

In the High Court of Judicature at Madras

(Appellate Jurisdiction)

Friday, the Twenty Eighth day of March

Two Thousand and Eight

PRESENT

The Honourable Mr. Justice S.J. Mukhopadhyaya
and

The Honourable Mr. Justice M. Venugopal

Writ Appeal Nos.
194 to 199, 317, 318 of 2008 and
1598 to 1602, 1607 to 1610, 1563, 1583 and 1584 of 2007
& connected Miscellaneous Petitions

M. Arul Manimaran	..Appellant in WA No.194/08 (Petitioner)
Kamalakaran	..Appellant in WA 195/08 (Petitioner)
R. Sundararajan	..Appellant in WA 196/2008 (Petitioner)
M. Prabhu	..Appellant in WA 197/2008 (Petitioner)
R. Deenadayalan	..Appellant in WA 198/2008 (Petitioner)
P. Sudhan	..Appellant in WA 199/08 (Petitioner)
A. Aruncharles	..Appellant in WA 317/08
R. Ramkumar	..Appellant in WA 318/2008
A. G. Chandrasekaran	..Appellant in WA 1598/07
S. Rathina Kumar	..Appellant in WA 1599/07 (Petitioner)

R.Ponnuswamy ..Appellant in WA 1600/07
(Petitioner)

C.Ramnath ..Appellant in WA 1601/07
(Petitioner)

S.Thiruvengadam ..Appellant in WA 1602/07
(Petitioner)

C.P.Saravanan ..Appellant in WA 1607/07
(Petitioner)

V.Prabhudass ..Appellant in WA 1608/07
(Petitioner)

S.Mohanraj ..Appellant in WA 1609/07
(Petitioner)

Balakumaran ..Appellant in WA No.1610/07
(Petitioner)

S.Parani Ramalingam ..Appellant in WA 1563/07
(Petitioner)

J.Kuppuraj ..Appellant in WA 1583/07
(Petitioner)

V.Kamalakannan ..Appellant in WA 1584/07
(Petitioner)

vs.

The Secretary to Government,
Home (Police IV) Department,
Fort St.George, Chennai-600 009.

.... Ist Respondent in
W.A.194/08, 195/08, 196/08
197/08, 199/08, 318/08
1598/07, 1599/07, 1600/07
1601/07, 1602/07, 1607/07
1608/07, 1609/07, 1610/07.

The Director General of Police/
The Chairman, Tamil Nadu Uniformed
Services Recruitment Board,
Anna Salai, Chennai-2.

... 2nd Respondent in

W.A.194/08, 195/08, 196/08
197/08, 198/08, 199/08, 317/08
318/08, 1598/07, 1599/07
1600/07, 1601/07, 1602/07
1607/07, 1608/07, 1609/07
1610/07, and Ist respondent in
W.P.1563/07, 1583/07, 1584/07

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... 3rd Respondent in W.A.No.194 of

2008, 195/08, 196/08, 197/08
199/08, 317/08, 318/08, 1598/07
1599/07, 1600/07, 1601/07
1602/07, 1607/07, 1608/07
1609/07, 1610/07 and 2nd
Respondent in 1563/07, 1583/07
1584/07 and Ist respondent in
W.A.198/08

The Secretary to Government
Home (Police II) Department
Fort St. George, Chennai-9

... Ist Respondent in W.A.317/08

P. Rajendran
Vibhakarsharma
sukla
Lakshmi Prasad

... Respondents 3 to 6 in
W.A.1563/07, 1584/07

Appeals under clause 15 of the Letters Patent against the
order of the Honourable Mr. Justice K. Venkataraman dated
20.11.2007 and made in the exercise of the Special Original
Jurisdiction of the High Court in Writ Petition Nos.31225/07
32119/07, 26637/07, 33198/07, 28707/07, 23692/07, 26048/07
30189/07, 26185/07, 26188/07, 28710/07, 29115/07, 33376/07
26184/07, 33197/07, 32225/07, 28975/07, 30358/07 and 32173/07

and the order of the Honourable Mr. Justice K. Chandru in WP.No.35682/2007 dated 26.11.2007 respectively presented to this Court under Article 226 of the Constitution of India to issue a Writ of (1) Declaration (a) declaring that the provisional select list published by the second Respondent on 17.07.2007 for recruitment of Sub-Inspector of Police, (Men - Open Market Quota) 2006 is null and void and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under 80% Open Market candidate Quota and grant - all consequential benefits. (WP.No.31225/07 and 32225/07)

(b) declaring that the provisional list published by the second respondent on 17.07.2007 for recruitment of Sub-Inspector of Police for the year 2006 is null and void and further direct the respondents to select and appoint the petitioner to the post of Sub-Inspector of Police under 20% Quota for Departmental candidates. (WP.32119/07) and grant all consequential benefits. (c) declaring that the provisional select list published by the 2nd respondent on 17.07.2007 for recruitment of Sub-Inspector of Police (Men - Department Quota) 2006 is null and void and direct the respondent to select and appoint the petitioner as Sub-Inspector of Police under 20% department candidates Quota and grant all consequential benefits. (WP.No.26637/07, 33198/07, 26185/07, 26188/07, 28710/07, 33376/07, 26184/07, 33197/07.

