

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23-12-2010

Coram:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal Nos.1719 to 1739 and 1602 to 1636 and 1933 to 1958  
Of 2010

- 1.The Secretary to Government,  
Home (Police) Department,  
Fort St.George,  
Chennai-600 009.
- 2.The Director General of Police/Chairman,  
Tamil Nadu Uniformed Services Recruitment Board,  
Anna Salai,  
Chennai-600 002.
- 3.The Director General of Police,  
Dr.Radha Krishnan Salai,  
Mylapore, Chennai-600 004. ... Appellants in all Was.

Vs.

- 1.A.Eswaramoorthy
- 2.R.Arjun Kumar ... Respondents in W.A.No.1719/2010
- G.Venkatesan ... Respondent in W.A.No.1720/2010
- K.Hemanth Kumar ... Respondent in W.A.No.1721/2010
- S.Rethinakumar ... Respondent in W.A.No.1722/2010
- P.Shanmugam ... Respondent in W.A.No.1723/2010
- S.Thiruvengadam ... Respondent in W.A.No.1724/2010
- C.Suresh Kumar ... Respondent in W.A.No.1725/2010
- R.Harikrishnan ... Respondent in W.A.No.1726/2010
- S.Vijaya ... Respondent in W.A.No.1727/2010
- B.Santhosh Kumar ... Respondent in W.A.No.1728/2010
- C.Shivashankar ... Respondent in W.A.No.1729/2010
- R.Sundararajan ... Respondent in W.A.No.1730/2010
- S.Gopi ... Respondent in W.A.No.1731/2010
- R.Karunakaran ... Respondent in W.A.No.1732/2010
- A.Sathiya Seelan ... Respondent in W.A.No.1733/2010
- V.Prabhu Dass ... Respondent in W.A.No.1734/2010
- N.Saravanan ... Respondent in W.A.No.1735/2010
- M.Shakthi Kumaran ... Respondent in W.A.No.1736/2010
- G.Gunasekaran ... Respondent in W.A.No.1737/2010
- N.Sivakumar ... Respondent in W.A.No.1738/2010
- R.Alex ... Respondent in W.A.No.1739/2010

1.N.Senthil Kumar  
2.R.Arjun Kumar ... Respondents in W.A.No.1602/2010

S.Kannan ... Respondent in W.A.No.1603/2010

1.M.Arumugam  
2.M.Mariappan  
3.G.Sankaranarayanan ... Respondents in W.A.No.1604/2010

T.Rajalingam ... Respondent in W.A.No.1605/2010  
E.Tamilmaran ... Respondent in W.A.No.1606/2010  
I.Ramachandran ... Respondent in W.A.No.1607/2010  
M.A.Kamalmohan ... Respondent in W.A.No.1608/2010  
V.Udayakumar ... Respondent in W.A.No.1609/2010  
J.Jayakumar ... Respondent in W.A.No.1610/2010  
M.P.Murugan ... Respondent in W.A.No.1611/2010  
R.Ponnusamy ... Respondent in W.A.No.1612/2010  
C.P.Saravanan ... Respondent in W.A.No.1613/2010  
M.Packiaraja ... Respondent in W.A.No.1614/2010  
T.Vanavamalai ... Respondent in W.A.No.1615/2010  
M.Kamal Dev ... Respondent in W.A.No.1616/2010  
M.Suresh Kumar ... Respondent in W.A.No.1617/2010  
M.Saravanan ... Respondent in W.A.No.1618/2010  
P.Sivakumar ... Respondent in W.A.No.1619/2010  
J.Vedamanickam ... Respondent in W.A.No.1620/2010  
K.Jeeva ... Respondent in W.A.No.1621/2010  
M.Uma ... Respondent in W.A.No.1622/2010  
D.Thangamani ... Respondent in W.A.No.1623/2010  
M.Kesavan ... Respondent in W.A.No.1624/2010  
A.Vijayakumar ... Respondent in W.A.No.1625/2010  
B.Kumar ... Respondent in W.A.No.1626/2010  
M.Thillai Govindarajaperumal ... Respt.in W.A.No.1627/2010  
M.Mariappan ... Respondent in W.A.No.1628/2010  
A.Pugazhenthai ... Respondent in W.A.No.1629/2010  
S.Manoharan ... Respondent in W.A.No.1630/2010  
B.Sivaraj ... Respondent in W.A.No.1631/2010  
C.K.Sundaramoorthy ... Respondent in W.A.No.1632/2010  
M.Arul Manimaran ... Respondent in W.A.No.1633/2010  
M.Balan ... Respondent in W.A.No.1634/2010  
G.Balamurugan ... Respondent in W.A.No.1635/2010  
A.G.Chandrasekaran ... Respondent in W.A.No.1636/2010  
E.Raj Prabhu ... Respondent in W.A.No.1933/2010  
J.Arul Prakash ... Respondent in W.A.No.1934/2010  
S.Giri ... Respondent in W.A.No.1935/2010  
K.Muniraj ... Respondent in W.A.No.1936/2010  
G.Elaiyaraja ... Respondent in W.A.No.1937/2010  
N.Venkatesan ... Respondent in W.A.No.1938/2010  
R.Subramanian ... Respondent in W.A.No.1939/2010  
I.Subburam ... Respondent in W.A.No.1940/2010  
K.Ravalakrishnan ... Respondent in W.A.No.1941/2010

P.Pon Moses	... Respondent in W.A.No.1942/2010
K.Sivakumar	... Respondent in W.A.No.1943/2010
S.Sugavanan	... Respondent in W.A.No.1944/2010
P.Boopesh	... Respondent in W.A.No.1945/2010
A.Kannan	... Respondent in W.A.No.1946/2010
V.Gunasekaran	... Respondent in W.A.No.1947/2010
I.Shankar	... Respondent in W.A.No.1948/2010
S.Thanigasalam	... Respondent in W.A.No.1949/2010
K.Subramanian	... Respondent in W.A.No.1950/2010
C.Shankar Ganesh	... Respondent in W.A.No.1951/2010
M.Arunachalam	... Respondent in W.A.No.1952/2010
G.Gopinath	... Respondent in W.A.No.1953/2010
A.Prince Barnabas	... Respondent in W.A.No.1954/2010
C.Duraipandian	... Respondent in W.A.No.1955/2010
A.Ayyakumar	... Respondent in W.A.No.1956/2010
M.Sudalaikannu	... Respondent in W.A.No.1957/2010
G.Prakash	... Respondent in W.A.No.1958/2010

