

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.7667 OF 2014
(Arising out of SLP(C)No.21828 of 2006)

K.K. Senthil Kumar and others ..Appellants

VERSUS

State of Tamil Nadu and others ..Respondents

WITH

C.A.No.7668/2014 @ SLP(C) No. 23629/2007
C.A.No.7669/2014 @ SLP(C) No. 23905/2007
C.A.No.7670/2014 @ SLP(C) No. 23993/2007
C.A.No.7671/2014 @ SLP(C) No. 24000/2007
C.A.No.7672/2014 @ SLP(C) No. 24072/2007
C.A.No.7673/2014 @ SLP(C) No. 7382/2009
C.A.Nos.7674-7675/2014 @ SLP(C) No. 10304-10305/2009
C.A.Nos.7676-7679/2014 @ SLP(C) No. 11005-11008/2011
C.A.No.7680/2014 @ SLP(C) No. 8127/2012
C.A.No.7681/2014 @ SLP(C) No. 9337/2012

O R D E R

Heard learned counsel for the parties.

Delay condoned.

Leave granted.

During the course of hearing, Mr.L.Nageswara Rao, learned

Additional Solicitor General appearing on behalf of the State of

Tamil Nadu, explained to us, the factual position out of which

the present controversy has emerged.

It was submitted, that the

present controversy pertains to selection/appointment o

Sub-Inspectors to the Tamil Nadu Police Service during th

recruitment process of 1997-98.

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According to learned counsel, there were three sources

Parveen Kumar Chawla

Date: 2014.08.16

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of recruitment of Sub-Inspectors. 70% of the vacancies were to

Reason:

be filled from the open category, by way of direct recruitment.

A further 20% of the vacancies were earmarked for recruitment

from in-service (Police Service) candidates. The remaining 10%

of the vacancies were to be filled from out of, wards of personnel of the Police Department.

The recruitment process entailed a physical efficiency test, followed by a written test, and an interview. 40, 45 and 15 marks respectively, were assigned for the same.

When the State Government conducted the process of selection, it selected candidates Range-wise. This determination of the State Government was assailed by the candidates, who had not been selected. Their grievance was, that the selection ought to have been made State-wise. The claim of the un-selected candidates was accepted by a series of judgments rendered by the Tamil Nadu Administrative Tribunal (hereinafter referred to as the 'Administrative Tribunal') which came to be upheld by the High Court on the above issue, and attained finality.

To implement the above determination, it was directed that un-selected candidates who had obtained marks, higher than those who had been appointed in different ranges, would also be appointed. It is in the above background, that the State Government implemented the directions issued by the Administrative Tribunal, in respect of such of the candidates who had assailed the selection process.

After the aforesaid judgments were rendered, some candidates who had obtained marks in excess of those selected/ appointed as Sub-Inspectors (in furtherance of the recruitment process of 1997-98) but had not approached the Administrative Tribunal, filed writ petitions before the High Court of Jharkhand at Ranchi (hereinafter referred to as the 'High Court') under Article 226 of the Constitution claiming appointment against the posts of Sub-Inspector on account of their higher position in the merit list.

Those who had approached the High Court with a delay in excess of 1 year were not granted the benefit of the orders passed by the Administrative Tribunal (which had attained

finality). This bunch of cases constitute one set of cases now before us. During the course of hearing of this category of cases, this Court directed the learned Additional Solicitor General representing the State of Tamil Nadu, to make available all original records pertaining to the selection process, specially the record pertaining to the un-selected candidates before this Court. The summoned record has since been made available, in respect of all the appellants before us, other than 7 candidates. The record available indicates that out of the appellants before this Court, there are only 11 appellants who had applied against the 70% open direct recruitment vacancies, who were awarded marks in excess of the cut off marks (on the basis of which appointments had been made). The question which arises for our consideration is, whether these 11 candidates ought to have been appointed on the culmination of the adjudication process.