(d) declaring that the publication published on 09.04.2007 for recruitment to the post of Sub-Inspector of Police for the year 2006 is null and void and further direct the respondents to publish the results in respect of the 10% wards quota and consider the claim of the candidates respectively (WP.23692/07)

(e) declaring that the provisional select list published by the 2nd respondent on 17.07.2007 for recruitment of Sub-Inspector of Police (men and Women) 2006 is null and void and further direct the respondent to select and appoint the petitioner as the Sub-Inspector of Police under 10% wards Quota and grant all consequential benefits (WP.26048/07)

(e) declaring that the provisional select list published by the second respondent for recruitment of Sub-Inspector of Police (Men - Direct Quota) 2006 is null and void and consequently direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under direct Quato (WP.30189/07)

f) declaring that the provisional select list published by the 2nd respondent on 17.7.2007 for recruitment of Sub Inspector of Police (men) 2006 is null and void and further direct the respondents to select and appoint the petitioner as Sub Inspector of Police under

10% wards quota candidates and grant all consequential benefits (W. 29115/07, 35682/07)

g) To declare the petitioners non selection (register No.1000030) for the recruitment to the post of Sub Inspector of Police (men and women) for the year 2006 as issued in the selection list and his non deputation for the medical examination and further process of selection as illegal, null and void and to consequently issue directions to the respondents to depute the petitioner to medical examination and police verification and if found fit to select him for appointment as Sub Inspector of Police (men) for the year 2006 and appoint him as such with retrospective effect from the date of appointment of his immediate Junior with all consequential service and monetary benefits (WP.28975/07, 32173/07)

II certiorarified mandamus (a) Calling for the records of the 2nd respondent in connection with the impugned orders passed by him in C.No.D1/2906/2007 dt 14.8.2007 and quash the same and direct the respondents to call the petitioner for the vive voce examination and appoint the petitioner as Sub Inspector of Police based on the selection conducted for the year 2006 (WP.28707/07)

(b) calling for the records relating to the entire selection process for recruitment of Sub Inspectors of Police Men and Women 2006, quash the non selection of the Petitioner under the 10% allotted as Wards Quota and the consequential order in Rc.No.D1/2658/2007 dt 28.8.2007, and issue consequential directions to the respondents to consider the candidature of the petitioner (Register No.1001862) under the quota 10% reserved of police (men) for the year 2006. (W.P.30358/07)

Order: These Writ Appeals coming on for orders as to admission on this day upon perusing the grounds of Appeals the order of the Hon'ble Mr. Justice K. Venkataraman, dated 20.11.2007 and made in the exercise of the special Original Jurisdiction of the High Court in W.P.Nos.31225, 32119, 26637, 33198, 28707, 23692, 26048, 30189, 26185, 26188, 28710, 29115, 33376, 26184, 33197, 32225, 28975 and 30358/07 and the order of Honourable Mr. Justice K. Chandru dated 26.11.2007 in W.P.No.35682/07 and upon hearing the arguments of Mr.K. Venkataramani, Senior Counsel for Mr.Muthappan in W.A.Nos.199 to 199/08, 1598 to 1602/07, 1607 to 1610/07 and of Mr.K. Selvaraj Advocate for the Appellant in W.A.317 and 318/08 and of Mr.M. Ravi Advocate for the Appellant in W.A.1563, 1583 and 1584/07 and of Mr.D. Sreenivasan, Additional Government Pleader on behalf of the State the Court made the following order:-

Common Judgment

S.J.Mukhopadhyaya, J

The Writ Appeals relate to the appointment to the post of Sub-Inspector of Police. The appellants/Writ Petitioners applied for appointment to the said post, pursuant to the Notification in question, but having not been recommended for appointment, they preferred these Writ Appeals, either challenging the total selection or praying for their appointment or for similar other reliefs. The Writ Petitions were dismissed by the learned single Judge in W.P.Nos.14482 of 2007 etc. batch cases, by the impugned common order dated 20.11.2007, giving rise to the present Writ Appeals filed by the appellants/Writ Petitioners. In the aforesaid background, the Writ Appeals were heard together and disposed of by this common judgment.

2. As the learned Senior Counsel/counsel appearing for the appellants limited their arguments with regard to the direct interview (viva-voce test) and marks allotted towards special certificates/sports/games, it is not necessary to discuss all the other submissions as were raised before the Writ Court and for that, we are referring only the following relevant facts for proper adjudication of the Writ Appeals:

(i) Pursuant to Notification in Na.Ka.A1.No.2626/2006, calling for applications for appointment of male/female Sub-Inspectors of Police (for shot, S.I. of Police) in the Tamil Nadu Police Service, the appellants/Writ Petitioners applied along with others. In the advertisement/prospectus, the respondents prescribed the procedure for selection, which consisted of the following stages:

- (i) Certificate(s) verification;
- (ii) Physical measurement test;
- (iii) Endurance test;
- (iv) Physical efficient test;
- (v) Written test;
- (vi) Direct interview (Viva-voce test) and
- (vii) Medical test (for selected candidates).

The candidates were informed through the advertisement/prospectus the marks allotted for different tests, as shown hereunder:

Name of the test	Marks
(i) Physical efficiency test	15
(ii) Written test (General Knowledge) in the specified manner (Tamil/English)	45
(iii) Written Test / Psychology Test (Tamil /English)	25
(iv) Direct interview (viva-voce)	10
(v) Other certificates (NCC/NSS & Sports)	5
Total	100

The selection was conducted through the Tamil Nadu Uniformed Services Recruitment Board (for short, 'Recruitment Board') for filling up of 682 vacancies of S.I. of Police by direct recruitment.

(ii) An Officer in the rank of Deputy Inspector General of Police was designated as Sub-Committee Chairman with one member in the rank of Superintendent of Police/DC and two other members in the rank of Additional Superintendent of Police/ADC and Deputy Superintendent of Police/AC, were entrusted to supervise the entire process of selection. One super-check officer in the rank of Inspector General of Police was also nominated with instructions to make surprise check of the measurement of height, chest and also the other tests for effective recruitment process.

(iii) In the said Notification, it was also informed that only the selected candidates will be informed of their selection and no individual intimation will be sent to those who were not selected.