Prayer: This Writ Appeals are preferred under Clause 15 of Letters Patent Appeal, against the common orders dated 4.11.2009 made in W.P.Nos.4509,4510,4511,4512,4513,4514,4515,4516,4517,4518,7411,7412,7413,7414,7415,7416,7417,7418,8874,8938 and 9181 of 2009 and 11224,11807,12032,12870,13130,13367,14463,14487,14888, 15667, 17196 to 17198,17472, 18226,13490 to 13497, 10752 to 10759,10761 to 10764, and 15874,18227 to 18232,18351,18538,18539,18659,19469 to 19473,19510,19587,19821,20280 to 20285 and 20470 of 2009 respectively.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writs of Mandamus, (I) directing the 2nd Respondent to add (a) one mark (in WP.Nos.4509 to 4518/09, 7418, 10754/09, 10762/09)

(b) two marks (in WP.Nos.7411 to 7417/09, 10758, 10754, 10764, 13493, 13495, 13496 of 2009)

(c) three marks (in WP.Nos.10753, 10756, 17198, 19470, 19471, 19472, 19473, 19510, 20285 of 2009)

(d) four marks (in WP.19587/09) to the petitioner for recruitment of Sub Inspector of Police (Men - Department Quota) 2006 and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under 20% department candidate quota and fix the appropriate place in the selection and grant all consequential service and monetary benefits (in WP.Nos.4509 to 4518/09, 7411 to 7418, 10753, 10754, 10756, 10758, 10759, 10764, 13493, 13495, 13496, 17198, 19470 to 19473, 19510, 20285/09, 19587 of 2009 and 10762/09)



(II) directing to add (a) one mark (in WP.Nos.10755, 10762, 12870, 14463, 14888, 18231, 19469/09) (b) two marks (in WP.10752, 10757, 10760, 10761, 11224, 13490 to 13492, 13494, 13497, 14487, 18228 & 18229/2009) (c) three marks (in WP.10763/09, 20280/09 to 20283/09) to the petitioner for recruitment of Sub-Inspector of Police (Men-80%) open Quota 2006 and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under 80% open candidates quota and fix the appropriate place in the selection and grant all consequential service and monetary benefits (in WP.Nos.10755, 10762, 12870, 14463, 14888, 18231, 19469, 10752, 10757, 10761, 10763, 11224, 13490 to 13492, 13494, 13497, 14487, 18228 & 18229/09, 20280 to 20283/09)

(III) directing the 2nd respondent to produce OMR marks statement and add (a) two marks (in WP.No.18230/09) (b) three marks (in WP.Nos.18659, 20284, 20470/09) to the petitioner for recruitment of Sub-Inspector of Police for (men - open categories) 2006 and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under open categories quota and fix the appropriate place in the selection and grant all consequential service and monetary benefits (in WP.Nos.18230 of 2009, 18659, 20284 & 20470/09)

(IV) directing the 2nd respondent to add the non-awarded marks to the petitioner for recruitment of Sub-Inspector of Police for the year 2005-2006 under 80% open candidates quota and fix the appropriate place in the selection and grant all consequential service and monetary benefits (in WP.Nos.18351/09)

V. directing the 3<sup>rd</sup> respondent herein to award (a) one mark to the petitioner Ref.No.1600414 (in WP.No.8938/09) (b) Two marks to the petitioner's Reg.No.1100710 (in WP.8874/09) for selection to the post of Sub-Inspector of Police for the year 2006 and consequently direct the respondents herein to appoint the petitioner as Sub-Inspector of Police for the year 2006 and place the petitioner in each of the petitions in the appropriate place in the list of selected candidates with all consequential service and benefits (in WP.Nos.8938 & 8874/09).

VI. directing the Respondents select and appoint the petitioners as sub-Inspector of Police under the direct Recruitment quota in WP.12032/09, 18538,18539, 17472/09.

directing the 2nd respondent to accept choice A as the correct answer for question No.44 falling under Part A in the written examination held for the year 2006-07 for the selection of Sub-inspector of Police, grant one additional mark to the petitioner for the said written examination together with all follow-up

Sub-Inspector of Police by the 3rd respondent on par with the 2006-07 batch mates (in WP.11807 of 2009)

VIII.directing the 2nd respondent to add one mark in WP.18226,18227/09 to the petitione for recruitment of sub-Inspector of police (10% wards Quota ) 2006 an further direct the respondents to select the appoint the petitioner as Sub Inspector of police uner 10% wards Quota and fix the appropriate place in the selection and grant all consequential service and monetary benfits. (in W.P.18226,18227 & 15874/09)

IX. directing the 2nd respondent to add two marks in respect of the disputed question and 1 mark for Form-II certificate and 2 marks for NSS Certificates to the petitioner for recruitment of Sub-Inspector of Police (Men-department Quota)(Men-80% open Quota) 2006 and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police under 20% and 80% respectively department and open candidates quota and fix the appropriate place in the selection and grant all consequential service and monetary benefits.(in WP.17196 &17197/09)

X. directing the 2nd respondent to modify the selection list in respect of in selection conducted to the post of sub inspector in 2006 consequent upon the verification add one mark awarded to the wrong answers and further direct the respondents to select and appoint the petitioner of sub-Inspector of police Under department quota and fix the appropriate place in the selection and monetary benefits.(W.P.18232/09).

