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W.P.No.5290 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2024

PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

Writ Petition No.5290 of 2017
and WMP.No.5606 of 2017

B.Karthi

..Petitioner

vs.

1. The Secretary to Government,
Home (Police III) Department,
Fort St. George,
Chennai 600 009.
2. The Secretary to Government,
Personnel & Administrative Reforms,
Fort St. George,
Chennai 600 009.
3. The Director General of Police,
Mylapore,
Chennai 600 004.
4. The Member Secretary,
T.N. Uniformed Services Recruitment Board,
Anna Salai,
Chennai 600 002.
5. Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai 600 003.

... Respondents



PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to Sub-Clause A of Clause VII of Advertisement No.117/2017 dated nil of 4th respondent and quash the same and to direct the respondents herein to fix separate cut off marks for persons studied in Tamil Medium in all stages of selection to the post of Grade II Police Constable.

For Petitioner : Mr.Habeeb Rahman

For Respondents

for R4 : M/s.Sowmi Dattan

for R5 : Mr.R.Bharanidharan

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the fourth respondent and the learned Standing Counsel appearing for the fifth respondent.

2. This Writ Petition is filed challenging the Sub-Clause (A) of Clause VII of Advertisement No.117 of 2017, dated nil, issued by the fourth respondent and for consequential direction to the respondents herein to fix separate cut off marks for the persons studied in Tamil medium in all stages of selection to the post of Grade II Police Constable.



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3. The case of the petitioner is that he completed 10th standard in Tamil medium in the year 2010 and completed B.E. (Civil Engineering) in 2016. From his childhood he aspired to become a Police Officer and serve for the public. In the year 2017, the fourth respondent herein invited application from eligible candidates for selection and appointment to the post of Grade II Police Constables vide Advertisement No.117/2017 dated nil for 15,711 vacancies (47 back log vacancies). The qualification prescribed for the post is passing of 10th standard and for those who claim reservation under PSTM should have studied Tamil in 10th standard. The petitioner made application for the post of Grade II Constable on 27.01.2017.

4. The learned counsel for the petitioner submits that the Government of Tamil Nadu in G.O.Ms.No.145 P & AR (S) Department, dated 30th September 2010 issued an order based on the Tamil Nadu Ordinance No.3/2010, wherein certain preferences were given for appointment in Government Service to those persons studied in Tamil medium. The Government Order states that those who have obtained the educational



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qualification or qualifications prescribed for direct recruitment in the Rules or Regulations or orders applicable to any appointment in the service under State through Tamil medium or instruction, 20% of all vacancies in the appointment, which are to be filled through direct recruitment shall be set apart on preferential basis to the persons studied in Tamil medium. It is also specifically stated that out of 200 point roster, 40 posts shall be set apart for persons who have studied in Tamil Medium. Subsequently, through G.O.M.s.No.40, Personnel and Administrative Reforms (S) Department, dated 30.04.2014 earlier Government order in G.O.Ms.NO.145 was amended and clarified with regard to reservation.

5. The learned counsel submits that the very object of the Government Order is to provide level playing field for persons studied in Tamil Medium to get fair opportunity in getting Government job and to encourage students to study in Tamil Medium in their School education.

6. The learned counsel further submits that in Sub-Clause A of Clause VII of 3rd respondent's notification, it is stated that reservation of 20% will be applied in the final provisional selection list only. On reading of the same, it is clear that the fourth respondent decided to apply the reservation of 20% for PSTM only at the final stage of selection to the candidates. As



such the procedure followed by the fourth respondent with regard to 20% reservation for PSTM will defeat the very object of the Act and sought to quash the same.

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7. In support of the contentions of the petitioner, the learned counsel for the petitioner has relied on the following judgments:

i) judgment dated 10.02.2021 of a Division Bench of Madurai Bench of Madras High Court in WP.(MD).No.19112 of 2020 and batch,

ii) judgment dated 27.07.2021 of a Division Bench of Madurai Bench of Madras High Court in WA.(MD).No.457 of 2021 and

iii) judgment dated 12.09.2023 of a Division Bench of Madras High Court in WA.No.1358 of 2022 and batch.

8. A counter affidavit has been filed by the fourth respondent. The sum and substance of the averments made in the counter affidavit of the fourth respondent is that as notified in para VII (C) of the notification dated 23.01.2017, issued for recruitment to the post of Grade II Police Constable,



Grade II Jailwarder and Firemen 2017, for the persons studied in Tamil Medium (PSTM) preference will be implemented at the final stage i.e, at the stage of Final Provisional Selection list as per G.O.Ms.No.145, Personnel & Administrative Reforms (S) Department, dated 30.09.2010.