(iv) The recruitment process was conducted in a phased manner between 30.3.2007 and 11.4.2007 in several batches, giving adequate and sufficient timing to the candidates to complete the tests. The candidates who had qualified in the certificate verification test, physical measurement test, endurance test and physical efficiency test, were called for the written test on 20.5.2007. The persons who had qualified themselves in the written test, were called for the direct interview/viva-voce test.

(v) The select lists were published in the Internet and a press-note to that effect was also issued. The candidates who asked for details of marks scored by them, were also provided with information. Apart from the panel, a waiting list was also drawn up to accommodate candidates in case any candidate failed in the medical examination or the police verification or declining the offer of appointment.

3. Though it was a direct recruitment, apart from reservation on the basis of caste, 20% of the posts was reserved for direct recruitment from amongst the departmental candidates (Police Department), who were already working in the lower posts. For the wards of the employees of the Police Department, out of the reserved 80%, 10% of the posts was provided. It included only those who are dependent on the employees, such as dependent son, daughter etc.

4. Before this Court in the Writ Appeals, the majority of the appellants/Writ Petitioners are departmental candidates who applied against 20% quota; there are one or other appellant who claimed appointment as "wards" and there is also one or other appellant who claimed appointment on direct recruitment as outsiders.

5. From the impugned common order passed by the learned single Judge in W.P.Nos.14482 of 2007, etc. batch cases, dated 20.11.2007, it would be evident that the appellants/Writ Petitions challenged the selection on the ground that the written examination was not conducted properly or the quota of each category was not followed or proper marking for certificate including sports, has not been made, which were classified by the learned single Judge, as follows:

"(a) The Written examination was not conducted properly and sought for cancellation of the written examination and conduct fresh examination; (b) 20% Departmental candidate quota was not published and selections have not been made for full 20% departmental candidate quota;

(c) 10% earmarked for the wards of the police personnel was not published separately and that 10% reserved for dependents category has not been filled up.

(d) S.C. & S.T. quota has not been filled up as per the advertisement made.

(e) Absolutely, there is no transparency in the selection.

(f) Marks have not been awarded for the sports certificates.

(g) In the viva-voce, though answered well, they have been given less marks."

6. As stated above, however, before this Court in the Writ Appeals, the learned Senior Counsel/counsel appearing for the appellants confined their argument in regard to direct interview (viva-voce test) and the marks granted for certificates/sports (NSS, NCC, sports, games, etc.) and made the following submissions:

(i) There was no transparency for giving marks towards the direct interview (viva-voce test). Though most of the appellants obtained better marks in the physical efficiency test and written test and fairly did well in the viva-voce test also by giving reply to almost all the questions, but, with a view to exclude them, they have been provided with lower marks in the viva-voce test and those who obtained lower marks than the appellants in the written test and the physical efficiency test, have been selected and appointed by providing them with higher marks in the viva-voce test. In support of their stand, the learned Senior Counsel/counsel appearing for the appellants relied on the data to show that some persons have been provided with higher marks in the viva-voce test, with a view to select them, though they have obtained lower marks than the appellants in the written test and physical efficiency test.

(ii) In the advertisement/prospectus, it was only shown that '5' marks will be provided for certificates such as NSS, NCC and sports. Though most of the appellants have produced NSS, NCC and/or sports certificates, but with a view to eliminate them, no marks have been given to them towards the "certificates".

The so-called marks as allotted towards different certificates, as highlighted by the respondents before the learned single Judge, were "after-thought", as no such decision was taken by the State Government or the competent authority to provide such marks for different certificates. It was submitted that the Selection Board/Committee had no jurisdiction to specify separate marks for "certificates" (NSS, NCC or sports), when once the marks allotted for such "Certificates" is specified in the advertisement/prospectus itself.

According to the learned Senior Counsel/counsel appearing for the appellants, even as per the special marks allotted for different "certificates", as stated by the respondents, many of the appellants were entitled for more marks, but they have not been given such marks for different "certificates".

7. In support of their stand that the appellants should have been provided with more marks for different subjects, certain facts have been highlighted in respect of each appellants, which we will take up and discuss at the appropriate stage in this judgment.

Learned counsel for the appellants also relied on certain decisions of this Court and the Supreme Court, particularly, AIR 1983 SC 580 (Punjab Engineering College, Chandigarh vs. Sanjay Gulati), 2001 (2) SCC 451 (W.B. State Electricity Board vs. Pate Engineering Co.), 2001 (6) SCC 46 (Rajsekhar Gogoi vs. State of Assam), 2005 Writ L.R. 697 (Madras High Court) (Dr.M.Ashish Nihmathullah vs. The Government of Tamil Nadu) and others, 2005 Writ L.R. 574 (Madras High Court) (Dr.M.Vennila vs. Tamil Nadu Public Service Commission) and 2006 Writ L.R. 964 (Madras High Court) (Dr.A.Rajapandian vs. State of Tamil Nadu and others). Out of these cases, the decision reported in AIR 1983 SC 580 (cited supra) relates to spot admissions made on extraneous considerations and in violation of rules. The said case was based on particular facts and cannot be applied in the present case, in the absence of any evidence to show that one or other appellant was excluded to accommodate one or other individual.

The rest of the two decisions of the Supreme Court, viz., 2001 (2) SCC 451 (cited supra) and 2001 (6) SCC 46 (cited supra) are not at all applicable, as they relate to awarding of tenders and Assam Excise Rules.

Similarly, we are not deliberating on the other cases, as they are based on particular facts and not relevant to the question raised in these appeals.