XII directing the third respondent herein to award two marks to the petitioner (Reg.No.1600486) for question Numbers 38 and 44 of the Written Test to the selection to the post of Sub-Inspector of Police for the year 2006 and and place him in the appropriate place in the list of selected candidates with all consequential and monetary benefits. (in WP No.15667/2009)

XIII directing the respondents herein to award two additional marks to the petitioner (Reg.No.2900401) for selection to the post of Sub-Inspector of Police for the year 2006 and consequently direct the respondents herein to post of the petitioner as Sub-Inspector of Police Taluk Police, taking into account the total marks as  $76+2=78$  in view of the correct answers in Question numbers 38 and 44 of the written test and place him in the appropriate place of the list of selected candidates with all consequential service and monetary benefits. (in WP No.9181/2009)

(XI) directing the 1st respondent to add three marks to the petitioners over all total in the process of recruitment of Sub-Inspector of Police-2006 and further direct the respondents to select and appoint the petitioner as Sub-Inspector of Police within the recruitment under MBC open men category and to fix and appropriate place of seniority in the Taluk Police selection by granting all consequential service and monetary benefits. (in WP 19821/2009)

(XIV) directing the second respondent to accept choice A- as the correct answer for question No.44 falling under Part A in the written examination held for the year 2006-2007 for the selection of Sub-Inspector of Police grant on additional mark to the petitioner for the said written examination together with all follow-up orders enabling the petitioner to be appointed for the post of Sub-Inspector of Police by the 3rd respondent on par with the 2006-07 batch mates for all purposes within the time frame. (in WP 13130/2009)

(XV) directing the respondents to rectify the error committed in the written test Sub-Inspectors Recruitment 2006 by awarding 2 additional marks to the petitioner and consequently select and appoint the petitioner as Sub Inspector of Police under the M.B.C category and impart training to the petitioner. (in WP No.13367/2009)

For Appellants :Mr.P.S.Raman, Advocate General  
assisted by  
Mrs.Sneha Govt.Advocate

For Respondents:Mr.Venkatramani, Senior Counsel 1602, 1611,  
1933, 1943  
for Mr.Muthappan in W.A.Nos.1945, 1947,  
1948, 1949  
Mr.C.Selvaraj, Senior Counsel  
for Mr.P.Athiveera Ramapandian in  
W.A.Nos. 1604, 1615, 1941 & 1942/10  
Mr.K.S.Viswanathan  
for Mr.S.Sivakumar in W.A.Nos. 1719 to  
1736/10, 1625 to 1630/10, 1617 to 1624,  
1608, 1609, 1612 to 1614, 1944, 1946, 1947,  
1952, 1953, 1955 & 1958/10  
Mr.Ravi Anandhapadmanabhan W.A.1603 &  
1606/10  
Mr.G.S.Gnanasambandan  
for G.Srinivasan 1605, 1610, 1616, 1619,  
1934 to 1936, 1938, 1939, 1943/10  
Mr.V.Manohar W.A. 1951/10  
Mr.P.I.Thirumoorthy W.A. 1940/10  
M/s.G.Bala and Daisy 1611, 1738, 1739 &  
1737/10  
Mr.A.Jeenasen W.A. 1617/10



## C O M M O N     J U D G M E N T

N.KIRUBAKARAN, J.

These Writ Appeals arise out of a common order passed in writ petitions Nos.4509 of 2009 etc. batch dated 4.11.2009 passed by the learned Single Judge by which directions were issued to prepare a list of un-selected candidates, who answered three disputed questions in the written examination conducted for selection of Sub-Inspector of Police, by virtue of notification dated 18.7.2006, which was issued to fill up 682 vacancies. For the sake of convenience, the petitioners and respondents in the above writ petitions are referred in the writ appeals also as petitioners and respondents respectively.

2. Brief facts are as follows:

The second respondent Board issued a notification dated 18.7.2006 for selection of 682 candidates for the post of Sub Inspector of Police. Written examination was conducted on 20-5-2007 and provisional selection list was announced on 20.12.2007. The un-selected candidates in the examination, questioned the provisional selection before this court contending that:

- 1) Quota fixed for each category was not followed,
- 2) Written test was not properly conducted,
- 3) Answers were not published
- 4) Marks were not properly given,
- 5) Marks were not published in the internet,
- 6) waiting list of candidates were not published,
- 7) Service Commission did not follow the established procedures in the process of selection due to show transparency.

On appreciation of the facts, the learned Single Judge dismissed the writ petitions on 20.11.2007 upholding the selection, which was also confirmed by the Division Bench of this Court in W.A.No.194 of 2007 batch on 28.3.2008.

3. Subsequently the candidates approached under RTI Act seeking information regarding questions and answers and answer sheets and they came to know that marks were awarded for answering wrong key answers and marks were not given inspite of answering properly. The disputed questions are 11,38 and 44 which are as follows:

11. Greenhouse effect is caused by

- |                       |                          |
|-----------------------|--------------------------|
| A) Oxygen depletion   | B) Ozone Layer depletion |
| C) Hydrogen reduction | D) Greenery reduction    |

Question No.38 is as follows:

What percentage (%) of human body weight is water?

- |       |       |
|-------|-------|
| A) 55 | B) 65 |
| C) 70 | D) 80 |

Question No.44 is as follows:

44 Free India's first Governor-General was

- |                     |                     |
|---------------------|---------------------|
| A) Mountbatten      | B) Rajaji           |
| C) Dr.Zakir Hussain | C) Dr.Radhakrishnan |

4. For question No.11, the key answer given was (B) Ozone layer depletion whereas the correct answer is (D) Greenery reduction. For question No.38, the key answer given was "C-70", whereas all questions were found to be correct. For question No.44, the key answer given was "D"-Rajaji, whereas the right answer was "A"-Mount Batten. The aforesaid position was admitted by the second respondent board in the reply given under Right to Information Act.

5. Therefore based on the information obtained under Rights to Information Act, the petitioners approached this court seeking a direction to the respondents to add the marks in view of wrong key answers and wrong valuation and consider them for selection.

6. It was contended before the learned Single Judge that the respondents admitted mistakes in the key answers, non-awarding of marks to the candidates who wrote correct answers and awarding of marks to wrong key answers and therefore marks for the correct key answers are required to be given to the petitioners and based on which, the petitioners are to be considered for the post of Sub-Inspector of Police. Secondly it was contended that problem started because of wrong/mistake committed by the Respondent-Board. Thirdly the respondents themselves were not aware of mistakes committed by the board and only after ascertaining the facts under Rights to Information Act, they approached the court. They also contended that supernumerary posts could be created and based on the revaluation the petitioners could be accommodated.

7. On behalf of the respondents, it was argued that the matter already attained finality in the earlier writ proceedings, that resjudicata is attracted and that there was delay and laches on the part of the petitioners to approach the court and therefore no relief could be granted.