9. It is also stated in the counter affidavit that the State of Tamil Nadu issued orders in G.O.Ms.No.82, Human Resource Management (S) Department, dated 16.08.2021 to amend the above stated G.O.M.S.No.145, Personnel & Administrative Reforms (S) Department, dated 30.09.2010. The said G.O.Ms.No.82, dated 16.08.2021 in para 4 clause XI provides for applying 20% PSTM preference at every stage of selection process in the direct recruitments.

10. In the counter, it is admitted that in the common recruitment for the post of Grade II Police Constables, Grade II Jailwarder and Firemen 2017, the application of PSTM was applied only at the final stage and thus the petitioner was not selected. However, in compliance to the Government order in G.O.Ms.No.82, 16.08.2021, the Board has implemented 20% PSTM quota at every stage of selection process from the subsequent recruitment



i.e., recruitment of Sub-Inspectors of Police for the year 2022. Hence, the petitioner cannot be considered for selection in the recruitment for the post of Grade II Police Constables as he was not eligible during the final selection under PSTM category.

11. The learned Standing Counsel for the fourth respondent has placed reliance on the following orders:

i) Order dated 20.01.2016 in W.P.No.155 of 2016 in the case of ***K.Vinoth vs. the Secretary to Government***.

ii) Order dated 08.09.2015 in WP.No.27005 of 2015 in the case of ***D.Anbarasan vs. the Secretary to Government***.

12. The Hon'ble Division Bench of Madurai Bench of Madras High Court in W.P.(MD).No.19112 of 2020 and batch, dated 10.02.2021 (***M.Vigneshwaran vs. State of Tamil Nadu and others***) has considered an identical issue and held as follows:

“8. We have perused the judgments of the Division Bench relied upon by the respondents in W.P.No.27005 of 2015 [D.Anbarasan v. Secretary to Government, Home Department,



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Secretariat, Chennai and Others]; W.P.No.23075 of 2015 [B.Velmurugan v. Secretary to Government, Home Department, Secretariat, Chennai and Others]; and W.P.No.332 to 334 of 2016 [K.Silamparasan and Others v. State of Tamil Nadu and Others], of which, one has been confirmed by the Hon'ble Apex Court.

9. As rightly submitted by the learned Senior Counsel appearing for the petitioners, unfortunately, the object and rationale behind the enactment has not been brought to the notice of the Court. The enactment, in its specified terms, justifies the classification sought to be made. This is, by taking note of the inequality, which is inherent in treating a candidate coming within the same communal roster having studied in English medium and Tamil medium. Therefore, there is no violation to [Article 16](#) of the Constitution of India, nor the reservation policy of the State qua vertical reservation. Thus, we are inclined to hold that the Act by itself clearly thinks of a valid reservation, despite being a horizontal one.

10. Section 2 of the Act defines a preferential vacancy. These vacancies would only mean such vacancies available for Persons Studied in Tamil Medium. Therefore, these vacancies ought to be filled up through Direct Recruitment only with the Persons Studied in Tamil Medium alone. The mere fact that such persons are entitled to compete for the vacancies other than the preferential vacancies, would not make them to the extent of considering them along with the others, for the



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vacancies specifically earmarked for them. As per Section 6 of the Act, the others are entitled for such vacancies earmarked for the PSTM candidates only when they are unfilled. Therefore, Sections 2, 3(1), 5 & 6 of the Act are to be read in consonance. In this connection, we may note that Section 5 of the Act clearly states that reservation has to be made as per the law in force.

11. As stated, these provisions are not only in consonance with each other, but with respect to the roster point fixed. The State of Tamil Nadu has got its own unique roster point system. This is with respect to both horizontal and vertical reservation. In every reserved category coming under vertical reservation, there is a horizontal reservation such as Widow, Disabled and PSTM. These are all the disadvantaged class of persons forming a distinct category among the vertically reserved categories. The roster point has been fixed in the vertical category to be filled with such horizontal category candidates. As stated, this aspect has not been brought to the notice of the Hon'ble Division Bench in the earlier cases. Even otherwise, the law laid down by the Division Bench, though relied upon by the respondents, is not even being followed.

12. In fact, the respondents are actually following the rule of reservation, but at the final stage. In other words, there is no question of two identical persons being considered and the one



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with PSTM being preferred among the vertically reserved candidates. That has never been done even in this case. Now what the respondents are doing is that, they take the finally selected candidates in each category and then trying to fix 20% for PSTM. Therefore, even the respondents have understood the object of the Act, but the mistake lies in its implementation. If 20% of the vacancies will have to be filled up, as per the roster point and in accordance with law, the starting point would be at the initial selection, namely, the written examination. When once the Act itself says that these persons cannot be treated on par and categorized along with the other candidates, who can be considered as per the vertical reservation, this approach of the respondents is obviously against the very Act itself.