8. Learned counsel appearing for the respondents-State, while reiterating that the selection was done in accordance with the procedures prescribed under the relevant Rules and advertisement/prospectus, submitted that there was no illegality committed in the matter of selection of S.I. of Police. He highlighted the manner in which the selection was made and marks were allotted under different heads, including the marks obtained by the appellants. According to the learned counsel appearing for the respondent-State, the appellants having got lower marks than the cut-off marks i.e. the last obtained by the person recommended and appointed in the particular category and as they have not come within the 'zone of appointment' against the existing vacancies have not been recommended for appointment. With regard to the individual candidates, learned counsel appearing for the respondents-State highlighted their marks vis-a-vis the cut-off marks upto which the names were recommended against each category and it was submitted that those who claim appointment against one or other quota, their cases were so considered.

9. We have heard the learned counsel appearing for the parties and noticed the rival contentions, as also the impugned common order and the judgments referred by the learned single Judge/counsel for the parties. We have also noticed the other records including the marks obtained by one or other appellants and certain original records as was produced by the learned counsel for the respondents-State before this Court.

10. The respondents along with their common counter affidavit dated 28.2.2008, filed in the Writ Appeals, produced a chart signed by the Director General of Police/Chairman of the Tamil Nadu Uniformed Services Recruitment Board, Chennai-2, showing the details of marks obtained by one or other applicants, the cut-off marks of that particular quota/community and the final remarks against their individual names showing the reasons for not taking them in the service. Learned Senior Counsel/counsel for the appellants have not disputed the marks as was shown in the said chart including the cut-off marks shown for one or other community/category. For proper appreciation of the individual cases, we are extracting the said chart hereunder:

Sl. No.	W.A. In W.P. No.	Code No.	Name of the Applicant	MARK DETAILS				Total Marks	Community (80% or 20%) Cut Off Marks	W.Q. Cut Off Marks	RESULT
				PET 15%	WT 70%	V.V. 10%	Spl. Mks. 5%				
1	2	3	4	5	6	7	8	9	10	11	12
1	W.A.194/08 in W.P.31225/07	0100292	Arulmanimaran.M	12	57	2	0	71	SC-80%-72	-	Not secured cut off mark
2	W.A.1610/07 in W.P.32225/07	0102226	Balakumaran.C	15	55	1	0	71	MBC-80%-73	-	Not secured cut off mark
3	W.A.1598/07 in W.P.26185/07	0200804	Chandrasekaran A.G.	12	55	3	0	70	BC-20%-72	-	Not secured cut off mark
4	W.A.198/08 in W.P.28707/07	0100922	Deenadayalan. R.	15	46	-	-	61	SC-80%-	-	Not qualified for V.V. Cut off mark for VV – 66
5	W.A.195/08 in W.P.32119/07	0104627	Kamalakannan. E.	12	52	6	0	70	BC-20%-72	-	Not secured cut off mark
6	W.A.1584/07 in W.P.32173/07	1000084	Kamalakannan. V.	15	54	1	0	70	MBC-80%-73	-	Not secured cut off mark
7	W.A.1583/07 in W.P.30358/07	1001862	Kuppuraj. J.	12	46	-	-	58	BC- -	PW-59	Not qualified for V.V. Cut off mark for VV – 59
8	W.A.1069/07 in W.P.35682/07	0600944	Mohanraj. S.	9	53	2	0	64	MBC- -	PW-68	Not secured cut off mark
9	W.A.106/08 in W.P.25563/07	0105574	Packiaraja. M.	12	54	5	0	71	BC-20%-72	-	Not secured cut off mark
10	W.A.1563/07 in W.P.28975/07	1000030	Paraniramalingam. S.	15	45	1	0	61	BC- -	PW-67	Not secured cut off mark
11	W.A.1600/07 in W.P.28710/07	0700882	Ponnusamy. R.	12	56	1	0	69	BC-20%-72	-	Not secured cut off mark
12	W.A.197/08 in W.P.33198/07	0105474	Prabhu. M.	12	49	1	1	63	SC-20%-67	-	Not secured cut off mark
13	W.A.1608/07 in W.P.33197/07	0105343	Prabudoss. V.	15	49	1	0	65	SC-20%-67	-	Not secured cut off mark
14	W.A.1601/07 in W.P.29115/07	0100072	Ramnath. C.	15	51	1	0	67	MBC- -	PW-68	Not secured cut off mark
15	W.A.1599/07 in W.P.26188/07	2601113	Rathinakumar. S.	15	54	3	0	72	MBC-20%-73	-	Not secured cut off mark
16	W.A.1607/07 in W.P.26184/07	0200893	Saravanan. C.P.	15	50	3	0	58	BC-20%-72	-	Not secured cut off mark
17	W.A.199/08 in W.P.23692/07	3000305	Sudhan. P.	9	41	-	-	51	BC-80%-	-	Not qualified for V.V. Cut off mark for VV – 67
18	W.ASR.5358/08 in W.P.34267/07	0105055	Sundaramoorthy. C.K.	12	55	3	0	70	BC-20%-72	-	Not secured cut off mark
19	W.A.196/08 in W.P.26637/07	0105816	Sundararajan. R.	12	54	3	1	70	MBC-20%-73	-	Not secured cut off mark
20	W.A.1602/07 in W.P.33376/07	0104977	Thiruvankadam. S.	6	60	6	0	72	MBC-20%-73	-	Not secured cut off mark
21	W.ASR.5354/08 in W.P.34264/07	0105057	Viji. A.	9	56	3	0	68	BC-20%-72	-	Not secured cut off mark

11. Learned Senior Counsel/counsel appearing for the appellants, while making general submission regarding the marks allotted towards direct interview (viva-voce test), as mentioned in the earlier paragraphs of this judgment, highlighted the certificates of individual appellants to suggest that they have not been provided with marks towards such certificates, which they were entitled to. The following submissions were made with regard to some of the appellants:

"W.A.No.1598 of 2007 (A.G.Chandrasekaran):

The appellant has not been awarded special marks for NSS certificate produced by him. The appellant has attended 240 hours of service in the various NSS projects/camps in the school level. The appellant should have been awarded 2 marks. In the previous selection for Sub Inspector of Police for 120 hours of NSS activities, one mark has been awarded and hence the appellant is eligible for 2 marks. The certificate was produced at the time of viva voce. But no marks have been awarded.