8. The learned Single Judge after thoroughly going through the records and appreciating the contentions, held as follows:

- a) The respondents admitted the mistakes in the key answers.
- b) The mistakes committed by board cannot be employed against the un-selected candidates.
- c) Petitioners were not aware of the wrong key answers till they got information under Right to Information Act.



d) Resjudicata would not arise, when questions involved in the writ petition were not specifically raised and considered earlier.

e) There is no delay on the part of the petitioners as the respondents themselves did not verify correctness of answers even after the examination, which is evident from first appellant's letter dated 30.1.2009.

f) The respondents cannot take advantage of their own wrong and contend laches is on the part of the petitioner and issued following directions:

"24 Hence after taking into consideration of the above said factual and legal position, this court is of the opinion that it is a fit case where the following directions will have to be issued:

(i) The respondents are directed to prepare a list of all the un-selected candidates who have answered question No.11 with option No.(D), Question No.38 with all the answers and question No.44 with option No.(A) and grant marks accordingly.

(ii) The respondents are directed to take the cut-off marks fixed for the selection made in the written examination on the basis for respective categories for the consideration of the non-selected candidates who would get higher marks in pursuant to the directions given by this Hon'ble court.

(iii) The respondents are directed to conduct vivo-voce Test for those candidates who come within the cut-off marks in pursuant to the granting of higher marks in the written examination.

(iv) The respondents are directed to take into consideration of the marks obtained in the interview for those unsuccessful candidates who have already attended the interview and who would be getting additional marks.

(v) The respondents are directed to consider the candidates who would become eligible to be selected in view of the directions of this Hon'ble Court by adding the marks due to them in the available vacancies, in the respective categories, as on the last date of the interview conducted.

(vi) For the future examinations, the second respondent is directed to verify the key answers immediately after the written examination is over and published the same in the web site of the second respondent as well as in any one of the news papers.

(vii) The second respondent is also directed to publish the marks obtained by the candidates in the written examination after the evaluation of the written examination in the web site of the second respondent.

(viii) In so far as the petitioner in W.P.Nos.9181 of 2009 is concerned, the respondents are directed to consider the seniority of the petitioner based upon the revised marks by taking into consideration of the marks to be awarded for the right answers in accordance with law."

9. Aggrieved by the order of the learned single Judge, the respondents are before this court. Learned Advocate General raised the following contentions:

He submitted that two types of petitioner are before this court namely

a) the candidates, who were parties to the earlier writ proceedings.

b) other candidates, who approached this court for the first time.

1) As far as first group of petitioners are concerned, he submitted that the entire selection process was challenged by them earlier and it attained finality and therefore constructive rejudicata applies.

2) As far as new candidates are concerned, they are guilty of laches as they approached the court belatedly after passage of two years and discretionary remedy of writ cannot be granted to them in view of failure to ascertain their rights in time.

3) All the contentions were raised in the earlier proceedings and they were negatived against the Petitioners/candidates. Even if the contentions were not specifically raised, they were decided as a whole by upholding entire selection process.

10. Learned Advocate General further submitted that:

1) The entire processes of selection was already over;

2) The selected candidates were sent for training in batches and they were appointed already;

3) When the selection processes was already over, there was no necessity for re-consideration by way of re-valuation.

4) If the exercise as per the order of the learned single judge is to be done, it will unsettle the selection which was completed;

5) It is not possible to create supernumerary posts and appoint candidates based on revaluation;

6) Subsequent vacancies cannot be filled up with the candidates who participated in the earlier selection process, which was already completed;

7) Filling up of vacancies over and above the vacancies advertised would be against the judgements of the Hon'ble Supreme Court.

8) There was no suppression of material facts before the Court and there was no fraud committed by the respondents.

9) If at all any mistake was committed, it was only a bonafide and unintended mistake and nothing could be attributed against the officials.

10) The verification of answers was not taken to avoid leakage of question papers.

He relied upon the following judgements in support of his contentions.

1) State of Orissa v. Harapriya Bisoi, (2009) 12 SCC 378.

2) Shiba Shankar Mohapatra & Others v. State Of Orissa & Others AIR 2010 SC 706.

3) U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464.

- 4) Sulochana Chandrakant Galande v. Pune Municipal Transport, (2010) 8 SCC 467.
- 5) S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166.
- 6) P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152.
- 7) A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala, (2007) 2 SCC 725.
- 8) Forward Construction Co. v. Prabhat Mandal (Regd.), (1986) 1 SCC 100.
- 9) Heena Kausar v. Competent Authority, (2008) 14 SCC 724.

11. On the other hand Mr. Venkatramani, learned senior counsel appearing for the petitioners submitted that most of the petitioners could not be selected by one or two marks or who missed the selection because of seniority in age when their marks were the same as that of selected candidates. He made the following contentions:

- 1) Admittedly there were wrong key answers.
- 2) Marks of each category for selection were not given.
- 3) Petitioners were deprived of marks and selection though answering questions rightly.
- 4) Arbitrariness and discrimination vitiated the selection processes.
- 5) In view of the admission made by the government there cannot be any delay. Admittedly when the mistake was committed by the authorities, there could not be any laches. He relied upon the judgement of the Hon'ble Supreme Court reported in 2001 (12) SCC 259.

12. Mr. C. Selvaraj, learned Senior counsel appearing for some of the petitioners submitted that his parties approached this court only in 2009 after ascertaining the details under Right to Information Act. The writ petitions were filed on 6.9.2009. He raised the following contentions:

- 1) Mere selection would not confer any right on the selected candidates.
- 2) When the issue was pending before this Court, there was no delay.
- 3) After getting the details under RTI Act, the petitioners approached this court rightly and there is no delay.
- 4) Illegality cannot be perpetuated that too on technicality.
- 5) Petitioners have legitimate expectation of selection.

