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W.P.No.26412 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM :  
**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**  
**AND**  
**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**W.P. No.26412 of 2023**

N.S.Siva Prakash

... Petitioner

Vs.

1.The Additional Chief Secretary to  
Government of Tamil Nadu,  
Home (Courts-I) Department,  
Saint George, Chennai.

2.The Registrar General,  
High Court, Madras,  
Chennai – 600 104.

3.The Registrar (Recruitment),  
High Court, Madras,  
Chennai – 600 104.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of Constitution of India, for issuance of writ of Certiorarified Mandamus, to call for the records of the 1<sup>st</sup> respondent in its impugned proceeding of G.O.(D) No.1483 Home (Courts-1) Department dated 07.11.2022 quash the same and consequently direct the



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respondents to appoint the petitioner to the post of Civil Judge in Tamil Nadu State Judicial Services for the year 2014 -15 to 2016-17 as per G.O.(4D).No.56 Home (Courts-1) Department dated 28.12.2018 of the 1<sup>st</sup> respondent.

|                |                                                     |
|----------------|-----------------------------------------------------|
| For Petitioner | : Petitioner in person                              |
| For R1         | : Mr.T.Chandrasekaran<br>Special Government Pleader |
| For R2 & R3    | : Mr.B.Vijay                                        |

### **ORDER**

**(Order of the Court was made by S.M.SUBRAMANIAM,J.)**

The *lis* on hand has been instituted questioning the validity of the order of the Government Order in G.O.(D) No.1483 Home (Courts-1) Department dated 07.11.2022, canceling the provisional selection of the writ petitioner for appointment to the Post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service.

2. Pursuant to the Notification No.8/2018 dated 09.04.2018 issued by the Tami Nadu Public Service Commission for selection and appointment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Services for the year 2014 to 2015 to 2016 – 2017, the petitioner submitted his application and participated in the process of selection. The petitioner in his application submitted through online disclosed his involvement in criminal



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case in C.C.No.5948 of 2007 on file of the learned XXIII Metropolitan Judicial Magistrate, Saidapet, Chennai. The petitioner participated in the examination. He was successful in the preliminary examination and he was shortlisted for the main examination. He had written the main examination conducted on 11.08.2018 and 12.08.2018. The petitioner succeeded in the main examination and further shortlisted to participate in the Oral Interview. The petitioner has secured total marks of 229.75 (written examination 205 + oral test 24.75)

3. Based on the selection, the Government issued an order of appointment in G.O.(4D) No.56 Home (Courts-1) Department dated 28.12.2018. The name of the petitioner is placed in Sl.No.83 in the said order. After passing the Government Order appointing the petitioner, the respondents issued an Office Memorandum for conducting verification of character and antecedents in respect of provisionally selected candidates from 06.03.2019 onwards. Similar, Office Memorandum was issued to the petitioner to submit his Income Tax Returns and also for verification of his character and antecedents. The processes were going on in respect of all the candidates. Finally, the case of the petitioner was not considered for joining



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duty to the post of Civil Judge (Junior Division). But the impugned order has been issued in G.O.(D)No.1483 Home (Courts-1) Department dated 07.11.2022, canceling the provisional selection of the petitioner for appointment to the post of Civil Judge. Thus, the present writ petition came to be instituted.

4. Mr.N.S.Siva Prakash, appearing in person would contend that his case cannot be compared with the other cases, where the candidates were not issued with an Order of Appointment. In the case of the petitioner, the Government issued an order of appointment in G.O.(4D) No.56 Home (Courts-1) Department dated 28.12.2018. The petitioner has not suppressed any material facts in the application form. He had disclosed his involvement in the criminal case and he was acquitted. When all these facts were placed, question of further verification or assessment of antecedents and character would not arise at all. Once an Order of Appointment has been issued, further examination of antecedents is beyond the scope of selection process. Therefore, the impugned order is liable to be set aside.

5. Mr.N.S.Siva Prakash distinguished the case of one ***Mr.J.Ranjith***



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**Kumar** dismissed by the Hon'ble Division Bench of this Court reported in **2022 SCC Mad 5628**. In the said case, Mr.J.Ranjith Kumar though disclosed his involvement in the criminal case, no Appointment Order was issued to him. Thus, the case of petitioner is distinguishable. By citing the case of **J.Ranjith Kumar**, the case of the petitioner cannot be dismissed.