W.A.No.1599 of 2007 (S.Rathina Kumar)

The appellant has not been awarded special marks for NSS (school and college), NCC (school) and sports/games. The appellant is a member of NSS during school & college. During school, he has participated 240 hours in the programme for which he should have been awarded 1 marks for NSS. He is also a member of NSS in the college and attended the special camp programme for which also he should have been awarded 0.5 mark. The appellant is a NCC cadet and obtained "A" Certificate for which necessary mark should have been awarded. As per the procedure followed for awarding marks, the "C" certificate in the college is alone awarded with marks which is illegal and incorrect. When there is no specific instructions regarding the participation in the school and college level, the appellant cannot be denied marks for the services rendered in NSS and for also obtaining "A" Certificate. The appellant is entitled to get 0.5 mark.

The appellant has also participated in the Intramural tournaments and sports representing the college during college days and obtained merit certificate. The appellant has obtained certificate of merit for chess tournament. The

appellant has also participated in various sports activities during school days and obtained merit certificate. The appellant has also obtained merit certificate in the State Police Duty Meet for the year 2004-05 in the State Aquatics which is one of the approved games and sports. The appellant is a State player representing the state in the Aquatics for which he should have been awarded minimum 1 mark. The appellant has also represented All India Police Aquatic & Cross Country Championship of 53rd All India Police Games held in Delhi during 2004 for which the appellant is eligible for 1 mark, according to the procedure followed in awarding special marks.

W.A.No.1600 of 2007 (R.Ponnuswamy):

The appellant has not been awarded special marks for NCC, NSS and sports/games. The appellant has obtained "A" certificate with "B" grading in the NCC while studying in the school. The appellant has also participated in the NCC camp during school days. The appellant is a member of a NSS scheme while studying in the college and attended 240 hours for which also certificates have been issued. The certificate was produced at the time of viva voce. But no marks have been awarded. The appellant is entitled to get 0.5 mark for NCC and 1 mark for NSS programme. But no marks have been awarded for NSS, NCC.

The appellant has obtained certificate of merit from the Cheyyar Athletic Sports Club. The Directorate of Sports and Youth Services has also issued certificate of merit for the appellant in the block level competition in the volley ball game. The appellant has represented the University of Madras in the Handball team in the year 1993-94. The appellant has represented the Tamil Nadu State in India in the national level competition in the game of handball in the year 1998 for which he has been granted Form 2 Certificate. The appellant has represented Hand Ball Federation of India in the South Zone Hand Ball Championship in the year 1998. The appellant is eligible for 2 marks for Form 2 Certificate issued by the Tamil Nadu Hand Ball Association. More over for representing the University and the State the

appellant is eligible for 1.5 marks as per the procedure followed in awarding special marks.

W.A.No.1601 of 2007 (C.Ramnath):

The appellant has not been awarded special marks for NSS, NCC and sports/games. The appellant as a football player has participated in the inter college football tournament 2004-05 representing his college and also represented the University of Madras in the University of Madras "B" Zone Tournament held during the year 2005-06 for which he has been awarded Certificate of Merit by the Chairman of the Tournaments and Sports Committee for University of Madras. The certificate was produced at the time of viva voce. But no marks have been awarded. The certificate is enclosed in the type set of the writ petition page 1 & 2. As per the procedure followed in awarding special marks for sports and games, the appellant is eligible for 1 mark. If the appellant is able to secure 1 mark, then he secures the cut off mark for selection. The appellant has not been awarded 1 mark which shows that there is total arbitrariness in awarding marks not only for extra curricular activities but also the viva voce.

W.A.No.1607 of 2007 (C.P.Saravanan):

The appellant has not been awarded special marks for NSS and sports/games. The appellant is a member of scout and a member of NSS during school & college. The appellant is a sportsman represented the school as well as the college and he is a champion. The appellant has represented the University of Madras in ball badminton during the 1995-96. The appellant has also represented Tiruvellore District for Ball Badminton during 1994-95. The appellant has also obtained merit certificate in the State Police Duty Meet for the year 2004-05. The appellant is a State player representing the state in the Ball badminton.

W.A.No.1608 of 2007 (V.Prabhu Dass):

The appellant has answered all the 12 questions put to him in the interview. The interview board has awarded him one mark whereas he is entitled to minimum 3 marks for

mere appearance in the viva voce examination. The candidates who have not answered well in the interview have been awarded more marks and they have been selected. Moreover, the candidates who have secured less marks in the physical efficiency test and written test have been awarded 6 to 7 marks in the interview and they have been selected. There is no transparency in the process of selection."

W.A.No.1610 of 2007 (Balakumaran):

The appellant has not been awarded any special marks. The appellant has participated in the divisional level games while studying in the school and has obtained merit certificate. The appellant is entitled to minimum 1 mark as per the special procedure. The appellant is a inservice candidate who has undergone commando course as a policeman and is graded "D". It shows that the appellant has got an outstanding career as a policeman. It is submitted that when a recruitment is made from among the policeman mark should be awarded for the outstanding performance as a policeman while serving in the department. The special procedure for awarding special marks does not speak about the merit performance of a policeman who is already serving in the department. The merit services in the department should be suitably rewarded by granting him special marks for the extra curricular activities (commando course training and stenographer's guild certificate). Had the appellant been awarded minimum of 2 marks for the extra curricular activities, he would have reached the cut off mark.