He relied upon the following judgements:

- 1) State of Orissa v. Prajnaparamita Samanta, (1996) 7 SCC 106.
- 2) Sandeep Singh v. State of Haryana, (2002) 10 SCC



- 3) Guru Nanak Dev University v. Saumil Garg, (2005) 13 SCC 749.
- 4) K. Venkatachalam v. A. Swamickan, (1999) 4 SCC 526.
- 5) State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330

13. Mr. Viswanathan, learned counsel appearing for petitioners in 51 cases made the following submissions:

- 1) There is no scope for application of res judicata if original order sanctified illegality.
  - 2) More over the key answers were not given in the original proceedings and no opportunity to controvert the key answers was given.
  - 3) No proper and fair opportunity was given in the earlier proceedings regarding written examination.
  - 4) Orders obtained fraudulently cannot be a res judicata in view of Section 44 of Evidence Act.
  - 5) In spite of opportunity to produce the key answers in the earlier proceedings, the respondent/ government deliberately not produced the details.
  - 6) Silence on the part of the government would amount to fraud.
  - 7) There is no delay, as the petitioners were waiting list candidates who waited for call letters.
- He relied upon the following judgements:
- 1) Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas, (2008) 11 SCC 753.
  - 2) Devilal Modi v. STO, (1965) 1 SCR 686
  - 3) Hope Plantations Ltd. v. Taluk Land Board, (1999) 5 SCC 590.

- 4) Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613.
- 5) United India Insurance Co. Ltd. v. Rajendra Singh, (2000) 3 SCC 581.
- 6) Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas, (2008) 11 SCC 753.
- 7) Hope Plantations Ltd. v. Taluk Land Board, (1999) 5 SCC 590.
- 8) Krishna Chandra Pallai vs. Union of India AIR 1992 Orissa 261 (F.B.)
- 9) S.P. Chengalvaraya Naidu vs. Jagannath and others, (1994) 1 SCC 1.

14. Mr. Ravi Anandhapadpanabhan, appearing for the petitioners in W.A.Nos.1603 and 1606 of 2010 submitted that as the key answers were found to be wrong, this court can grant relief to the candidates. He relied upon the following judgements:

- 1) Union of India v. R. Reddappa, (1993) 4 SCC 269.
- 2) B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749.
- 3) C. Tulasi Priya v. A.P. State Council of Higher Education, (1998) 6 SCC 284.
- 4) State of M.P. v. Hazarilal, (2008) 3 SCC 273.
- 5) P. Rathinam v. Union of India, (1994) 3 SCC 394.

- 7)Collector Land Acquisition Anantnag&anothers v. Mst. Katiji And Others 1987 (1) LLJ 500 (1) SC.  
8)1997 All India Service Law Journal 14.  
9)Consumer Action Group v. State Of Tamil Nadu 2000 (4) CTC 181.

15. Mr.Gnanasambandam, appearing for the candidates in 9 writ appeals in W.A.No. 1605 of 2010 and others submitted the following:

- 1) Facts should be certain and known to both the parties and they should have been adjudicated to attract resjudicata.
- 2) When fact in issue viz "wrong key answers" was not the subject matter in the earlier proceedings and it was not known to the petitioners which was also admitted by the government, it cannot attract resjudicata.
- 3) The petitioners have no means to find out what was going on in the recruitment board. He referred to "Administrative law" by HW Wade and C.F. Forsyth and "Judicial review on administrative action" by SAD smith. He further referred to explanation 4 of Section 11 C.P.C. to contend that resjudicata would not apply to the facts of the case and writs are to be allowed on the admission made by the respondents as per order 21 Rule 6 of the C.P.C.

He relied upon

- 1)Workmen v. Board of Trustees, Cochin Port Trust, (1978) 3 SCC 119.
- 2)P.N. Subramanyam Reddy v. A.P. State Road Transport Corpn., (1992) 1 SCC 63.
- 3)Mohan Singh v. State of Punjab, (1975) 4 SCC 254.

16. In reply, learned Advocate General submitted that:

- 1) There was no plea of fraud by the petitioners.
- 2) There was no wilful suppression of fact.
- 3) Government was not gained or benefited out of the alleged suppression.
- 4) If at all any mistake was there, it was only a bonafide mistake.

He relied upon the following judgements

- 1) State of Orissa v. Harapriya Bisoi, (2009) 12 SCC 378.
- 2) Shiba Shankar Mohapatra & Others v. State Of Orissa & Others AIR 2010 SC 706.

17. Heard the rival contentions and perused the records.

The case can be divided into two.

- 1) Case of 23 candidates, who were parties to the earlier proceedings.
- 2) Case of other writ petitioners, who approached the court for the first time.

"PETITIONERS WHO WERE PARTIES TO THE EARLIER PROCEEDINGS"

18. The case of those who were parties to the earlier proceedings is resisted on the ground of constructive resjudicata by the government relying upon the Apex Court judgements in Dadu Dayalu Mahasabha, Jaipur (Trust) vs. Mahant Ram Niwas and another reported in 2008 (11) SCC 753 in Heena Kausar vs. Competent Authority reported in 2008 (14) SCC 724. However the Hon'ble Supreme Court in the Workmen of Cochin Port Trust vs. The Board of Trustees of Cochin Fort Trust and another reported in AIR 1978 SC 1283 held that the technical rule of resjudicata, although a wholesome rule based on public policy, cannot be stretched too far to bar the trial of identical issues in separate proceedings merely on an uncertain assumption that the issues must have been decided. In Hope Plantations Ltd. vs. Taluk Land Board reported in (1999) 5 SCC 590 it was held that the parties may not be bound by the determination earlier, if there is fresh cause of action, or continuous cause of action or law is changed or differently interpreted. In the case on hand in the earlier proceedings "Wrong Key answers" were not raised specifically and decided. Therefore the learned Judge correctly held that "Constructive Resjudicata" cannot be applied as the correctness of key answer was not specifically raised and decided in the earlier proceedings and only based on RTI query, the petitioners came to know about the details of the key answers. Therefore we respectfully agree with the said conclusion. In any event, the learned Advocate General tacitly conceded that resjudicata would not attract in respect of those 23 candidates, who approached the court earlier. He produced a list of 23 candidates, whose papers were re-valued and out of revaluation 10 persons are eligible to be appointed. The list of candidates are given below:

"SUB INSPECTOR OF POLICE-2006

- 1.Eswaramoorthy--BC
- 2.Hemant Kumar--BC
- 3.Rethina Kumar--MBC
- 4.Shanmugam--SC
- 5.Thiruvengadam--MBC
- 6.Hari Krishnan--BC
- 7.Vijayakumar--BC
- 8.M.Mariappan--BC
- 9.M.A.Kamal Mohan--SC
- 10.T.Vannavamalai--MBC"

Therefore, based on the above 10 candidates who got qualified are directed to be appointed after complying with formalities.