13. The aforesaid observation, we give, as in future, no such anomalies should occur and as rightly being followed by the other instrumentalities of the State, namely, Tamil Nadu Public Service Commission and Teachers Recruitment Board, and in view of the fair submissions made by the learned Advocate General and the learned Additional Advocate General.”

13. The said judgment was followed by another coordinate Bench of Madurai Bench of Madras High Court in judgment in WA.(MD).No.457 of 2021 dated 27.07.2021. In the light of the judgment of the Division Bench, the Government has issued G.O.Ms.No.82, Human Resource



Management (S) Department, dated 16.08.2021 by applying 20% PSTM preference at every stage of selection process in the direct recruitment.

14. The contention of the respondents in the present case is that the petitioner cannot be considered for selection in the recruitment for the post of Grade II Police Constable 2017 as he was not eligible during the final selection under PSTM category. The similar issue was considered by a Division Bench of this Court in W.A.No.1358 of 2022 and batch and the findings of the Divisional Bench in the said appeal dated 12.09.2023 will answer the same. The relevant portion of the judgment of the Division Bench is extracted hereunder:

“17. With respect to the contention that the appellant Board had completed the entire recruitment process and had published the provisional selection list on 15.04.2021 for the notified vacancies and hence, the claim of the respondents / writ petitioners is not feasible for consideration, the same cannot be countenanced by this Court, as it is an admitted fact that the appellant Board did not conduct the selection process in proper mode as per law and that, there was no delay or laches on the part of the respondents / writ petitioners in approaching this court. When the respondents / writ petitioners



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have obtained qualifying marks on merit to be included in the list of selected candidates for participating in the next stage, they have been deprived of such opportunity, in view of the improper method of selection adopted by the appellant Board. Consequently, they would have to undergo another selection process afresh right from the beginning. Due to no fault on part of the respondents / writ petitioners, they cannot be made to suffer. Therefore, this court is of the opinion that the learned Judge is justified in directing the appellant Board to permit the respondents / writ petitioners to participate in the next selection process and thereafter, create supernumerary posts by following due procedure, for the purpose of accommodating the respondents / writ petitioners, if they are found eligible to be selected under the PSTM quota and also absorb them into regular services without disturbing the appointments already made.

18. It is also to be pointed out that SLP (Civil) No.21029/2021 filed by the appellant Board before the Hon-ble Supreme Court against the judgment dated 27.07.2021 passed in W.A.(MD)No.457 of 2021, came to be dismissed, by order dated 26.07.2022, with the following observation:

“No doubt that there is substance in the submission made by Mr.Hegde, learned senior counsel that when another Division Bench vide order dated 10.02.2021 had made observations that the relief granted therein is restricted only to



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the petitioners therein, the same observation should have been given due consideration by another Division Bench.

However, we find that the Division Bench vide order dated 27.07.2021 had considered all the aspects and found that even if the petitioners in the said petition was granted the relief being sought, there would be no disturbance in the selection process and even otherwise, the respondent-writ petitioner was found to be meritorious.

As such in the peculiar facts and circumstances of the case, we do not find that this is a fit case to invoke our jurisdiction under Article 136 of the Constitution of India.”

Further, the cases filed by similarly placed persons referring to the order dated 10.02.2021 passed in WP (MD) No.19112 of 2020 etc, batch, were dismissed, only on the ground that the selection process was completed by the appellant Board, which is not accepted by this court for the reasons stated in the earlier paragraph of this judgment. ”

15. Admittedly, in the present case, the fourth respondent Board did not conduct the selection process in proper mode as per law and there was no delay or laches on the part of the petitioner in approaching this Court. It



is an admitted fact that the petitioner filed this Writ Petition in the year 2017 itself immediately after issuing notification No.117 of 2017.

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16. Therefore by following the prepositions of law laid down by a Division Bench of Madurai Bench of Madras High Court in W.P.(MD).No.19112 of 2020 and batch, dated 10.02.2021 and WA.(MD).No.457 of 2021 dated 27.07.2021 and judgment of a Division Bench of this Court in WA.No.1358 of 2022 dated 12.09.2023 and in the light of G.O.Ms.No.82, Human Resource Management (S) Department, dated 16.08.2021, this Court is of the opinion that this Writ Petition has to be allowed.

17. Accordingly, this Writ Petition is allowed directing the fourth respondent to permit the petitioner to participate in the next selection process and thereafter, create supernumerary post by following due procedure for the purpose of accommodating the petitioner, if he is found eligible to be selected under the PSTM quota and also absorb him in regular service without disturbing the appointments already made.



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No costs.

Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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Pre-delivery order in

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