The case of the petitioner is that the petitioner joined the Police



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Department as a Grade-II Police Constable on 04.01.2006. Later, he was promoted to Grade-I Police Constable and thereafter, to Head Constable and is working in the said post as of the date. While so, in the year 2006, when the notification was issued calling for the applications for Direct Recruitment in the post of Sub-Inspector of Police, the petitioner applied for the same. The petitioner was awarded 71 marks. The petitioner belonged to the Scheduled Caste category. The last of the candidates in the Scheduled Caste category, who was selected, scored 72 marks. In the said examination, the key answers to questions No.11, 38 and 44 were wrongly given. After the examination, several candidates filed Writ Petitions in W.P.Nos.4509 of 2009 etc. The batch of Writ Petitions came to be disposed of by the learned Single Judge of this Court by the order, dated 04.11.2009. In the said order, this Court found that the key answers in respect of the said three questions as erroneous and directed to award three marks in respect of the candidates who have correctly answered the same.



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3. Feeling aggrieved by the said order, the respondents filed W.A.Nos.1719 of 2010 etc., and all the Writ Appeals were taken up together and disposed of by the common judgment, dated 23.12.2010. The Division Bench also confirmed the findings of the learned Single Judge that three questions were erroneous and that the marks had to be given to the candidates. However, the Division Bench made a dichotomy when it came to the matter of grant of relief. The Division Bench stated that the marks should be granted only in respect of the petitioners who approached the Court at the earliest point of time, but not in respect of the others.

4. A Special Leave Petition was also filed as against the said Division Bench judgment in S.L.P.Nos.36358 of 2011 etc., and by the order, dated 19.01.2015, the Special Leave Petitions came to be dismissed.

5. In the meantime, the selected candidates were appointed. The selected candidates once again filed the second set of Writ Petitions stating



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that by the judgment of this Court in respect of the erroneous answers, the marks have to be correctly granted even to them and accordingly, their inter se seniority should be re-adjusted. Some of the Writ Petitions filed by the individuals came to be allowed, while, a Writ Petition filed by one *S.Suthakar* came to be dismissed. Against the same, the said *S.Suthakar* filed W.A.No.2771 of 2019. The matter was once again considered by the Division Bench of this Court. The earlier order in the Writ Appeal was also brought to the notice of the Division Bench. After considering the same, the Division Bench found that once the error is on the part of the respondents, whether any particular candidate approached the Court or not, the respondents ought to have corrected the mistake uniformly to all the candidates. The Division Bench directed that the seniority of the selected candidates should be re-fixed after carrying out the award of marks to all the selected candidates, irrespective of the fact whether the candidates have approached the Court or not.



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6. As against the same, once again a Special Leave Petition was filed by the State in S.L.P.No.15062 of 2021. The said Special Leave Petition was also dismissed on 23.01.2024. Therefore, according to the petitioner, now, the position is clear that irrespective of the fact that whether any person has approached the Court or not, the respondents had to correct the marks. If the marks are corrected, the petitioner would have been appointed as Sub-Inspector of Police. Therefore, the petitioner made a representation on 19.02.2024 and since there was no positive response from the respondents, the present Writ Petition is filed.

7. The Writ Petition is resisted by the respondents by contending that in respect of the non-selected candidates who did not immediately approach this Court, in the earlier round itself i.e., in W.A.Nos.1719 of 2010 etc., this Court had categorically said that the benefit need not be extended to the candidates holding them to be fence-sitters. An appeal that is preferred is also dismissed by the Hon'ble Supreme Court of India and therefore, the



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matter attained finality. The second round of litigation is relating to the inter se seniority between the selected candidates and that cannot be applied in respect of the petitioners. When the similarly situated candidates belatedly approached this Court in W.P.No.28409 of 2021, this Court dismissed their case by the order, dated 21.02.2022. The Writ Petition filed by the petitioner after long years of delay cannot be entertained.

8. Heard *Mr.Ravi Anantha Padmanaban*, learned Senior Counsel for the petitioner; *Mr.C.Jayaprakash*, learned Government Advocate for the respondent Nos.1 and 3 and *Mr.Kumaresan*, learned Additional Advocate General for the second respondent.

