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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.10.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P.No.32840 of 2017
and W.M.P.No.36188 of 2017

P.Siranjeevi

... Petitioner

Vs

1. Union of India rep. By the
Govt. of Puducherry through the
Inspector General of Police,
Police Department, Puducherry.
2. The Superintendent of Police (HQ),
Police Department,
Puducherry.
3. K.Priya
4. M.Saranya
5. R.Agalya
6. S.Sathya
7. A.Shanmuga Sathya
8. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents



PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus to call for the records of the 8th respondent in respect of the order passed in O.A.No.1207 of 2012 dated 2.6.2015 and to quash the same and direct the respondent 1 and 2 to appoint the petitioner in the post of Sub-Inspector of Police with effect from the date on which the respondents 3 to 7 are appointed with arrears of wages, seniority and other consequential benefits.

For Petitioner : Mr.Govarthan
and Mr.V.Ajay Kumar

For Respondents : Mr.Syed Mustafa
Special Government Pleader – R1 to R7
R8 - Tribunal

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner is an aspirant for the post of Sub-Inspector. He had responded to Notification bearing No.8850/A2/Estt.I/pol/2010 dated 18.11.2010 issued by the Police Department in the Government of Puducherry for recruitment to various posts including the post of Sub-Inspector. A total of 41 posts had been advertised. The Notification contained a note to the effect that i) Horizontal reservation for the post of Sub-Inspector of Police will be ensured as per Rules for Ex-service personnel ii) Reservations and concessions in recruitment shall be extended as per rules in force and iii) reservation of 20% for women shall be considered.

2. The petitioner had participated in the process for recruitment submitting an application. He was successful in the preliminary stages of recruitment including the



physical test. While so, and in these circumstances, he is aggrieved by an order passed by the respondents on 07.02.2011, wherein his name does not figure in the list of successful candidates appointed as Sub-Inspector of Police. He simultaneously challenges the appointment of R3 to R7 who have been recruited as Sub-Inspectors of police in the Police Department in Puducherry, and approached the Central Administrative Tribunal (CAT/Tribunal) seeking quash of their selections and a consequential direction to select him instead with all consequential benefits.

3. The Tribunal, on a consideration of the matter had dismissed his application. The main ground agitated by the petitioner is the provision for 20% as reservation for women. According to the petitioner, there was no Rule stipulating such reservation and hence carving such a horizontal reservation was erroneous. The Tribunal rejected that argument on the ground that the petitioner had not challenged the Notification calling for applications and had participated in the selection process being fully cognizant of the reservations provided.

4. Relying on the judgments of the Supreme Court in *K.A.Nagamani V. Indian Airlines & Ors.*¹, *Madanlal & Ors. V. State of K&K & Ors.*², *Chandra Prakash Tiwari V. Shakuntala Shukla*³ and other High Court decisions, the Tribunal reiterated the well settled position that once a candidate has engaged in the selection process, he cannot challenge his non-selection merely because such non-selection was

¹ AIR 2009 SC 3240

² (1995) 3 SCC 486

³ AIR 2002 SUPREME COURT 2322



unpalatable to him.

5. Aggrieved by that order, the petitioner is before the Court and Mr.Govardhan, learned counsel appearing for him reiterates the submissions made before the Tribunal relying on a judgment in the case of *Dr.(Major) Meeta Sahai V. State of Bihar & Ors.*⁴

6. Per contra, Mr.Syed Mustafa, learned counsel for the official respondents would, at the outset, point out that the petitioner has obtained only 111 marks in the written test, which is the final stage of selection process. Even assuming that the appointments of the 5 women candidates that he challenges are set aside, the petitioner would still not make it into the zone of consideration, as the cut-off fixed for the Most Backward Community (MBC) category is 222 marks and the petitioner falls far short.

7. Be that as it may and even otherwise, there is no fallibility in the selection process itself. The Notification has made it clear that both vertical and horizontal rules of reservation would be followed. The Union Territory of Puducherry has strictly applied the ratio of reservation as set out in *Indra Sawhney V. Union of India*⁵ and the reservations provided fall within the overall quota of 50%. He relies upon the judgments of the Supreme Court in *Shiv Prasad V. Government of India and others*⁶ and *Rekha Sharma V. Rajasthan High Court, Jodhpur*⁷.

4 (2019) 15 SCR 273

5 1992 Supp (3) SCC 217

6 (2008) 10 SCC 382

7 2024 SCC OnLine SC 2109



8. We have heard both learned counsel in detail. In *Shiv Prasad*⁸, one of the issues that arose was how the reservation provided for woman may be implemented and enforced and whether the grant of such reservation would violate the overall threshold of 50% that has been granted in the case of *Indra Sawhney* (supra). In the case of *Indra Sawhney* (supra) a distinction was made between the two types of reservations, i.e., vertical and horizontal. It was also emphasised that the impact of both types of reservation must not exceed the maximum percentage of reservations permissible under law.