6. Mr.B.Vijay, learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents would oppose the contentions of the petitioner by stating that after issuance of provisional selection list, the character and antecedents of the candidates are verified by the Competent Authorities. In this regard, an Office Memorandum was issued to all those selected candidates and they are bound to produce necessary documents as such called for by the Competent Authorities for verification. The said process has been done pursuant to the Judgment of the Hon'ble Division Bench in the case of **D.Ramganesesh and Ors. v. Tamilnadu Public Service Commission** reported in **Manu/TN/0903/2017**. In the said Judgment, a direction was issued to provide an opportunity to the provisionally selected candidates to defend the materials available against them. After the said Judgment, the respondents are providing opportunities to



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the provisionally selected candidates for the purpose of defending their case with reference to the allegations set out against them. Similar opportunity was provided to the petitioner herein. The petitioner participated and defended his case. The Authorities found that the petitioner was not suitable for appointment to the post of Civil Judge (Junior Division). Thus, the impugned order has been issued.

7. Mr.B.Vijay, learned Counsel for the respondents 2 and 3 would solicit the attention of this Court with reference to the assessment of suitability, which is of paramount importance. In support of his contentions, he has relied on the following Judgments:

(i) In the case of ***D.Ramganes and Ors v. TamilNadu Public Service Commission*** reported in ***MANU/TN/0903/2017***, the relevant portion is extracted hereunder:

*“37.Finally, we dispose of all the four writ petitions, requiring the High Court to ut the respective petitioner on notice by inviting objections and then bestow consideration of the facts in each case and then arriving at an appropriate decision as to whether the conduct behind involvement in the criminal cases by the respective*



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*candidates is such that amounts to disqualification for holding the office of Civil Judge (Junior Division) and the decision taken thereon may be communicated as expeditiously possible, preferably within a maximum period of two months from the date of receipt this order. No costs. Consequently, the above WMPs are closed.”*

(ii) In the case of ***Union Territory, Chandigarh Administration and Ors. V. Pradeep Kumar*** reported in ***[(2018) 1 SCC 797]***, the relevant portions are extracted hereunder:

*“15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took decision that the respondents are not suitable for the post of Constable in Chandigarh Police.*



*The procedure followed is as per guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.*

*17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.”*

(iii) In the case of ***Ashutosh Pawar v. High Court of Madhya Pradesh*** reported in ***2018 (1) CTC 353***, the relevant portions are extracted hereunder:

*“40. In view of the law laid down in above said judgments, there is no doubt that in exercise of power of Judicial Review under Article 226 of the Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of Appeal over the reasons recorded by the State Government. We*





*antecedents or any other material which is relevant in respect of suitability of a candidate, the State must share the information with the High Court. The ultimate decision on suitability of candidate for appointment is to rest with the High Court. The Question No.6 stands answered accordingly.”*

(iv) In the case of ***State of Madhya Pradesh and Ors. Vs. Abhijit Singh Pawar*** reported in ***[2018 (18) SCC 733]***, the relevant portions are extracted hereunder:

*“14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an*



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*honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.*

*15. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).”*

*16. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as the Division Bench*



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*and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs.”*

(v) In the case of **Anil Bharadwaj v. Hon'ble High Court of Madhya Pradesh** reported in **2021 (13) SCC 323**, the relevant portions are extracted hereunder:

*“13. There is no dispute that on the date when the Committee declared the appellant unsuitable, criminal case against him under Sections 498-A and 406 IPC was pending which was registered on a complaint filed by the appellat's wife, Smt.Pooja. The mere inclusion in the select list doe not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Sections 498-A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant*



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*unsuitable. The submission which needs to be considered is that whether in view of the subsequent acquittal of the appellant, his case was required to be reconsidered and he was entitled to be appointment.*

14. ....

15. *The observation was made by this Court in the above case that a candidate wishing to join the police force must be a person having impeccable character and integrity. The above observations apply with greater force to the Judicial Service. This Court further observed that even in the case of acquittal, it has to be examined as to whether the person was completely exonerated in the case or not. In the present case the acquittal having taken place after the close of recruitment process, there was no question of examining the acquittal order by the High Court at the time of finalising the selection process.”*

22. *There can be no dispute that in the event it is found that the decision by which the candidature of a candidate is rejected is arbitrary or actuated by mala fide such decision can be interfered with by the constitutional courts. We have already notice the judgment of this Court in **State (UT of Chandigarh) v. Pradeep Kumar** that the decision of the Screening Committee must be final unless it is mala fide.”*



