

IN THE HIGH COURT OF JUDICATURE AT MADRAS

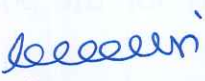
(SPECIAL ORIGINAL JURISDICTION)


W.P. No.15911, 15920, 16549 of 2019

1. Deepika
D/o Irulappan
Aged about 27 years
Residing at No.2, New Street,
MM Colony, Aminjikarai,
Chennai-600 029.
2. Thenmozhi
D/o. Sendhur Pandian
Aged about 29 years
61/C5, MGR Nagar,
4th Street, North PudhuGramam,
Kovilpatti, Thoothukudi -628 502.
3. Saratha,
D/o Mariappa
Aged about 29 years
Residing at 19F/10,
North PudhuGramam,
Illuppaiyurani, Kovilpatti,
Thoothukudi District -628 502. ...Petitioners

- Vs -

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Old COP Office Campus,
Pantheon Road, Egmore,
Chennai-600 008.
Through its Chairman
2. State of Tamil Nadu
Through the Ministry of Social Welfare
Tamil Nadu State Government
Secretariat, Fort St. George,
Chennai-600 009.
3. State of Tamil Nadu
Through the Department of Labour and Employment
Tamil Nadu Government
Secretariat, Fort St. George
Chennai-600 009.Respondents


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


COMMON COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

I, Vidya Jayant Kulkarni, I.P.S, W/o Jayant S.Chikangaonkar Hindu, aged about 48 years and residing at Flat No. H 18/2, Taisha, All India Service Officers Housing Complex, West Natesan Nagar, Virugambakkam, Chennai-600 092 do hereby solemnly affirm and sincerely state as follows

2. I am serving as Inspector General of Police/Member Secretary, Tamil Nadu Uniformed Services Recruitment Board. I am well acquainted with the facts of the case from the records. I have been authorized to file this counter affidavit on behalf of the Director General of Police/ Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai. I have read the Affidavit of the above Writ Petition and I deny all the averments except those that are specifically admitted herein.

3. It is submitted that the writ petitioners prayed that this Hon'ble Court may be pleased to issue a Writ of in the nature of Certiorarified mandamus, quashing the Notification No.1/2019, dated 06.03.2019 to the extent that it provides age limit of 26 years for transgender applicants to the post of Grade II Police Constable (AR) and direct the respondents to issue a Corrigendum providing for relaxation of age to transgender persons seeking to apply for the post of Grade II Police Constable up to 45 years, similar to the age relaxation provided to other categories and directing the respondent No.1 to allow the petitioners to apply for the post of Grade II Police


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


Constable (AR), on the online application portal and accept the application of the petitioners and to permit them to appear for the written examination and pass any other order in the interests of justice and equity.

4. It is submitted that the TNUSRB invited applications from Indian Citizens only through online mode from 08.03.2019 for the Common recruitment to the post of Gr.II Police Constable, Gr.II Jail Warder and Firemen 2019 for 8826+62 (BL) vacancies. The said notification No.1/2019 was issued on 06.03.2019 and the last date of submission of online application was 08.04.2019.

5. It is submitted that the petitioners herein are transgenders who do not satisfy the age norms as per the notification in Para VII (2) and information brochure in Para No.5 (ii) issued by the TNUSRB. The petitioners belong to BC/DNC category and as per the age norms prescribed in the notification and brochure they should not have attained 26 years of age as on 01.07.2019. Since the petitioners are beyond the maximum age prescribed for the said post they are not eligible to apply.

6. Aggrieved over their ineligibility to apply for the Common Recruitment of Gr.II Police Constable on account of not fulfilling the age norms the petitioners herein has filed writ petitions in WP.No.15911, 15920 & 16549 of 2019 before the Hon'ble High Court of Madras. The above case came up for hearing on 24.06.2019 and the Hon'ble Court passed an interim order directing the first


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


respondent to accept the applications from the petitioners for the posts of Grade II Police Constable (AR) under the Notification No.1/2019 dated 06.03.2019 and allow the petitioners to appear in the written examination that is to be conducted by the first respondent for the said post.

7. It is further submitted that during the Common recruitment of Gr. II Police Constable 2017-2018 a transgender Aradhana's online application was not accepted as she did not satisfy the upper age limit for BC Community to which she belonged. Aggrieved over non acceptance of her online application she filed a writ petition in WP.No.1163 of 2018 before the Hon'ble High Court of Madras with the prayer to quash the notification dated 27.12.2017 as illegal as far as not prescribing age limit for transgender.