9. This very issue was dealt with in *Swati Gupta V. State of U.P.*⁹ and *Anil Kumar Gupta V. State of U.P.*¹⁰, where too, the Court reiterated the position that even after providing for horizontal reservations, the percentage of reservations must overall remain the same.

10. The procedure for filling in seats applying the rules of reservation has been made clear in paragraph 18 of the judgement in *Anil Kumar Gupta*¹¹, where the Court states as follows:

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the

OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find

8 Foot Note Supra (6)

9 (1995) 2 SCC 560

10 (1995) 5 SCC 173

11 Foot Note Supra (9)



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out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/ accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

11. Thus, while filling up the quota for reservations, the proper and correct course would be to fill the OC quota (50%) on the basis of merit, then, each of the social reservation quotas, i.e., SC,ST and BC. The third step would be to ascertain how many candidates belonging to special reservations. In other words, it is to be ascertained how many candidates who are eligible for horizontal reservation basis have already been selected on the application of parameters for vertical reservation. If the quota that has been fixed for horizontal reservations has already been satisfied numerically by filling up of the posts on vertical reservation basis, then no further question arises.

12. We had, at the hearing on 09.08.2024 directed the respondents to produce the records and a tabulation on the application of the vertical and horizontal



reservation rules in the selection of the successful candidates and the files have been produced and duly perused by us.

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13. The Notification by the Police Department of the Government of Puducherry categorically mentions that both vertical and horizontal reservation would be applied in the selection of candidates. There is also a stipulation that 20% of the posts shall be reserved for women. Learned counsel for the petitioner has, in this regard, referred to Office Memorandum bearing No.36011/1/2022-Estt (Res-I) of the Department of Personnel and Training, Ministry of Personnel, Public Grievance & Pensions, Government of India dated 28.03.2024 and Office Memorandum bearing No.36012/22/93-Estt. (SCT) of the Department of Personnel and Training, Ministry of Personnel, Public Grievance & Pensions, Government of India dated 08.09.1993.

14. We do not find the aforesaid Office Memoranda relevant, as they deals specifically with reservation for other Backward Class posts in the Government of India, and reservation for SCs, STs, OBCs, PwDs and EWS in posts and services in the Central Government, respectively. Neither Notification can be read in isolation but must be seen in context with the overall reservation policy.

15. In the present case, the grievance is specifically that there is no mention of reservation relating to women. The Court concludes in the case of *Shiv Prasad*¹² that reservation for woman candidates cannot be held to be invalid or in excess of

¹² Foot Note Supra (6)



permissible quota as the policy of the Government explicitly ratifies such reservation.

The Court makes reference to OM dated 26.02.1999, and extracts paragraph 2 thereof to state '*Reservation will be of horizontal nature i.e., if any woman candidate is selected on the basis of reservation in any category then she will be fixed of the said category*'. Hence, there could be no grievance as regards the provision of horizontal reservation for woman.

16. Faced with this position, the petitioner would modify his submission to stated that while he does not per se object to the reservation provided for women, it is the stipulation of the percentage, at 20%, that offends him.

17. However, the stipulation of a percentage is one of policy, falling within the domain and discretion of the respondents. The petitioner could well have challenged the recruitment Notification itself, in which case, the merit/demerit or the legality/illegality of such stipulation could have been tested. However, he has not chosen to do so and has raised this issue only at the stage of his non-selection after the entire selection process has been completed.

18. Seen in this light, we agree with the conclusion of the Tribunal that the petitioner cannot be permitted to raise an objection in regard to a selection criteria contained in the Notification, after having responded to the same and participated in the selection process. Such a challenge is clearly an afterthought.

19. The decision in *Dr.(Major) Meeta Sahai*¹³ also does not advance the

¹³ Foot Note Supra (4)



petitioner's case. The challenge mounted by Dr.(Major) Meeta Sahai had been resisted by the Bihar Health Department on the ground that she had participated in the selection process and had challenged it merely on account of her failure.

20. The Supreme Court referring to the judgment in the case of *Manish Kumar Shahi V.State of Bihar*¹⁴, reiterated the proposition that the principle of estoppel prevented a candidate from challenging the selection process after having participated in, and ultimately failing in it. They state that the underlying objection of the principle was to prevent candidates from having another shot at being considered for the post, and to avoid an impasse where a disgruntled candidate, having failed the selection would challenge it in the hope of a second chance.

21. Ultimately and on the facts of that case, the Court differentiated the principle stating that the candidate had agreed to '*participate in the selection process only..... and not the illegality in it*'. They go on to state that in a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, such illegality cannot be condoned merely because the candidate has succumbed to the selection process.

