



Writ Petition No.22068 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
01.08.2024

PRONOUNCED ON
20.08.2024

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Petition No.22068 of 2024
and W.M.P.No.24046 of 2024

Vengatesan

... Petitioner

Vs

- 1.Union of India
Represented by the Secretary to Government (Home),
Government of Union Territory of Puducherry,
Puducherry.
- 2.The Officer on Special Duty,
Office of the Superintendent of Police (HQRS),
Police Department,
Puducherry – 605 001.
- 3.The Senior Supdt. Of Police (HQ) &
In-charge of SSP (C&I)-Cum-Chairman of Recruitment Committee,
Police Department,
Government of Puducherry,
Puducherry.
- 4.Dharmaraj J
- 5.Marimuthu B



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6.Ravindaran S
7.Vajumuni R
8.Nadhiyalagan M
9.Pragassam K
10.Mullaivalavan G
11.Amesh Paramel

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the Central Administrative Tribunal, Chennai Bench relating to the order dated 23.07.2024 in OA No.310/000476/2023 and quash the same and consequently, allow the Original Application in O.A.No.310/000476/2023 and pass such further order.

For Petitioner : Mr.T.Sai Krishnan
and Mr.R.Saravanan

For Respondents : Mr.R.Syed Mustafa for RR1 to 3
Special Government Pleader (Pondy.)

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This instant Writ Petition had been preferred by the unsuccessful applicant wherein his challenge to the notification dated 08.06.2023 in so far as the provisional selection of the private respondents and a consequential prayer to declare the petitioner as provisionally selected under MBC



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category and appointment were turned down by the Tribunal.

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2. Heard Mr.T.Sai Krishnan, learned counsel for the petitioner and Mr.R.Syed Mustafa, learned Special Government Pleader (Puducherry) appearing on behalf of the respondents 1 to 3.

3.Mr.T.Sai Krishnan, learned counsel for the petitioner would submit that the petitioner had participated to the recruitment of Police Constables pursuant to the notification issued by the second respondent, dated 26.11.2022. His name was not included in the provisional selection list, but, however his name was included in the wait list. He would contend that a perusal of the provisional selection list would indicate that the private respondents herein did not have the qualification as prescribed under the notification. On enquiry, it was found that the qualifying marks in respect of the Ex-servicemen category were unilaterally modified without any corrigendum to the notification and they were all provisionally selected. Since, the selection of the private respondents are contrary to the notification, he had challenged the same before the Tribunal. However, the



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Tribunal without considering the facts and merits of the case had held that the Official respondent/ Recruiting Agency was correct in modifying the qualifying marks in respect of the Ex-servicemen category and therefore, their selection need not be set aside.

4. He would further contend that if the selection of the private respondents is held to be in violation of the notification, then the petitioner would come into the zone of consideration. But, the Tribunal had erroneously found that the petitioner even otherwise could not be eligible to be appointed as he does not come into zone of consideration. In support of his contention that the qualifications cannot be changed to facilitate a particular group of person that too without amending or issuing a corrigendum to the original notification, he had relied upon a judgment of the Hon'ble Apex Court in the case of ***Sureshkumar Lalitkumar Patel & Others Vs State of Gujarat and Others*** reported in ***2023 SCC Online 167*** and contended heavily that the petitioner cannot be deprived of the right of getting selected for the recruitment as a Police Constable. Hence, he would seek interference of this Court with the order passed by the Tribunal.



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5. Countering his arguments, Mr.R.Syed Mustafa, learned Special Government Pleader (Puducherry) would contend that considering the Ex-servicemen as a category and following the Rules enshrined in Ex-servicemen (Re-employment in Central Civil Service and Post) Rules, 1979, only on finding that none of the Ex-servicemen were eligible as they have not obtained the qualifying marks, as a special case, the qualifying marks of the category was reduced for the Ex-servicemen category and to the respective candidates. He would submit that the reason for giving such a relaxation was that even though, there were reserved quota for Ex-servicemen category and candidates available in that category, none of the candidates had secured enough marks as per the notification. He would further contend that if no candidates were selected in the said category, the same would go as a backlog vacancy for the next recruitment year and therefore, the said reserved category would not fall back to any particular reserved category in the particular reservation. Hence, he would submit that there is no infirmity in the order passed by the Tribunal which warrants interference by this Court.



6. We have considered the submissions made by the learned counsels

appearing on either side perused the materials available on record.

7. The primordial contention of the petitioner was that the reduction of mark during the selection process is contrary to the judgment laid down by the Hon'ble Apex Court reported in **2023 SCC Online SC 167** is as follows:-

“ 24. It is true that a candidate may not have a vested right to the post, however, it cannot be confused with a right to be considered in accordance with law. A law which enables a candidate to get a post cannot be changed to facilitate another group of persons, since the candidate acquires a vested right to be considered in accordance with law, as held by this Court in N.T. Devin Katti v. Karnataka Public Service Commission, [\(1990\) 3 SCC 157](#),

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva



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voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during



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the pendency of selection unless the amended rules are retrospective in nature.

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26. We have already discussed the scope and ambit of the relevant clauses contained in the advertisement, particularly sub-clauses (15) and (19). In our considered view, they do not confer unbridled power either on the State Government or on the Selection Committee to modify the selection process, and thereby, reduce the cutoff marks after the results are published. The submission made that the selection was made only thereafter, will not hold water. What was done by way of publishing the selection list after the change is nothing but a ministerial act.”

8. The said decision had been made by relying upon on an earlier judgment of the Hon'ble Apex Court reported in **1990 (3) SCC 157**. It is to be noted that the Government/ Recruiting Agency had decided to adopt the Rules that were framed by the Central Government in respect of the Ex-servicemen for their re-employment. The said Rules has also been extracted by the Tribunal in its order. The object of the said Rules seems to be that when a reservation had been made to a particular category namely the Ex-servicemen and if such candidates were available, but, if that candidates



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have not secured enough marks to fill such category, the Rules had empowered the Government to modify the qualifying marks so as to fill up the particular category. It is not the case of the petitioner that there were no Ex-servicemen candidates for the reservation category. The reservation for the Ex-servicemen had been earmarked by the Recruiting Agency. Such reservation had been made to benefit the Ex-servicemen and not otherwise. The case of the petitioner could have been considered if there were no Ex-servicemen who had not made any application. Reducing the marks for such Ex-servicemen in the reservation category by adopting the Rules made by the Central Government to the service of the Department cannot be faulted with. Further, as rightly pointed out by the learned Special Government Pleader that if the vacancy could not be filled up in a particular reserved category, such vacancy could have to be taken forward as a backlog vacancy only in the next recruitment year and as contended by the petitioner it cannot be redistributed to the category. Therefore, we do not find any infirmity or illegality in the order passed by the Tribunal which warrants interference by this Court.

9. In fine, this Writ Petition fails and is accordingly, dismissed.



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However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J., .A.C.J.) (K.B., J.)
20.08.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

THE HON'BLE ACTING CHIEF JUSTICE
and
K.KUMARESH BABU.,J.

Gba

To

- 1.The Secretary to Government (Home),
for Union of India
Government of Union Territory of Puducherry,
Puducherry.
- 2.The Officer on Special Duty,

10/11



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Office of the Superintendent of Police (HQRS),
Police Department,
Puducherry – 605 001.

3.The Senior Supdt. Of Police (HQ) &
In-charge of SSP (C&I)-Cum-Chairman of Recruitment Committee,
Police Department,
Government of Puducherry,
Puducherry.

A Pre-delivery order made in
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