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The above appellants before us, have admittedly been denied the right of appointment, merely on account of having approached the High Court belatedly. Having given our thoughtful consideration to the issue in hand, we are satisfied, that it was the bounden duty of the State Government to implement the judgment rendered by the Administrative Tribunal in letter and spirit. More so, after the same had attained finality. Not doing so would result in some meritorious candidates being ignored, despite their higher merit, than those appointed while implementing the order of the Administrative Tribunal. Had the aforesaid onus and responsibility been discharged by the State Government, there would have been no need for the appellants either to approach the High Court or this Court. There is no doubt that 11 of the appellants before this Court namely, A.Sethuraman, E.Ramesh Babu, V.Jayabalan,

K.Sivakumar, S.Chandran, R.Ravi, K.K.Senthil Kumar, O.Dayalan, P.Paulraj, M.Sundarapandian and K.Moovendhan, who ought to have been appointed in terms of the judgments passed by the Administrative Tribunal (dated 19.07.2001/12.07.2002), have a right of being appointed in terms of their acknowledged/admitted position in the merit list.

It is not as if there were valid grounds for not making these appointments. Illustratively, if all advertised posts had been filled up, perhaps the State Government could have a legitimate reason for denying the claim of these appellants for appointment, on account of delay.

From

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the sequence of facts brought to our notice, it emerges, that a large number of vacancies had remained unfilled, after appointments were originally made. Even after the State Government implemented the orders of the Administrative Tribunal by appointing only those who had availed of judicial redress, a number of vacancies still remained unfilled. Therefore, not a single person appointed by the State Government would have to be dislodged, to extend the benefit of the judgment to these 11 appellants. All of them could have been accommodated, against unfilled vacancies, of the same recruitment process. In our considered view, delay alone could not be a valid justification to deprive these meritorious candidates, the right to be appointed. We therefore, hereby, direct the State Government to appoint all the aforesaid 11 appellants as Sub-Inspectors.

During the course of hearing, a serious issue arose as to whether the above-mentioned 11 persons, should be granted seniority with effect from the same date persons originally selected against the posts of Sub-Inspector (through the selection process for the years 1997-98) were appointed. Learned counsel for the above-mentioned 11 appellants very

fairly state, that they would have no objection if the appointment of these 11 appellants, were ordered to be made with immediate effect, in that, they would be extended the benefit of seniority at the bottom of the regularly appointed Sub-Inspectors as of today. Ordered accordingly.

We shall now advert to the second set of cases before

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us. The second set comprises of seven candidates whose records have gone missing, and therefore, could not be produced before us. They are, S. Balamurugan, K.Pichandi, M.Murugan, V.Shanmugam, M. Ilamaran, V.Murugan and Marichamy. It was not possible to verify the relative merit obtained by them on account of the fact that the complete record maintained by the respondents is not available. The evaluation of the physical efficiency test of these seven candidates has gone missing. The fault of the respondents, could not be a valid basis for denying these seven appellants due consideration. Therefore we decided, as a one time measure, that the merit of these candidates should be determined only on the basis of their marks awarded to them in the written test and viva voce. Their merit vis a vis the selected/appointed Sub-Inspectors, would therefore have to be determined by excluding the physical efficiency test marks (from the total marks) awarded to those selected and appointed.

In adopting the above process of determining inter se merit, we arrived at the conclusion that out of the selected/appointed candidates, Rajagopal from the category of Most Backward Class, would have had the least marks. He would have had an aggregate of 20.3750 marks. Likewise, out of the Backward Class category, K. Chandrasekaran, who had been appointed, would have had an aggregate of 20.5625 marks. Out of the Scheduled Caste candidates, R. Gunasekaran would have earned the least marks. He would have had 18.0625 marks.

There are three appellants from the category of Most

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Backward Class candidates, whose record has gone missing, namely, V.Shanmugam, M.Murugan and M. Illamaran with marks in

excess of the marks obtained by Rajagopal.

They have 27.8125,

30.25 and 24.1250 marks.

We are of the view that since they

have more marks than the least meritorious candidate from their category, they ought to have been appointed.

V.Murugan (out of the appellants) from Most Backward category, whose record is not available, obtained only 19.9375 marks, which is less than the last selected/appointed candidate.