"THE CANDIDATES THOSE WHO APPROACHED THE COURT FOR THE FIRST TIME"

19. They were not parties to the earlier proceedings. Therefore the question of resjudicata does not arise. The only point to be decided is as to whether the candidates could be granted relief, in view of delay on their part to approach the court seeking remedy.



20. It is seen that the notification was issued on 19.7.2006 for selection of candidates for the post of Sub-Inspectors of Police and the vacancies sought to be filled up was as on 31.12.2004; results were announced on 17.7.2007; Earlier proceedings attained finality by order dated 28.3.2008. Subsequently only the applications were filed under RTI Act seeking details regarding key answers. Meanwhile, the first batch of selected candidates were sent for training in January, 2008 and the second batch in June, 2008. The entire process of selection was over and the rights got accrued to the selected candidates. On 30.1.2009, the second respondent board wrote a letter to the first respondent about the wrong key answers given for question No.44 and further informed that 145 candidates were eligible for selection based on awarding of extra marks to the said question No.44 and that they could be accommodated. The said proposal was rejected by the government by letter dated 22.5.2009. It was admitted before the learned Single Judge that the key answers for three questions namely 11,38 and 44 were wrong and there was a mistake in awarding of marks for the said question.

21. Though it was admitted by the Government that wrong key answers were given for three questions, this court has to see whether the said act is a deliberate one warranting interference by this court. Para-8 the communication dated 30.1.2009 written by the second respondent board to the first respondent reads as follows:

"8. Regarding the key for Question No.44, it is submitted that because of the previous leakage of question papers abundant precautions were taken by the Recruitment Board in setting up of the question paper. Three set of question papers along with keys were obtained from three senior IPS Officers whose integrity/record was impeachable. Later the Chairman picked up one of the question papers which was sent to Tamil Nadu Public Service Commission for printing. The question paper was opened only in the Printing Press where it was printed. The Board never verified either the question paper or the key. The Board members saw the question paper only after the examination was over. This was done as an abundant precaution to prevent the leakage of the Board."

22. The aforesaid communication would prove that only to avoid leakage of question papers, the question and answers were not verified. It was done only in the interest of public to maintain secrecy regarding the questions, Considering earlier instances of leakage of question papers. Hence it is evident that there is no deliberate act on the part of the board to give wrong key answers and it was only a bonafide mistake and unintentional. Therefore, this court agrees with the submission

of the learned Advocate General in this regard.

"FRAUD AND SUPPRESSION OF MATERIAL FACTS"

23. It is seen from the files produced that only after the candidates started applying under RTI Act in June, 2008, the board started to verify the correctness of the key answers writing to the University of Madras. The process of verification undertaken by the second respondent was also given by way of RTI reply dated 31.3.2009. For question No.44, the correct answer "Mount Batten" was received from the University by letter dated 22.12.2008. As far as question No.38 is concerned, the board wrote a letter to Madras Medical College on 3.4.2009 and a reply was obtained on 15.4.2000. As far as question No.11 is concerned, the correct answer was "D" which was also obtained from the experts. The said exercise was done till 26.5.2009. After verification only, the board came to know the wrong key answers in May, 2009. The correct details about the wrong key answers were given by RTI reply dated 4.8.2009 to the petitioners. In the above circumstances, there was no possibility of having information regarding correct key answers by the respondents themselves and consequently informing the same before the Court in the earlier proceedings in 2007. Therefore there was no deliberate suppression of material facts by the government.

24. Though it is seen as serious lapse and failure of duty on the part of the government, it can not be said deliberate act. Equally it cannot be said that the government is taking advantage of its own wrong. There was no necessity for the respondents to deliberately frame wrong key answers.

25. There is no dispute that "fraud vitiates even solemn proceedings". The Apex Court in detail discussed about "Fraud" in State of Orissa and others vs. Harapriya Bisoi reported in 2009 (12) SCC 378 and para 40 is extracted as follows:

"40. It is necessary to consider the effect of fraud.

"29. By 'fraud' is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression 'fraud' involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the

second condition is satisfied. [See *Vimla (Dr.) v. Delhi Admn.*<sup>4</sup> and *Indian Bank v. Satyam Fibres (India) (P) Ltd.*<sup>5</sup>]

0. A 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath*<sup>6</sup>.)

31. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi*<sup>7</sup>.)

32. 'Fraud' and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary, 'fraud' in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, 'fraud' is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to



deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines 'fraud' as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise, fraud arises out of deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false. In <sup>1</sup> a leading English case i.e. Derry v. Peek<sup>8</sup> what constitutes 'fraud' was described thus: (AC p. 374)

"fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.'

But 'fraud' in public law is not the same as 'fraud' in private law. Nor can the ingredients, which establish 'fraud' in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State for Home Deptt.*<sup>9</sup>, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. 'Fraud' in relation to statute must be a colourable transaction to evade the provisions of a statute.

'20. ... "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope." Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on

existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain." In public law the duty is not to deceive.' (See Shrisht Dhawan v. Shaw Bros.<sup>10</sup>, SCC p. 554, para 20.)

33. In that case it was observed as follows: (Shrisht case<sup>10</sup>, SCC p. 553, para 20)

'20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as an act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case Derry v. Peek<sup>8</sup> what constitutes fraud was described thus: (All Er p. 22 B-C) (AC p. 374)

'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.'

34. This aspect of the matter has been considered by this Court in Roshan Deen v. Preeti Lal<sup>11</sup>, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education<sup>12</sup>, Ram Chandra Singh case<sup>7</sup> and Ashok Leyland Ltd. v. State of T.N.<sup>13</sup>

35. Suppression of a material document would also amount to a fraud on the court. (See Gowrishankar v. Joshi Amba Shankar Family Trust<sup>14</sup> and S.P. Chengalvaraya Naidu case<sup>6</sup>.)

36. 'Fraud' is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case<sup>212</sup>.

37. In Lazarus Estates Ltd. v. Beasley<sup>15</sup>, Lord Denning observed at QB p. 712:

'No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.'

In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity."