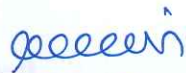
8. It is further submitted that the writ petition came up for hearing and the Hon'ble Justice in interim order dated 25.01.2018 directed the petitioner Aradhana to submit the application and the respondent TNUSRB shall receive the same without insisting upon the online application. Accordingly the TNUSRB received and accepted the application of Aradhana.

9. It is further submitted that the TNUSRB filed a writ appeal in WA.No.330 of 2018 against the interim order passed in WP.No.1163 of 2018 and the same was disposed by the Hon'ble Division Bench of Madras High Court in its order dated 22.02.2018 with the direction to the Government in Para No.6 as follows:-



**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

Para 6. A wholesome reading of the judgment of the Apex Court in National Legal Services Authority-Vs.-Union of India [(2014) 5 SCC 438] reveals that after the abject neglect and gay abandon of the Third sex over the centuries finally has dawned upon the world community. Through the judgment, the Supreme Court has impressed upon the Nation the need to undo the wrong silently suffered by the Third Gender of the human race, which has for far too long been oppressed, suppressed and left depressed. If the judgment of the Hon'ble Supreme Court is seen in such light and if the intent behind the same is to be carried forward, then we see absolutely no reason why reservations in age permissible to destitute widows and Ex-Servicemen and the like should not be extended also to transgenders. This observation would be applicable in equal measure to each and every concession, relaxation of conditions made in any form of public employment. In other words, the aim of Government should be upliftment of the Third gender in every manner possible. We, strongly would recommend the adoption of such a course and earnestly hope that this State be the forerunner in placing those who have too long been tread upon as the least among us, as the first among equals.




**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

10. It is further submitted that as per the legal opinion dated 07.03.2018 obtained from the learned Advocate General the candidate K.Aradhana was permitted to write the written examination and her results were not declared.

11. It is further submitted that in pursuant to the disposal of the writ appeal order dated 22.02.2018 made in WA.No.330 of 2018, the TNSURB sent a letter to the Government in C.No.R1/1250/2018, dated 14.03.2018 requesting to make suitable amendments or otherwise in the existing rule as enumerated in the TNPSS (1953) and TNSPSS (1978). Further it was also requested the Government to issue suitable direction on this specific issue of Transgender candidate K.Aradhana, in particular, who on the orders of Hon'ble High Court has been allowed to writ exam, but whose result would be sealed and released only after clarification is received from the Government.

12. It is further submitted that the writ petition filed by K.Aradhana in WP.No.1163 of 2018 is pending before the Hon'ble High Court of Madras, the clarification sought is yet to be received from the Government and therefore the result of the written examination of the candidate K.Aradhana was not declared and kept pending.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

13. It is further submitted that vide in the Government Letter (Ms) No.1604, Home (Police.III) department, dated 30.10.2007 the age limit in respect of the candidates belonging to the Backward Class/Most Backward Class and de-notified communities be enhanced as indicated below for recruitment to the post of Gr.II Police Constable and Sub Inspector of Police the relaxation of age limit by 2 years for MBC and BC candidates.


Sl. No.	Category	Existing upper age limit	Revised Age limit for future recruitment
1.	Grade II Police Constable	18-24 years	18-26 years
2.	Sub Inspectors of Police	20-28 years	20-30 years

Accordingly by G.O.Ms.No.1357, Home (Police.VI) Department, dated 03.10.2008, the revised age limit has been amended in Special Rules for Tamil Nadu Police Subordinate Service Rules 1953 and by G.O.Ms.No.1644, Home (Police.9) department dated 18.12.2008 the revised age limit has been amended in Tamil Nadu Special Police Subordinate Service Rules 1978.

14. It is submitted that the Hon'ble Apex Court in their order dated 15.04.2014 in WP. (Civil) No.400 of 2012 has directed Central and State Governments to provide certain measures for transgender:-

- (i) Hijras, Eunuchs, apart from binary gender, be treated as "third gender".
- (ii) Right to decide their self identified gender such as male or female or as third genders.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

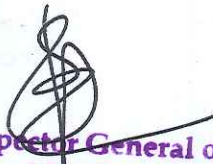
- (iii) To treat them as socially and educationally backward classes and extend all kind of reservations in cases of admission in educational institutions and for public appointments.