(vi) In the case of ***Commissioner of Police v. Raj Kumar*** reported in

**2021 (8) SCC 347**. The relevant portions are extracted hereunder:

*“28. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment.....*

*31. Public service—like any other, presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, principles, govern essential aspects such as qualification, experience, bas, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non- discriminatory manner. However, suitability is entirely different; the autonomy choice of the public employer, is greatest, as long as the process of decision- making is neither illegal, unfair, or lacking in bona fides.*



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32. *The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This Court is of opinion that such generalisations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinised by the public employer concerned, through its designated officials more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."*

(vii) In the case of ***Rajasthan High Court, Jodhpur v. Akashdeep Morya*** reported in **2021 (14) SCC 567**, the relevant portions are extracted hereunder:

*"23. We cannot be oblivious, in a case of this nature,*



*about the nature of the post which is at stake. The post of a judicial officer at any level of the hierarchy involves applying the most exacting standards. This is for reasons which are obvious. The incumbent of a judicial post discharges one of the most important functions of the State, that is, the resolution of disputes involving the people of the country. Judges occupying the highest moral ground go a long way in building public confidence in the justice delivery system. In fact, even in the advertisement, there is a reference to the requirement of the candidate being possessed of character. Character cannot be understood as being limited to a mere certifying of the character by the competent authority. The High Court is involved with the appointment of judicial officers and rightly so, under the scheme of the Constitution. Though the order of appointment is issued by the State, the involvement of the High Court in the appointment of judicial officers essentially flows from its position in the constitutional scheme. The High Court is duty-bound to recommend the most suitable persons to occupy the post.*

*24. The post of a Civil Judge or a Magistrate is of the highest importance notwithstanding the fact that in the pyramidal structure of the judiciary, the Civil Judge or the Magistrate is at the lowest rung. We say this for the reason that of all the litigation which is instituted in the country, the highest volume of the same takes place at the*



*lowest level. Not many of the cases finally reach the highest Court. It is through the Civil Judge (Junior Division)/Magistrate that the common man has the greatest interface. Most importantly, the perception of the common man about the credentials and background of the judicial officer is vital. We have only highlighted these aspects as a prelude to consider the facts of the case further. In other words, in the absence of a honourable acquittal, the alleged involvement of an officer in criminal cases may undermine public faith in the system.*

*32. We would, therefore, think that bearing in mind the age, the nature of the offences in which the first respondent was implicated and the two FIRS, at any rate, in which the matter progressed from the stage of the FIR to the stage of charge-sheet and the manner in which the case ended viz. acquittal based substantially on a compromise and also where the witnesses turned hostile and also the nature of the post for which the first respondent was a candidate, the matter should have been approached differently by the High Court. Here again, we must notice one aspect. The Court in judicial review is not concerned with the decision per se. It is more anxious that the decision-making process is not flawed. Circumstances, where the Court would interfere with the merits of the decision, are far too well settled to require any reiteration. We cannot possibly hold that the decision taken by the*



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*appellant through its committee after bearing in mind the decision in Avtar Singh though it has referred only to para 38.1.4, but in the body of which decision, it has borne in mind the principles, which we think would be apposite, should have been interfered with by the High Court. In other words, we would think that in the facts of this case, interference with the decision of the appellant was not warranted.”*

(viii) In the case of ***Union of India v. Methu Meda*** reported in **2022**

**(1) SCC 1.** The relevant portions are extracted hereunder:

*“20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee*



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would be final unless mala fide. In *Pradeep Kumar*, this Court has taken the same by this Court in *Raj Kumars*. view, as reiterated in *Mehar Singh*. The same view has again been reiterated

21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in *MethuMeda v. Union of India* and the Division Bench in *Union of India v. Methu Medal* are not sustainable in law, as discussed hereinabove.”

(ix) In the case of ***J.Ranjith Kumar v. Registrar General*** reported in **2022 SCC Online Mad 5628**. The relevant portions are extracted hereunder:



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*“6. In view of this incontrovertible legal position, it is beyond cavil that the authority making selection always has the right to consider the antecedents of a candidate so as to examine whether he is 'suitable and fit' for appointment to the post. It has not been shown that there has been any element of bias in the decision of the First Respondent or that the action of the First Respondent disqualifying the Petitioner for appointment to the judicial post suffers from any malafides. The point then boils down to the next question as to whether the disqualification of the Petitioner for appointment to the judicial post is based upon relevant considerations?*