9. *Mr.Ravi Anantha Padmanaban*, learned Senior Counsel for the petitioner placed strong reliance on paragraphs Nos.17 and 18 of the judgment of the Division Bench in W.A.No.2771 of 2019 and would submit that the same is a judgment in rem. The Division Bench has given a



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categorical direction to correct the mistake for every candidate. He would submit that there was no delay whatsoever on the part of the petitioner. It can be seen that the litigation started as early as in the year 2006 and ended finally with the dismissal of the Special Leave Petition filed by the respondents by the order, dated 23.01.2024. Immediately after the dismissal of the Special Leave Petition, a representation has been made by the petitioner. Therefore, in this case, there is no delay whatsoever at all on the part of the petitioner. When the error has been directed to be rectified in respect of every person, the consideration of equity and law should only favour the correction of the mistake and there was no question of any delay on the part of the petitioner.

10. The learned Senior Counsel would also submit that when similarly situated persons namely, *M.Arumugam* and *K.Prabhakaran* approached this Court by way of W.P.No.28409 of 2021, this Court observed that because of the pendency of the Special Leave Petition, the Writ Petition was not



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maintainable and therefore, the petitioner has rightly waited and has approached this Court after the dismissal of the Special Leave Petition.

11. The learned Senior Counsel, in support of his propositions, also relied upon the judgment of the Hon'ble Supreme Court in ***Ravindra Kumar Vs. State of U.P and Ors.***¹ to contend that the special circumstances of the case have to be taken into account while deciding the matter. The learned Senior Counsel also placed reliance on earlier orders passed in W.P.No.15379 of 2022 and also the judgment of the Division Bench in Review Application. (MD). No.153 of 2019, whereunder, reliefs have been granted in respect of the same batch. The learned Senior Counsel also would rely upon the judgment of the Hon'ble Supreme Court of India in ***Union of India and Ors. Vs. R.Reddappa and Anr.***² to contend that if Courts find that injustice is done, then, no rule or any other technical consideration should hold its hand in rendering justice to the person.

¹ 2024 SCC OnLine SC 180

² (1993) 4 SCC 269



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12. The learned Senior Counsel would also rely upon the judgment of the learned Single Judge in W.P.No.12218 of 2010 whereunder also the relief was granted to the individuals. It can be seen that the petitioner is still working as Head Constable and even if this Court feels that there is an efflux of time, then, that can be adequately taken care of by denying back-wages and grant of notional appointment alone with proper fixation of scale of pay. The petitioner ought to have been selected in the year 2006 itself and he therefore would not be deprived of a lawful benefit due to him.

13. Per *contra*, *Mr.Kumaresan*, the learned Additional Advocate General for the second respondent would submit that originally, by the judgment, dated 04.11.2019 in W.P.Nos.4509 of 2009 etc., this Court directed that the marks should be calculated in respect of every candidate and accordingly, to re-draw and publish the select list. However, the Division Bench set aside the said order of the learned Single Judge and



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directed the grant of marks only to the petitioners who approached the Court at the earliest point in time alone. The same was duly complied with by the respondents. Even the appeal preferred to the Hon'ble Supreme Court of India against the said order is dismissed. Therefore, the matter attained finality at that stage itself. Even in the year 2009, the Division Bench of this Court found that the Writ Petition was hit by delay and laches and that the petitioners therein were fence-sitters. This petitioner now approaches this Court only in the year 2024 and as such, is a fence-sitter and is not entitled to the benefit.

14. He would submit that as far as the judgment of the later Division Bench is concerned, directions are given to re-fix the seniority in respect of the candidates and even if the said judgment is implemented, it will not enure to the benefit of the petitioner. Therefore, the petitioner is not entitled to any relief. The learned Additional Advocate General would also place reliance upon the Division Bench judgment of this Court in W.A.No.1168 of



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2012 and would submit by considering all the above in detail, the Writ

Appeal was allowed, by the judgment, dated 17.04.2023.

15. I have considered the rival submissions made on either side and perused the material records of the case.

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.



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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 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



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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 (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.



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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 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



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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.



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22. Accordingly, finding no merits, this Writ Petition stands dismissed. There shall be no order as to costs.

04.04.2024

Index: yes

Speaking order

Neutral Citation: yes

grs

To

1. The 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.
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