15. It is further submitted that in pursuance to the directions of the Hon'ble Supreme Court of India the Government of Tamil Nadu has issued following orders with regard to transgender

Government Order	Subject
G.O.Ms. No. 127, Labour and Employment Department, dated 27.10.2014.	Third gender treated as women for purpose of reservation within 30% reservation for women
G.O.Ms.No.28, Backward classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 06.04.2015.	Treated as third gender included in the list of MBC for communal reservation.
G.O.Ms.No.71, Social Welfare and Nutritious Meal Programme (SW8 (2)) Department, dated 06.11.2015.	Rights to decide self identification of gender

According to G.O.Ms.No.28, Backward classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 06.04.2015 the transgenders are included under MBC category. In order to safeguard the interest of the transgender belonging to SC/ST community, the Board obtained the Legal Opinion from the Additional Advocate General -VII of Tamil Nadu and accordingly the transgender will be considered under the community to which the transgender belongs subject to the production of community certificate and those transgender who do not submit their community certificate will be treated under MBC category. This has been adopted in the Information Brochure in Para No.9 (d & e) and the same is specified in the notification in Para No. XI (d & e) published by the TNUSRB.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


16. It is submitted that the Board till 2015 recruitment has not considered transgender as a separate category and after the judgment in K.Prithika Yashini (Transgender) Vs The Chairman, TNUSRB dated 03.11.2015, the Board had sent a proposal to the Government to classify the transgender as a separate category and accordingly the Government issued vide G.O.Ms.No.567, Home (Police VI) department, dated 02.08.2016 in which following amendment was effected to the Special Rules for Tamil Nadu Police Subordinate Service as follows:


AMENDMENT

In the said Special Rules, after Rule 14, the following rules shall be inserted, namely:-

14-A Recruitment of Transgender Candidates:-

- (1) A transgender candidate, who applies as Third Gender, shall be eligible for appointment in the vacancies reserved for women candidates as well as the vacancies under the general category.
- (2) A transgender candidate, who applies as third gender, shall produce an Identity Card issued by the Transgenders Welfare Board.
- (3) A transgender may choose to appear as male or female by selecting either of the gender category at the time of application.
- (4) If a transgender candidate applies as male candidate, then the requirement of Physical Measurement Test, Physical Endurance Test and Physical Efficiency Test prescribed for the male category shall apply.
- (5) If a transgender candidate applies as female candidate, then the requirement of Physical Measurement Test, Physical Endurance Test and Physical Efficiency Test prescribed for the female category shall apply.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


(6) If a transgender apply as a Third gender, the Physical Measurement Test, Physical Endurance Test and Physical Efficiency Test prescribed for the female candidates shall apply to the Third gender candidates.

17. It is further submitted that the Government in the G.O.Ms.No.90, Social Welfare and Nutritious Meal Programme (SW8(2)) Department, dated 22.12.2017 issued the following order regarding the determination of community and reservation in employment for the third gender as given below:-

Determination of the Community:-

- (i) The Third Gender candidates, who do not possess any community certificate may be considered under Most Backward Class as per G.O.(Ms) No.28, Backward Classes, Most Backward Class and Minorities Welfare Department, dated 06.04.2015.
- (ii) The Third Gender candidates who belong to Scheduled Caste/Scheduled Caste (A)/Scheduled Tribe communities, and possess community certificate as such, may be considered as per their respective community.
- (iii) The Third Gender candidates who belong to the communities other than Scheduled Caste/Scheduled Caste (A)/Scheduled Tribe and possess community certificate as such (not covered under point (i) above) may be considered as per their own community or as Most Backward Class whichever is advantageous to them as per their option and once the individual exercises option for community selection it should be crystallized and this option should not be changed in future.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


Reservation in Employment:-


- (i) The Third Gender candidates who identify themselves as "Female" by self-declaration supported by the certificate (ID card) issued by the Tamil Nadu Third Gender Welfare Board (TNTGWB) may be considered against both 30% reservation for women as well as 70% reservation for the General Category (both Men & Women).
- (ii) The Third Gender candidates, who identify themselves as "Male or "Third Gender", may be considered against the 70% reservation for General category (both Men & Women) as the case may be.

The above concessions may be granted subject to production of certificate identifying them as Third Gender or Third Gender (Male) or Third Gender (Female) issued by the Tamil Nadu Third Gender Welfare Board (TNTGWB), as the case may be.