22. The constitutional scheme, they say, is sacrosanct and its violation in any manner is impermissible, noting that on the contrary, a candidate may not have locus to assail the illegality of the process, unless she had participated in the selection process.

¹⁴ (2010) 12 SCC 576



23. The ratio of this decision is inapplicable as, in this case, the challenge is not to the selection process on the ground of illegality perse and, rather the challenge is to the 20% reservation provided for women, which is part of the Notification itself. Thus, this is not a case where an illegality has transpired in the course of the selection process, subverting the otherwise constitutional scheme of selection.

24. This is a case where the rules of the game had been clearly set out at the very first stage revealing transparently that the reservation provided was pegged at 20% for women. This also in line with extant policy. Having not challenged that stipulation and continuing to participate in the process till the finish, the ratio of the decisions cited by the petitioner are unavailable to him. This argument is rejected.

25. Coming to the process of reservation itself, the vertical and horizontal reservations provided are as follows:

RECRUITMENT TO THE POST OF SUB INSPECTOR OF POLICE AS PER NOTIFICATION
DATED 18.11.2010 & 25.11.2010.

VERTICAL RESERVATION

<i>S.NO.</i>	<i>CATEGORY</i>	<i>VACANCIES</i>
<i>1</i>	<i>GENERAL</i>	<i>12</i>
<i>2</i>	<i>MBC</i>	<i>10</i>
<i>3</i>	<i>OBC</i>	<i>06</i>
<i>4</i>	<i>BCM</i>	<i>02</i>
<i>5</i>	<i>SC</i>	<i>10</i>
<i>6</i>	<i>BT</i>	<i>01</i>
	<i>TOTAL</i>	<i>41</i>

HORIZONTAL RESERVATION

<i>S.NO.</i>	<i>CATEGORY</i>	<i>POST</i>
<i>1</i>	<i>EX-SERVICEMEN (XSM) (10%)</i>	<i>4 POSTS</i>



2

WOMEN (20%)

7 POSTS

26. The impugned provisional selection list reads as below:

PROVISIONAL SELECTION LIST dated 07.02.2011

Sl.No	Roll No.	Name of the Candidate	MARKS	Type
GENERAL CATEGORY				
1.	101701	A ZAGUIR QUSSENE	140	Ex-Servicemen
2.	210080	MALI B	139	Ex-Servicemen
3.	102766	J JEROME JESMOND	135	
4.	101595	S BALAJI	134	
5.	100457	RAJA SEKAR K	133	
6.	102735	G KALALARASAN	131	
7.	100726	S RAJESH	127	
8.	100375	MURUGANANDHAN J	126	
9.	100897	V SIVAKUMAR	126	
10.	103022	PRAMOD KAYANADATH	125	Ex-Servicemen
11.	101355	N KUMARAVEL	125	
12.	100725	S RAMESH	125	
MOST BACKWARD CLASSES				
1.	101519	E PRABU	124	
2.	104087	B VIMAL KUMAR	123	
3.	200135	D VENKATESA PERUMAL	122	Ex-Servicemen
4.	104088	D GOVINDARAJAN	122	
5.	102660	V JAYAGURUNATHAN	122	
6.	101394	K PRIYA	99	Women
7.	100572	SARANYA M	93	Women
8.	101241	R AKALYA	80	Women
9.	101433	S SATHIYA	78	Women
10.	102353	SHANMUGA SATHIYA A	72	Women
OTHER BACKWARD CLASSES				
1.	104696	E PUNITHA RAJA	124	
2.	100939	S NANDAKUMAR	123	
3.	100955	S VELOU	118	
4.	102626	D MURUGAN	118	
5.	102609	G SANDHOSH	117	
6.	102489	C MARY FRANCISCA	96	Women



27. The respondents have averred in paragraph 7 of their Reply statement dated Nil, February, 2013 before the Tribunal that the cut-off marks for male candidates in MBC category is 122 out of 200. The petitioner had secured only 111 marks (44 in paper 1 and 76 in paper 2). It is hence that the petitioner stood eliminated from selection in that category. A perusal of the list of candidates in MBC category reveals that the candidate in serial number 5, V.Jayagurunathan had secured 122, which is the cut-off. The candidates thereafter are women candidates in that category.

28. In light of the detailed discussion as above, this writ petition has no merit and is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

(A.S.M.,J) (G.A.M.,J)
03.10.2024

Index:Yes
Speaking order
Neutral Citation: Yes
sl

To

1. Union of India rep. By the
Govt. of Puducherry through the
Inspector General of Police,
Police Department, Puducherry.



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2. The Superintendent of Police (HQ),
Police Department,
Puducherry.

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3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.



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