



W.A(MD)No.1042 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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- 1.M.Mohammed Asif
- 2.A.Sultan Abubakker Sithik
- 3.A.Navaskhan
- 4.M.Surulimasthan
- 5.S.Mohaideen Abdul Kather Kailani
- 6.Ansar Ahammed
- 7.M.Frose
- 8.A.Ameer Khan
- 9.A.Abdhul Lathif
- 10.Mohamed Rizwan
- 11.J.Ameer Batch

... Appellants /
Petitioners

Vs.



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1. Tamil Nadu Uniformed Services Recruitment Board,
Represented by its Member Secretary,
Egmore, Chennai – 8.

2. The Director General of Police,
Beach Road,
Chennai - 4.

... Respondents /
Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P(MD)No.3102 of 2020 dated 29.10.2020 on the file of this Court.

For Petitioners : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard both sides.

2.The writ appellants belong to Backward Class Muslim category. Pursuant to the notification dated 06.03.2019 issued by the Tamil Nadu Uniformed Services Recruitment Board calling for applications for filling up 8888 posts of Grade II Police Constable, the petitioners applied for the same.



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They wrote the written examinations and cleared the same. They also took part in the physical test as well as in the certificate verification. But they were not selected.

3.The case of the petitioners is that if the backlog vacancies meant for BC(M) category had been filled up, they would have been selected. Hence, they filed W.P(MD)No.3102 of 2020 seeking declaration that the provisional selection list issued by the Board was illegal. They also sought further direction for appointing them in the post of Grade II Police Constable under BC(M) category. The writ petition was dismissed vide order dated 29.03.2021. Challenging the same, this intra Court appeal came to be filed.

4.The learned Senior Counsel appearing for the appellants drew our attention to the notification dated 06.03.2019 issued by the Board and pointed out that it specifically mentions the existence of 62 backlog vacancies as earmarked for BC(M) category. He reiterated all the contentions set out in the memorandum of grounds of writ appeal. Notes of arguments were also filed. It is further contended that 3.5% quota meant for BC(M) had not been filled up in 2019 recruitment. He called upon this Court to set aside the impugned order and grant relief as prayed for.



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5.The respondents have filed counter affidavit and the learned Additional Advocate General took us through its contents. The respondents submit that the writ petition filed by the appellants was rightly dismissed and that interference is not warranted. They pressed for dismissal of the writ appeal.

6.We carefully considered the rival contentions and went through the materials on record.

7.The entire argument of the learned Senior Counsel appearing for the appellants is centred on the fact that 62 backlog vacancies were earmarked for BC(M) category and that only 10 were filled up in 2019 recruitment process; if all the 62 backlog vacancies had been filled up, the appellants would have been selected.

8.It is true that the recruitment notification in fact mentions the number of backlog vacancies meant for BC(M) category as 62. But on a careful consideration of the entire materials on record enclosed in the type set, we notice that there has been a typographical error. 30% reservation for women has always been provided. That is why in the recruitment notifications, the



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number of vacancies meant for men and number of vacancies meant for women will be separately given. As per Tamil Nadu Government Servants (Conditions of Service) Act, 2016, when 30% women reservation is not filled due to shortage of eligible women candidates for a particular category, the respective vacancies are to be filled with men candidates from that particular category alone. For instance, if under AR women are not filled, the same shall be filled with men eligible for selection under AR men and not filled from men eligible for other category.

9. In the year 2010, 56 vacancies meant for BC(M)(Women) were not filled up. They were carried forward and in the 2012 recruitment notification, this was specifically notified. Copy of the 2012 notification has been enclosed and it is specifically mentioned that 56 backlog vacancies are meant for BC(M)(W). It is to be noted that these 56 backlog vacancies came under TSP (Tamil Nadu Special Police) category and not under Armed Reserve / Jail Warder / Firemen category. Out of 56 BL vacancies, 10 were filled up. The remaining 46 were carried forward to the 2017 recruitment process. Copy of the 2017 recruitment notification dated 23.01.2017 has been enclosed in the typed set of papers and it is specifically mentioned therein that the BL vacancies are meant for BC(M)(W) category. Since in the year 2015, vide G.O(Ms)No.32 Home



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Police Department dated 12.01.2015 Tamil Nadu Special Police had been exempted from the reservation for women and only male candidates were made eligible for appointment to this service, the 46 BL vacancies earmarked for BC(M)(W) were not filled up. When another recruitment process was held in the year 2017-18 and notification dated 28.12.2017 was issued, the backlog vacancies (46) for BC(M)(W) category were reflected. G.O(Ms)No.34 Backward Class MBC and Minorities Welfare Department dated 02.05.2000 mandated that unfilled vacancies must be carried forward for 4 recruitment years and if they are still unfilled they shall lapse. In view of the aforesaid GO, the backlog vacancies were carried forward and reflected in the 4 recruitment years (2012, 2017, 2017-18 and 2019). It appears that there was some filling up of vacancies in the year 2017 and that is how the backlog vacancies shown in the 2019 recruitment notification has become 43. We are more than satisfied that though not specifically mentioned, 62 backlog vacancies set out in the 2019 recruitment notification (AR-7, Jail Department-12, TSP-43) were all meant only for BC(M)(W). This position becomes clear if we compare the 2019 recruitment notification with the previous three recruitment notifications of the years 2012, 2017 and 2017-18.



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10. There is one Himalayan impediment for the writ petitioners. As already mentioned, reservation for women in TSP had been given up in the year 2015. Thus the question of carrying forward the backlog vacancies for BC(M)(W) did not arise at all. The Board labouring under the impression that backlog vacancies must be shown and carried forward for four recruitment years had indicated the backlog vacancies for BC(M)(W). In fact the backlog vacancies pertaining to AR, Jail Department and Fire Department alone should have been shown. It is true that if the vacancies meant for women is not filled up, it should be filled up by eligible men candidates from the same communal category. But this provision in the statute will not come to the appellants' rescue. This is for a very simple reason. In the year 2019 there was no reservation or earmarking of any vacancy for women candidates in respect of TSP. Only if there was reservation for women and there were no women candidates, the resulting vacancy could have been filled up by eligible men candidates from the same category. From the year 2015 onwards, the Government had taken a policy decision not to recruit women candidates for TSP. Therefore, Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is of no avail.



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11.The appellants cannot take advantage of the typographical or clerical error in the 2019 notification. Even if the respondents have committed a mistake, it will not enure to the advantage of the appellants. The appellants have to independently demonstrate the existence of a legal right. In this case, the existence of such a right has not been shown. The materials on record indicate that the reservation quota meant for BC(M) category had been duly filled up. We are satisfied that the appellants have no case on merits. The order impugned in this Writ Appeal is sustained.

12.This Writ Appeal stands dismissed. There shall be no order as to costs.

[G.R.S., J.] [R.P., J.]
19.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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