This court already concluded that there was no suppression of material facts by the Government and consequently it has to be held that there was no fraud committed by the Government. Moreover, the government is not gained/benefited out of the alleged suppression or fraud. Therefore the judgement of the Apex Court in Meghmala & others vs. G.Narasimha Reddy rendered in SLP (C) Nos.14447-14448 of 2007 and in S.P.Chengalvaraya Naidu (Decd) by Lrs vs. Jagannath (Decd) by Lrs and others reported in 1994 (1) SCC 1 relied on by the petitioners based on fraud/suppression of material facts are not applicable to the facts of the case. Even otherwise there is no plea of "fraud" by the petitioners.

#### DELAY/LACHES

26. As far as the delay is concerned, as stated earlier for the vacancies as on 31.12.2004, notification was issued on 19.7.2006 for recruitment. Examination was conducted on 20.5.2007. Results were published on 17.7.2007 and final selection list was published on 20.12.2007. First batch of candidates were sent for training in January, 2008 and second batch of candidates were sent in June, 2008 and the selection process was already over. Earlier writ proceedings initiated



challenging the selection were dismissed by the learned Single Judge on 20.12.2007 and by the Division Bench on 28.3.2008 and by Apex Court on 28.10.2008. Subsequently the petitioners started applying under RTI Act to get details of the examination. The petitioners cannot take advantage of their delayed query under RTI Act in June 2008. There was no prohibition for the petitioners to apply and they could have made the exercise even at the earliest point of time. Delayed RTI application cannot give them cause of action for filing the above writ petitions. If the contention of the petitioners in this regard is to be accepted, there will not be any finality to the selection process and it will be against public interest.

27. As stated earlier, there was a considerable long delay on the part of the petitioners even for applying under RTI Act which enabled them to file the writ petitions from March, 2009 onwards before this court. Petitioners are required to approach this court without any delay and it is well settled law that delay defeats the rights. The entire process was already over and the selected candidates already were appointed. Apart from that, another recruitment for the post of Sub-Inspector was made in 2010 and it is informed that about 1091 + 4 candidates were provisionally selected. In P.C.Sethi and others vs. UOI reported in AIR 1975 SC 2164, it was held that petitions could not be dismissed on the ground of delay, as there were hopes given by the government to the petitioners therein and believing the same they did not approach the court in time. Therefore the facts of the case are different. In State of Karnataka vs. Y.Moideen Kunhi (Dead) by L.Rs & others reported in 2009 AIR SCW 4491 and in Collector Land Acquisition Anntnag and another vs. Mst. Katiji and others reported in 1987 (1) LLJ 500 SC, the point for consideration was condonation of delay in Land Acquisition proceedings and therefore they are not useful to the petitioners. However, in Solochana Chandrakand Galande vs. Pune Municipal Transport and others reported in 2010 (8) SCC 467, it has been held that those who approached the court belatedly, could not be permitted to get the same benefits when similarly placed diligent people got the benefits. The Hon'ble Supreme Court in P.S.Sathasivasamy vs. State of Tamil Nadu reported in AIR 1974 SC 2271 dealt with a service matter in which promotion was challenged and held that a person aggrieved by the promotion of his juniors should approach within or in a year. It was further held that it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary power under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for the relief and who stand by allow things to happen and then approach the court to put forward stale the claim and try to unsettle settled matters. In State of Orissa and others vs. Prajaparamita Samanja and others reported in 1996 7 SCC 106, it was held that only those who are diligent and

approach the court in time can be given relief. Therefore discretionary relief sought for belatedly by the petitioners under Article 226 cannot be granted on the ground of delay.

28. It is true that when the government is at fault, it should not stand on plea of limitation or technicality as held by Apex Court in S.R.Bhanrale vs. UOI and others reported in 1997 (1) All India Services Law Journal 14(SC). As rightly pointed out by the learned counsel for the petitioners, there is no dispute with regard to powers of this court under Article 226 to render complete justice beyond technicalities and the same is recognised in Collector Land Acquisition Antnag and others vs. Mst.Katiji and others reported in 1987 1 LLJ 500 SC, Dwarthnath vs. I.T. Officer reported in 1996 SCC 1981, Union of India and others vs. R.Reddappa and another reported in 1993 4 SCC 269, V.C.Chatruvedi vs. Union of India reported in 1995 6 SCC 749, Air India Statutory Corporation vs. United Labour Union reported in AIR 1977 SCC 645. Similarly this court has power to order revaluation in case of irregularities/malpractice and is recognised in Abhijitsen vs. State of U.P. AIR 1994 SC 1402, C.Thulasipriya vs. State A.P.counsel Higher Education reported in AIR 1999 SC 199. However the delay in this case is too long. The paper valuation done in 2007 has been challenged in 2009. It is found in this case that the mistake occurred was bonafide and not deliberate one. Therefore the directions given by the learned single judge to add marks for wrong key answers to the non-selected candidates and consider them for selection at this distance of time are not warranted and therefore they are set aside.

29. As found in the impugned order that letter dated 30.1.2009 itself would show that the second respondent did not verify the answers even after the examination. This court found that there was bonafide mistake committed in setting key answers, and the verification was not done only to prevent leakage of question papers. If any direction is to be issued, it would certainly un-settle the selection process which was already completed, and it would give room for many claims from various parties making the issue very complicated. At this point of time, if the directions of the learned single judge are given effect, more candidates would possibly be eligible for appointment, and it would compel the government to make appointments more than advertised and it would be against settled position of law. In Union of India vs. Easwersingh Khatri reported in 1992 Suppl. 3 SCC 84. Gujarat Deputy Executive Engineer Association vs. State of Gujarat reported in 1994 Supp. SCC 591, Kamaleshkumar Sharma vs. Yogeshkumar Gupta reported in AIR 1998 SCC 1021 and State of U.P. And others vs. Rajkumar Sharma and others reported in 2006 (3) SCC 330 it has been held that filling up vacancies over and above the number of advertised could be violative of fundamental rights

guaranteed under Article 14 and 16 of Constitution of India. Therefore the directions (i) to (v) given para 24 of the impugned order are set aside.