18. It is further submitted that the Board follows the procedures in the Determination of the Community and Reservation in Employment for transgender as per G.O.Ms No.90, Social Welfare and Nutritious Meal Programme (SW8 (2)) Department, dated 22.12.2017.

19. It is further submitted that the rules of procedure adopted by the Tamil Nadu Uniformed Services Recruitment Board for the selection of suitable persons for the subordinate services of the uniformed departments like Police, Prisons and


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

Fire services is as per G.O.Ms No.232, Home (Services-F) Department, dated 12.2.1992, in which it is stated in Para 2(d) (viii) that


“the Board shall follow and carry out the directions of the Government of Tamil Nadu in regard to the policies of recruitment and other related matters.”


Accordingly the Board provides age relaxation to SC/ST community, Ex-serviceman and Destitute widow as per G.O.(Ms) No. 834, Home (Police-III) Department, dated 10.09.2001.

20. It is submitted that the State of Tamil Nadu had given undertaking before the Hon'ble Supreme Court of India in the order dated 24.04.2017 made in Writ Petition (C) No.183/2013 to fill up the vacancies of different ranks in the Police Department and with regard to the filling up of vacancies in the constables cadre the undertaking given in Para No.5, 6 and 7 are as follows:-

Para No.5

Insofar as the cadre of Constables is concerned, it is submitted, that there is a sanctioned strength of 1,09,694 posts, out of which 92,105 personnel are in position. As against the remaining 17,589 vacancies, the Tamil Nadu Uniformed Services Recruitment Board has already issued an advertisement notifying 13,183 vacancies of Grade-II Police Constables (Armed Reserve and Tamil Nadu Special Police) on 23.01.2017. It is pointed out, that the provisional selection list, will be issued positively by August, 2017, whereafter, after abiding by the verification process, orders of appointment will be issued in November, 2017, requiring the selected candidates to undergo training for a period of eight months.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

Para No.6


It is submitted, that the entire balance vacancies, including such vacancies which may arise in the interregnum, will be taken up, as soon as the provisional list, for the existing process of selection is published, in August, 2017. It is affirmed, that the Tamil Nadu Uniformed Services Recruitment Board, will fill up all the remaining vacancies, in the cadre of Constables of Police, within a period of eight months of the issuance of the advertisement. In the above view of the matter, it is expressly undertaken, that all the balance vacancies in the cadre of constables, will be filled up by April, 2018.

Para No.7

The aforesaid factual position brought to the notice of this Court, is taken on record. The Director General of Police, who is also the Chairman of the Tamil Nadu Uniformed Services Recruitment Board, shall be personally responsible for complying with the undertaking given to this Court.

21. It is submitted that the observation of the Bench of Hon'ble Justice of High Court in writ appeal in WA.No.330 of 2018 to the Government is still pending and as per the order of the Hon'ble Supreme Court of India made in Writ Petition (C) No.183/2013 dated 24.04.2017, the Director General of Police, Chairman of the Tamil Nadu Uniformed Services Recruitment Board is personally responsible for complying with the undertaking given before the Hon'ble Supreme Court of India, the TNUSRB issued notification of the Common Recruitment of Gr II PC 2019 as per the existing Government Orders with regard to the transgenders.


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**



**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

22. It is further submitted that the TNUSRB is only an agency for recruiting persons for the Uniformed Services. The direction to recruit has been given by the State of Tamil Nadu and all decisions for recruiting members for the posts in Tamil Nadu Police Subordinate Service is taken by the State of Tamil Nadu. Further the Board does not have the powers to extend age relaxation to Transgender as there is no specific GOs now available in this regard. Hence the prayer of the petitioners in their writ petitions to relax the age limit of the transgender up to 45 years, similar to the age relaxation provided to other categories is not acceptable and not maintainable as per the rules in existence.

For the foregoing reasons and other legal submissions to be made at the time of arguments it is humbly prayed that this Hon'ble Court may be pleased to dismiss this Writ Petition and thus render justice.

Solemnly affirmed at Chennai on
this the..... day of July 2019
and signed her name in my presence.


**Inspector General of Police &
Member Secretary
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**
BEFORE ME


**Superintendent of Police
Tamil Nadu Uniformed Services
Recruitment Board, Chennai - 2**

**HIGH COURT, MADRAS
(SPECIAL ORIGINAL JURISDICTION)
District : Chennai**

**W.P. No. 15911, 15920,
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**COMMON COUNTER
AFFIDAVIT FILED BY
THE 1st RESPONDENT**

GOVERNMENT PLEADER