The appellant has answered all the 10 questions put to him in the interview. The interview board has awarded him one mark whereas he is entitled to minimum 3 marks for mere appearance in the viva voce examination. The candidates who have not answered well in the interview have been awarded more marks and they have been selected. Moreover, the candidates who have secured less marks in the physical efficiency test and written test have been awarded 6 to 7 marks in the interview and they have been selected. There is no

transparency in the process of selection."

W.A.No.194 of 2008 (Arul Manimaran):

The appellant has not been awarded any special marks. The appellant is a member of NSS in the college and has secured participation certificate. The petitioner has attended camps in NSS and has participated in the community service and social awareness programme for which he is entitled to 2 marks for the extra curricular activities as per the special procedure for special marks. But no marks have been awarded to him and the certificate produced by him was ignored. Had he been awarded minimum 2 marks for extra curricular activities, he would have reached the cut off mark.

The appellant has answered all the 13 questions put to him in the interview. The interview board has awarded him one mark whereas he is entitled to minimum 3 marks for mere appearance in the viva voce examination. The candidates who have not answered well in the interview have been awarded more marks and they have been selected. Moreover, the candidates who have secured less marks in the physical efficiency test and written test have been awarded 6 to 7 marks in the interview and they have been selected. There is no transparency in the process of selection.

W.A.No.195 of 2008 (Kamalakannan):

The appellant has not been awarded any special marks. The appellant is a body building champion participated in the various championship programmes for the last several years and has secured 1st rank. He has participated in the district level, state level, city level and has been awarded meritorious certificate. He should have been awarded all the 5 marks meant for extra curricular activities. The appellant has participated in the 12th All India Coastal Weight Lifting Competition, 1996. The department ought to have encouraged a inservice candidate who has got an outstanding performance as a gymnastics which is one of the approved games and sports. But he has not been awarded due marks. Had he been awarded minimum

3 marks for extra curricular activities, he would have reached the cut off mark.

The appellant has answered all the 6 questions put to him in the interview correctly. The interview board has awarded him 6 marks out of 15 whereas he is entitled to minimum 10 marks for the entire performance based on interview and as well as extra curricular activities. The candidates who have not answered well in the interview have been awarded more marks and they have been selected. Moreover, the candidates who have secured less marks in the physical efficiency test and written test have been awarded 8 to 9 marks in the interview and they have been selected. There is no transparency in the process of selection.

W.A.No.196 of 2008 (R.Sundarrajan):

The appellant has not been awarded special marks for NCC and sports/games. The appellant is a member of NCC during college days and has obtained "C" certificate. The appellant has also held the position as Under Officer while studying in the college. The appellant has participated in the Trucking Expedition Goa 1990 during the year 1990. The appellant is eligible for 1.5 marks for All India Trucking Camp and also 1 mark for serving as Under Officer with the qualification of "C" certificate. The appellant should have been awarded 2.5 marks for the NCC certificate alone as per the procedure followed for awarding special marks.

The appellant is a sportsman who represented the college and has obtained merit certificate. The appellant has attended Senior Inter District Volley Ball Championship in the year 2005-06 conducted by the Tamil Nadu State Volley Ball Association and has received merit certificate. The appellant is eligible for 1 mark for his sports activities representing the State.

As per the procedure followed in awarding special marks for NCC the appellant should have been awarded 2.5 marks and for sports and games, the appellant should have been awarded 2 marks and in total he should have been awarded 4.5 marks. Instead he has been awarded 1

special mark. If the appellant is able to secure 4.5 marks, then he secures the over and above the cut off mark for selection. The appellant has not been awarded special marks which shows that there is total arbitrariness in awarding marks not only for extra curricular activities but also for viva voce.

W.A.No.197 of 2008 (M.Prabhu):

The appellant is a "Karate" Master and has secured number of certificates. The appellant has participated in the Invitational All India Karate Championship held at Indoor Stadium Ajmer in 2000. The appellant has obtained merit certificate by participating in the 25th Tamil Nadu State Silver Jubilee Celebrations held in the year 2003. The appellant is a member of the All India Karate "DO Federation". The appellant is a black belt holder in the Karate. The appellant's meritorious performance in the Karate should have been taken into consideration for awarding all the 5 marks earmarked for the extra curricular activities. The respondent ought to have considered the meritorious Karate candidate who is already a member of the police department and for his outstanding performance he should have been awarded all the 5 marks meant for sports and games. It is unfortunate that Karate is a game recognized by the Olympics and also Tamil Nadu Olympics Committee whereas the respondent has chosen to exclude the Karate from the approved sports and games. Had he been awarded minimum 3 marks for extra curricular activities, he would have reached the cut off mark.

The appellant has answered all the 12 questions put to him in the interview correctly. The interview board has awarded him 2 marks out of 15 whereas he is entitled to minimum 10 marks for the entire performance based on interview and as well as extra curricular activities. The candidates who have not been answered well in the interview have been awarded more marks and they have been selected. Moreover, the candidates who have secured less marks in the physical efficiency test and written test have been awarded 8 to 9 marks in the interview and they have been

selected. There is no transparency in the process of selection."