*8. Though a vain attempt is made by the Petitioner to impeach the procedure of enquiry adopted by the First Respondent as not fair and reasonable, it is accepted that an enquiry had been conducted by the High Court in Recruitment Committee of the High Petitioner had participated and his explanation had been heard for the adverse materials that had been relied against him, which adequately satisfies the requirements of a fair and reasonable procedure. The claim of the Petitioner that the scope of such enquiry should have been expanded by calling upon him to lead evidence by examining witnesses to disprove the inference sought to be drawn against him, is far fetched and cannot be countenanced.*



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*11. The said condition certainly binds the Petitioner who had participated in that recruitment and he cannot wriggle out of the same.”*

8. The principles laid down in the above Judgments relied on by the respondents would be sufficient to form an opinion that mere selection or issuance of an appointment order would confer no absolute right to the candidate. In the present case, the petitioner has not allowed to join the duty. Before joining duty, the process of verification of antecedents were undertaken. Such a process has been adopted in respect of the provisionally selected candidates. The petitioner has taken a ground that he was acquitted in the criminal case. In this regard, the learned Counsel for the respondents drew the attention of this Court with reference to the Judgment of the Criminal Court dated 26.09.2007 in C.C.No.5948 of 2007, on the file of the learned XXIII Metropolitan Judicial Magistrate, Saidapet, Chennai. The Judgment reveals that the petitioner was acquitted on benefit of doubt. More so, the witnesses turned hostile and taking note of the fact that the Criminal Court acquitted the petitioner by extending the benefit of doubt. Such acquittal cannot be the basis for the purpose of selection of a candidate in to



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public services.

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9. We are of the considered opinion that that even an acquittal in general cannot be a ground to seek selection as right as observed in the case of ***Delhi Commissioner's case***. The employer is empowered to assess the character, antecedents and suitability of a candidate for appointment to Public Posts. High Court cannot substitute the views of the Selection Committee. The Selection Committee is the Final Authority to form an opinion regarding the suitability and eligibility of a candidate for appointment.

10. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision has been taken in consonance with the Statutes and Rules in force, but not the decision itself. That being the scope of Judicial Review, High Court cannot go into the assessment of suitability and eligibility determined by the competent Selection Committee. Only in the event of an illegality apparent on record or malafide, the power of Judicial Review can be exercised, but not otherwise. In the event of malice or mindlessness or



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illegality by the Selection committee, High Court has to necessarily step in by exercising the powers of Judicial Review.

10.1 In the present case, the order impugned states that sufficient opportunities were granted to the petitioner with reference to the principles laid down by the Hon'ble Division Bench in the case of ***D.Ramganesb and Ors*** as cited *supra*. The petitioner availed the opportunities and presented his case. The Selection Committee considered all the grounds. The findings of the Selection committee is that:

*“Considering the totality of circumstances, this Committee is of the opinion that the candidate Thiru.N.S.Siva Prakash cannot be considered suitable for appointment to the post of Civil Judge. The registry is directed to intimate the Government in this regard and to remove his name from the provisionally selected list of candidates and the TNPSC may also be informed about the decision of the High Court and the candidate may also be intimated in this regard by the Government.”*

10.2 The principles laid down in ***Avatar Singh's Case*** by the Hon'ble



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Supreme Court has been subsequently watered down by the Supreme Court in catena of Judgments. In all those Judgments, the Apex Court in unequivocal terms held that the assessment of character, antecedents and suitability/eligibility are the prerogative of the Selection Committee, which cannot be interfered by the High Court in a writ petition. Exceptions are, where malice of illegality or mindlessness have been noticed with reference to the decision taken by the Competent Authorities. In the present case, the procedures had been followed. Mere issuance of Order of Appointment would not confer an absolute right to the petitioner to join duty. Issuance of Order of Appointment based on selection is subject to verification and assessment of eligibility and suitability, since the appointment proposed to be made is for the post of Civil Judge, where the responsibility and accountability is onerous.

11. In view of the facts and circumstances, we do not find any infirmity in respect of the decision taken by the respondents. Consequently, the Writ Petition stands dismissed. No costs.

**[S.M.S,J.] [K.R.S,J.]**  
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To

- 1.The Additional Chief Secretary to  
Government of Tamil Nadu,  
Home (Courts-I) Department,  
Saint George, Chennai.
- 2.The Registrar General,  
High Court, Madras,  
Chennai – 600 104.
- 3.The Registrar (Recruitment),  
High Court, Madras,  
Chennai – 600 104.

**S.M.SUBRAMANIAM,J.**  
**AND**  
**K.RAJASEKAR,J.**

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Order in  
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