"FENCE SITTERS"

30) No doubt the petitioners had legitimate expectation about the selection and they are also not responsible for the problem. However, the petitioner approached the Court only in 2009 for the first time. The Hon'ble Supreme Court in Shiba Shankar Mohapatra and Ors vs. State of Orissa and Ors. Reported in AIR 2010 SC 706 held as follows:

"28 It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the latches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (vide Aflatoon and Ors. v. Lt. Governor, Delhi and Ors. MANU/SC/0437/1974: AIR 1974 SC 2077; State of Mysore v. V.K. Kangan and Ors. MANU/SC/0429/1975: AIR 1975 SC 2190; Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors. MANU/SC/0022/2000; AIR 2000 SC 671; Inderjit Gupta v. Union of India and Ors. MANU/SC/0447/2001; (2001) 6 SCC 637; Shiv Dass v. Union of India and Ors. MANU/SC/7032/2007; AIR 2007 SC 1330; Regional Manager, A.P. SRTC v. N. Satyanarayana and Ors. MANU/SC/8097/2007; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors. MANU/SC/81250/2008; (2009) 1 SCC 168)". (emphasis supplied).

Hence the petitioners who approached the court for the first time are definitely "fence sitters". In view of that the writ petitions filed by those petitioners who approached the court for the first time in 2009 are dismissed on the ground of delay.

31. As far as writ petitioner in W.P.No.9181 of 2009 (W.A.No.1739 of 2010) is concerned, he was already selected and was appointed as Sub-Inspector of Police(Armed Reserve). In view of the wrong key answers, he sought for additional marks. Therefore he gave representation only on 9.4.2009 to award two additional marks and to post him as Sub-Inspector of Police (Taluk). It is seen that he was selected on 19.12.2007 and sent for training on 18.1.2008 as Sub-Inspector of Police (Armed



Reserve) on 28.4.2008. Subsequently he gave a representation only on 9.4.2009. Hence the said representation is directed to be considered by the respondents based on merits as per law. The appeal is allowed and the writ petition is disposed with the above direction the writ petition is disposed.

32. In fine,

1) The appeals filed by the government are allowed setting aside the directions given in the impugned order in para 24(i) to (iv) except para 25(vi) & (vii).

2) As far as 23 old candidates are concerned, as stated above, the list provided by the Advocate General would disclose that revaluation was done and out of 23 candidates 10 candidates are found to be eligible for appointment. Accordingly, they are directed to be appointed subject to usual formalities.

3) W.A.No.1739 of 2010 is also allowed with a direction to dispose of the petitioner's representation dated 9.4.2009. Appeals are allowed as stated above. No costs.

33. However, it is seen that the litigations are due to mistakes committed during setting up question paper. The petitioners are not responsible for wrong key answers. Though this court found the mistake/wrong committed was unintentional and bonafide, the second respondent has to bear in mind that it is conducting exams to recruit persons for uniformed services. Any irregularity in the process of selection would affect morale of the force and interest of the public. In future the second respondent board should be very seriously and carefully and responsibly conduct exams without giving any room for challenge. In this regard, the learned judge issued general guide lines to be followed in future in para 25 vi. Vii of the impugned order and the same are confirmed.

Sd/-

Deputy Registrar.

/true copy/  
सत्यमेव जयते

Sub Asst.Registrar.

vk

To

WEB COPY

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

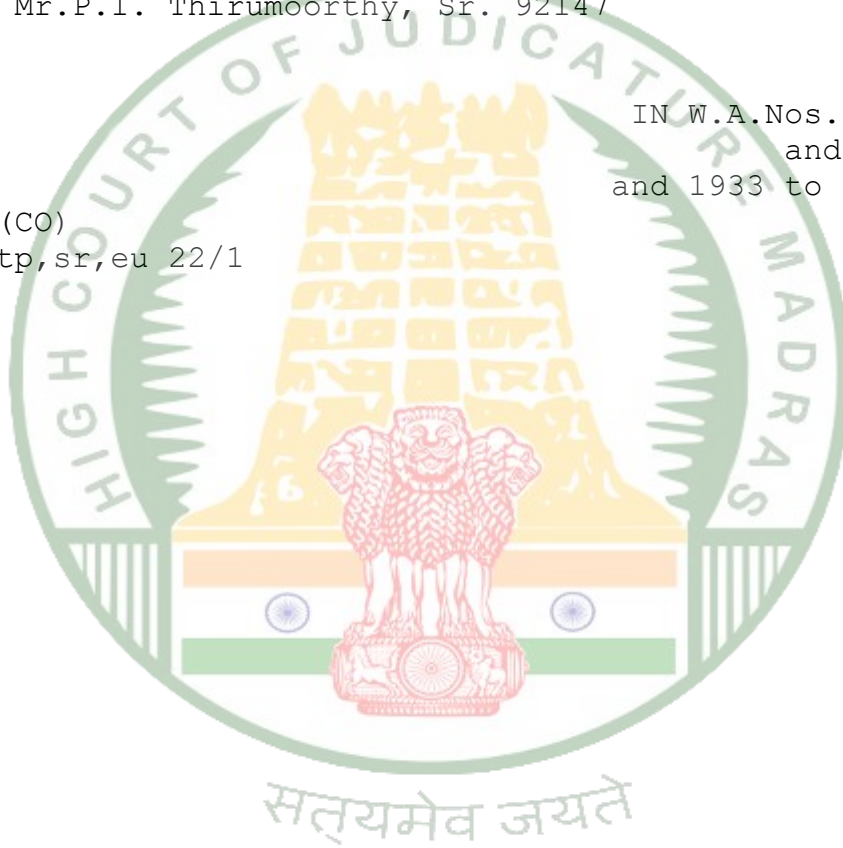
2.The Director General of Police/Chairman,  
Tamil Nadu Uniformed Services Recruitment Board,  
Anna Salai, Chennai-600 002.

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

3 ccs to Government Pleader, Sr. 92261 to 92263  
2 ccs to Mr.K. Ravi Ananthapadmanbhan, Sr. 92189  
10 ccs to Mr.S. Sivakumar, Sr. 67  
1 cc to Mr.V. Manohar, Sr. 92537  
4 ccs to Mr.G. Bala & Daisy, Sr. 92014  
10 ccs to Mr.M. Muthappan, Sr. 92224  
1 cc to Mr.P.I. Thirumoorthy, Sr. 92147

IN W.A.Nos.1719 to 1739  
and 1602 to 1636  
and 1933 to 1958 of 2010

RL, KM (CO)  
kk ,km,tp,sr,eu 22/1



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