12. Learned counsel appearing for the respondents/State on the other hand, submitted that the interviewing committee for giving marks towards certificates, as per the advertisement/prospectus followed the following criteria in awarding the special marks for NSS/NCC and sports/games:

Special marks of NCC	:	Marks
a) All India Best Cadet or State Best Cadet		1.5
b) Senior Under Officer or Under Officer or equivalent with 'C' Certificate		1.0
c) 'C' Certificate with completion of 3 years in Sr. Division (College) and/or participation in National Programmes like R.D. Parade in Delhi.		0.5

Special marks of NSS	:	Marks
a) Winner of National NSS Award		1.5
b) Winner of Tamil Nadu State NSS Award		1.0
c) National Integration & Motivation camps, Inter-State Youth Exchange Programmes etc., sponsored by the Department of Youth Affairs & Sports/ State Government		0.5

Special marks of Sports/Games	:	Marks
a) For representing the country (India) in an approved Game/Sports		2.0
b) For representing the State of Tamil Nadu in the National Championship in an approved Game/Sports		1.0
c) For representing any University in the All India Inter-University in an approved Game/Sports		0.5

List of approved Games and Sports:

- | | |
|----------------|--------------------|
| 1. Basket Ball | 8. Boxing |
| 2. Foot Ball | 9. Gymnastics |
| 3. Hockey | 10. Judo |
| 4. Volley Ball | 11. Weight lifting |
| 5. Hand Ball | 12. Aquatics |
| 6. Kabbadi | 13. Athletics |
| 7. Wrestling | 14. Equitation |

13. We have noticed the submissions made by learned Senior Counsel/counsel appearing for the appellants that the aforesaid criteria of awarding the marks has been laid down by the Recruitment Board to non-suit the appellants and others, though in the advertisement/prospectus, the candidates were informed that those who possess NSS/NCC and sports/games certificates will be rewarded with marks, but strangely, by adopting a special procedure for awarding marks, the appellants have been excluded.

14. Learned Senior Counsel/counsel appearing on behalf of the appellants, from the common additional typed set of papers filed in Writ Appeal Nos.1563, 1583 and 1584 of 2007, dated 26.1.2008 highlighted as to how brother and sister, both have been selected and appointed, and that in many of the cases, the persons having secured lower marks, were called for interview. With regard to one of the selected candidates, namely P.Suganthi, it was alleged that she is a married daughter, but has been appointed as a ward of Police personnel, which is not permissible.

Learned counsel appearing for the State while submitting that the brother and sister have competed individually on their own merits, in regard to the said case of Suganthi, it was submitted that though she is daughter of a Police personnel, but is also the wife of a Police employee.

15. In the present case, though during the hearing of the writ appeals, general allegation was made, but no specific allegation has been made against any individual who have been selected and appointed. No individual selected candidate has been impleaded as a party-respondent. Therefore, in the absence of such a pleading and they having not been impleaded, we are not inclined to decide the question relating to legality or propriety of selection of one or other candidate. Similarly, in the absence of any specific allegation of mala-fide against any individual member of the Selection Committee, based on any evidence, it cannot be presumed that because of mala-fide on the part of one or other Officer/member, the appellants have been excluded to include one or other individual in the panel. The general allegation as made against the officers/members cannot be accepted to give any specific finding of mala-fide against them.

16. So far as direct interview/viva-voce test is concerned, only '10' marks have been fixed out of '100'. From the records, it would be evident that during the interview, the members of the Selection Committee were to notice not only the answers given by the candidates, but also the behaviour of the person who appeared before them, and the other required ability, which were to be assessed. The learned single Judge rightly observed that those

matters are under the exclusive domain of the members of the Selection Committee and it is not for this Court to lay a particular method or to evolve a particular mode.

17. "The disadvantage of an oral test", fell for consideration before the Supreme Court from time to time.

In the case of *Ajay Hasia vs. Khalid Mujib* reported in AIR 1981 SC 487, the Constitution Bench of the Supreme Court noticed the validity/permisibility of viva-voce test for consideration of candidates for admission to a College and in the said case challenge was made on the ground that the viva-voce examination does not afford a proper criterion for assessment of suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors, such as predictions and prejudices of the interviewer, their attitudes and approaches, preconceived notions and idiosyncrasies and it is also capable of abuse, because it will leave scope of discrimination, manipulation and nepotism, which could remain undetected under the cover of an interview and that it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for few minutes. Having noticed the commentaries on interview and earlier decisions rendered by the Supreme Court, the Constitution Bench of the Supreme Court, in the said decision reported in AIR 1981 SC 487, held as follows:

"18.

It is therefore not possible to accept the contentions of the petitioners that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test, as presently held should not be relied upon as

an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification. "

18. In the case of State of U.P. vs. Rafiquddin, reported in 1987 (Supp.) SCC 401, the Supreme Court considered the question of appointment in the Uttar Pradesh Judicial Service through the Public Service Commission. In the said case, it was noticed that while making selection for appointment to the Uttar Pradesh Judicial Service, the Commission at the instance of the State Government, reduced the standard of percentage of marks in aggregate and on that basis, forwarded the list of successful candidates for appointment to the judicial service. Again, at the behest of the State Government, with a view to implement the decision of the high level committee consisting of Chief Justice, Chief Minister and the Chairman of the Commission, names of certain more candidates were forwarded. Having noticed the said fact, the Supreme Court observed in paragraph 30 that, " Once the Commission determines the norms and makes selection on the conclusion of the competitive examination and submits list of the suitable candidates to the government it should not reopen the selection by lowering down the norms at the instance of the Government. "

From the aforesaid decision, it would be evident that the norms were to be fixed by the Commission, which is the selection body and once such norms are fixed, in such a case, even the State Government is not supposed to reopen the selection by lowering down the norms.

19. So far as the additional qualification is concerned, which is to be preferred, fell for consideration before the Supreme Court in the Secy., A.P. Public Service Commn. vs. Y.V.V.R.Srinivasulu, reported in 2003 (5) SCC 341, wherein, the Supreme Court made the following observation:

"11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be

preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered. If it is to be viewed the way the High Court and the Tribunal have chosen to, it would amount to first exhausting in the matter of selection all those, dehors their inter se merit performance, only those in possession of additional qualification and take only thereafter separately those with ordinary degree and who do not possess the additional qualification."