Accordingly, we are of the view that his claim cannot be accepted.

By the same process, out of the Backward Class candidates, the two appellants before this Court, namely,

K.Pichandi and S. Balamurugan have come to obtain more marks

than the last selected/appointed candidate, K. Chandrasekaran.

They have come to obtain 22.9375 and 27.75 marks. We are of the

view that they ought to have been appointed, as they have more

marks than 20.5625 obtained by K. Chandrasekaran, who had been

appointed. Therefore, both the above candidates deserved to be

appointed.

Only one other appellant remains, namely, Marichamy.

He belongs to the Scheduled Caste category.

The sum total of

his marks in the written test and the viva voce is 17.1250.

As

against the above, the last candidate selected/appointed out of

the Scheduled Caste category, namely, R. Gunasekaran is shown to

have been awarded 18.0625 marks, by adopting the same process.

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Since Marichamy has not come to obtain more marks, than the last

selected/appointed candidate from his category (Scheduled

Caste), in our view, he would not be entitled to appointment as

Sub-Inspector.

For the reasons recorded hereinabove, with reference

to the second set (of seven candidates) of cases, whose record

is partly unavailable, we are of the view, that all the

candidates other than V.Murugan and Marichamy should have been

appointed as Sub-Inspectors. We, accordingly, direct the

respondent-State, to issue orders of appointment to the

Mr.Jayant Muth Raj, Adv.
For Mr. C. K. Sasi, AOR(NP)

Mrs.G.Indira, Adv.
For Mrs. Mona K. Rajvanshi, AOR(NP)

Mr.R.Nedumaran, Adv.
Mr.P.Soma Sundaram,AOR(NP)

For Respondent(s) Mr.L.Nageswara Rao, ASG
Mr.B. Balaji, Adv.
Mr.R.Rakesh Sharma, Adv.
Mr.S.Anand, Adv.

Mr. S. Gowthaman, AOR(NP)

Ms. A. Sumathi, Adv.

Upon hearing the counsel the Court made the following
O R D E R

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SLP(C)No.21828 of 2006, SLP(C) No. 23629/2007, SLP(C) No.
23905/2007, SLP(C) No. 23993/2007, SLP(C) No. 24000/2007,
SLP(C) No. 24072/2007, SLP(C) No. 7382/2009, SLP(C)
No.10304-10305/2009, SLP(C) No. 11005-11008/2011, SLP(C) No.
8127/2012, SLP(C) No. 9337/2012

Delay condoned.

Leave granted.

The appeals are disposed of in terms of the signed
order.

S.L.P.(C) Nos.6855-6856 of 2008

Learned counsel for the petitioners acknowledges that
none of the petitioners in these petitions satisfies the
parameters on the basis of which we have ordered the appointment
of other candidates.

In view of the above, we are of the view that there is
no merit in these petitions, and the same are liable to be
dismissed. Ordered accordingly.

S.L.P.(C) No. 23018, 23883, 23852, 23857, 23995, 23992 and
23939 of 2007

Heard learned counsel for the petitioners.

No ground for interference is made out in exercise of
our jurisdiction under Article 136 of the Constitution of India.

The special leave petitions are dismissed.

S.L.P.(C) No.28033 of 2009

We have considered the contention advanced at the hands
of the learned counsel for the petitioner. It is not a matter

of dispute that the petitioner belongs to the backward class category. It is also not a matter of dispute that the petitioner

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had sought appointment out of the 20% quota meant for in service police personnel. During the course of determination of the petitioner's merit based on the physical efficiency test, written test and the viva voice test, the petitioner was awarded 56.0726 marks.

The last candidate admitted out of the backward class category from the 20% quota, against which the petitioner was an applicant, had obtained an aggregate of 56.75 marks. It is, therefore, apparent that the marks obtained by the petitioner are less than the marks awarded to the last selected/appointed candidate.

In view of the above, we find no merit in this petition, and the same is liable to be dismissed. Ordered accordingly.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Assistant Registrar

[signed order is placed on the file]