20. In the present case, learned counsel appearing for the respondents-State has brought to the notice of the Court an instruction contained in Letter No.1/Police (Sports)/97(1)--4 issued from the Intelligence Bureau (Ministry of Home Affairs), Government of India, New Delhi, dated 25.5.1999, by the Joint Director, IB and Secretary, All India Police Sports Control Board addressed to the Director General of Police, Tamil Nadu Uniformed Services Recruitment Board, Chennai, wherein and whereby, the following list of approved games and sports has been communicated stating that the All India Police Sports Control Board holds competitions in the following events every year:

1. Hockey
2. Foot Ball
3. Volley Ball
4. Basket Ball
5. Hand Ball
6. Kabbadi
7. Wrestling (both Free Style and Greco Roman Style)
8. Boxing
9. Gymnastics
10. Judo
11. Weight lifting (both men and women)
12. Aquatics (swimming)
13. Athletics (both men and women)
14. Equitation (riding horse)

21. From the records as above, we find that only 14 games and sports have been approved but the games, such as Badminton, Tennis, Chess etc., have not been approved. It would be evident from the list of approved sports that those games which are required for Police personnel to keep them fit, have been approved. On the other hand, other games which may not be good for Police personnel and

may affect their service/career, such as Chess, etc., have not been approved. In such circumstances, if only a group of games and sports have been approved for providing marks by the Recruitment Board, which are beneficial to Police personnel, such marking cannot be held to be arbitrary, nor the appellants can claim marks for other games which are not approved, such as Chess, Badminton, Tennis, etc.

We have noticed that one or other appellant has obtained certificates in games like Chess etc., but as those games do not come within the group of approved games and sports, they cannot claim any mark.

22. It is for the competent authority to lay down the relevant Rules. The authority can also prescribe the marks to be allotted against one or other tests/certificates, as shown in the advertisement/prospectus in the present case. However, how the said assessment is to be made for awarding such marks, for example, for awarding marks for written test, or direct interview or for certificates, etc., it is to be left open to the Examiner/Board which makes such assessment. In this background, for assessment of certificates such as NSS, NCC, sports and games, within the fixed "5" marks, if separate marks are given for one or other certificates, that too based on the standard of certificate, i.e. whether it is national or state level or university level, we find no illegality in the same and it was well within the jurisdiction of the Recruitment Board/Selection Committee to prescribe such marks for one or other certificates.

One or other candidate may produce a certificate, but such candidate has no right to claim as to how the certificate is to be assessed. For example, many of the appellants have claimed for 24 hours or 480 hours of NSS/NCC training, some claimed on the basis of the rating of certificates such as 'A', 'B' or 'C' Grade Certificates, but it was for the Recruitment Board/Selection Committee to determine as to how such marking is to be given for one or other certificate.

23. Though this Court is not supposed to sit in appeal over the marking given by the Recruitment Board/Selection Committee for one or other Certificates held by one or other appellant, but just to find out whether it was proper or not, we also verified the certificates as attached by one or other appellant in the typed set of papers. We find that most of the certificates of NSS/NCC sports are general and not of the standard, for which the marks can be allotted as per the specification made by the Recruitment Board/Selection Committee, except one or other, for which marks have already been allotted. In one case, namely Mr.R.Sundarrajan (appellant in Writ Appeal No.196 of 2008), the learned Senior

Counsel appearing for the appellants referred to one or other certificate, to show that he was also entitled for atleast 0.5 marks for one of the certificates, but even if that is accepted, we find that he does not come within the "zone of consideration" for selection, having got lesser marks than the cut-off marks in the category for which he applied.

So far as the sports certificates are concerned, none of them are national or state level or university level certificates, or approved games and sports. Therefore, no marking can be given for that.

So far as the Police Meet is concerned, it will be a national meet, but cannot be held to be at the Country/State level or a National/State level game, being confined to the Police persons. Further, as it was direct recruitment, the Police personnel may claim weightage against their departmental quota; but certificates for Police Meet cannot be relied upon for competing with the outsiders. No separate marks could have been given for same test, one for the outsiders and one from the Departmental candidates.

24. We find no illegality in the selection made by the respondents/State for appointment made to the post of S.I. of Police, pursuant to the Notification in Na.Ka.No.A1/2626/2006. Thus, no interference is called for in the impugned common order passed by the learned single Judge.

25. There being no merits, the Writ Appeals are dismissed. No costs. Pending Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

सत्यमेव जयते Sub Asst. Registrar.

CS

to

1. The Secretary to Government of Tamilnadu
Home (Police IV) Department,
Fort St.George, Chennai-600 009.
2. The Director General of Police/
Chairman, Tamil Nadu Uniformed
Services Recruitment Board,
Anna Salai, Chennai-2.

3. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

4. The Secretary to Government of Tamilnadu
Home (Police II) Department
Fort St. George, Chennai-9

15 ccs to Mr.T. Ayngaraprabhu, Advocate, Sr. 17668
1 cc to the Government Pleader, Sr. 17634
2 ccs to mr.K. Selvaraj, Advocate, Sr. 17676
3 ccs to Mr.M. Ravi, Advocate, SR. 17911

Dated: 28.3.2008

ORDER

Writ Appeal Nos.
194 to 199, 317, 318 of 2008 and
1598 to 1602, 1607 to 1610
1563, 1583 and 1584 of 2007

Dismissing the Writ Appeals as
stated within.

BV (CO)
kk, km, rvl, sr 17/4

सत्यमेव जयते
WEB COPY