**Under Article 226 of the Constitution of India**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**(Special Original Jurisdiction)**

**W.M.P No. \_\_\_\_\_\_\_\_\_ of 2019**

**In**

**W.P. No. 15920 of 2019**

Thenmozhi

D/o Sendhur Pandian

Aged about 29 years

61/C5, MGR Nagar,

4th Street, North Pudhu Gramam,

Kovilpatti, Thoothukudi - 628 502 …Petitioner

-vs-

1. State of Tamil Nadu

Through its Chairman

Tamil Nadu Uniformed Services Recruitment Board

Old COP Office Campus, Pantheon Road,

Egmore, Chennai - 600 008

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

**AFFIDAVIT OF THE PETITIONER**

I, Thenmozhi, D/o Sendhur Pandian, aged about 29 years, residing at No. 61/C5, MGR Nagr, 4th Street, North Pudhu Gramam, Kovlpatti, Thoothukudi - 628 502, presently in Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner in above-mentioned petition and I am well acquainted with the facts and circumstances of the case and competent to affirm and swear to this Affidavit.
2. I submit that I am a transgender person having Transgender Identity Card issued by the Tamil Nadu Transgender Welfare Board and I belong to a Backward Class community.
3. I submit that the above-mentioned pending Writ Petition has been filed before this Hon’ble Court seeking directions to the Respondent No. 1 to provide to the Petitioner and to all transgender persons who are applying to the Respondent No. 1 for the post of Grade II Police Constable (AR) under Notification No. 1/2019 dated 06.03.2019 issued by the Tamil Nadu Uniformed Services Recruitment Board with the benefit of age relaxation up to 45 years as provided to other categories of applicants.
4. I submit that the present application for amendment is being filed before this Hon’ble Court seeking an amendment to prayer in the above-mentioned petition to provide relaxation in the cut-off marks for the post of Grade II Police Constable (AR) for transgender applicants similar to the relaxation in cut-off provided to Desitute Widows.
5. I submit that I was born as male. However, I have identified as a transgender person from a young age and faced harassment and humiliation on account of this both within the family and outside. I have completed my education up to Class 10 and had to discontinue my education as I was disowned by my family when I identified myself as a transgender person.
6. I submit that vide Notification No. 1/2019 dated 06.03.2019 (Impugned Notification), the Respondent No. 1 called for applications for the post of Grade II, Police Constable (AR) and seeks to fill 2465 vacancies from women and transgender applicants. The Impugned Notification sets out the applicable rules and conditions for transgender applicants as follows:
   1. Transgender persons can choose their gender as male / female / third gender as their gender.
   2. If a transgender person chooses their gender as male, they will be required to participate and clear the physical requirements and efficiency tests as applicable to males.
   3. If a transgender person chooses their gender as female or third gender, the relevant physical requirements and efficiency tests as applicable to females would have to be fulfilled.
   4. If a transgender person chooses their gender as third gender, they will be considered as a female applicant.
   5. If a transgender person submits their caste/community certificate, they will be eligible for reservations as applicable to their respective community, and if they do not submit a certificate, they will be considered as belonging to the Most Backward Class for the purpose of reservations.
7. I further submit that the Impugned Notification prescribes age limits for different categories of applicants. They are as follows:
   * + - 1. General Merit Category: Between 18 years to 24 years as on 01.07.2019 (i.e. should have been born between 01.07.1995 and 01.07.2001).
         2. Applicants belonging to Backward Castes / Backwards Castes (Muslim) / Most Backward Castes (MBC) and Denotified Communities: Between 18 years to 26 years as on 01.07.2019 (i.e. should have been born between 01.07.1993 and 01.07.2001).
         3. SC/ST applicants: Between 18 years to 29 years as on 01.07.2019 (i.e. should have been born between 01.07.1990 and 01.07.2001)
         4. Destitute Widow applicants: Between 18 years to 35 years as on 01.07.2019 (i.e. should have been born between 01.07.1984 and 01.07.2001)
         5. Ex-servicemen applicants: Between 18 years to 45 years as on 01.07.2019 (i.e. should have been born between 01.07.1974 and 01.07.2001)
8. I submit that in March 2019, I attempted to apply for the post of Grade II Police Constable by filling in the prescribed online application form on 26.03.2019 and I chose my gender as ‘transgender’. As I belong to a Denotified Community, the age limit applicable to me is 26 years. However, as I was born prior to 01.07.1993, my age was 29 years at the time of application and my application was not accepted and could not be uploaded to the online application portal. In fact, when I filled in my details, I was informed that “*you are overaged for this recruitment*”.
9. I submit that therefore, I approached this Hon’ble Court in W.P. No. 15920 of 2019 praying for relaxation of age along the lines of the age relaxation provided to Destitute Widow applicants (35 years) and for Ex-Servicemen applicants (45 years).
10. I submit that vide order dated 24.06.2019 in W.M.P No.15728 of 2019, this Hon’ble Court directed the Respondent No. 1 to accept my application and permitted me to appear for the written examination held on 25.08.2019. The results of the said examination were released in September 2019. However, my enrolment number did not appear in the provisional list of candidates who would be called for Physical Measurement Test, Endurance Test & Physical Efficiency Test (PMT, ET & PET) (hereinafter ‘physical endurance test’).
11. I submit that thereafter, the Respondent No. 1 intimated me through e-mail that I had scored 30 marks in the written examination. However, the cut-off for the Women – General (MBC) Category is 38, my enrolment number was not included in the provisional list. The cut-off marks set for the different categories for recruitment to Grade II Police Constable (AR) for 2019 under the Women Category is as follows:

**Women Cut-Off Marks for PMT – ET – PET**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | General | Sports | Ex-Servicemen | Widow |
| GT – 31% | 38 | 28 | 40 | 28 |
| BC – 26.5% | 38 | 28 |  | 2 |
| BCM – 3.5% | 28 | 32 |  |  |
| MBC – 20% | 38 | 28 | 32 | 29 |
| SC – 15% | 38 | 28 |  | 28 |
| SCA – 3% | 38 | 28 |  | 28 |
| ST – 1% | 38 | 31 |  |  |

Therefore, as per the above, under the MBC category under which I would be considered, a specific relaxation in cut-off marks has been provided to Destitute Widow (29) applicants when compared to the General category. However, no such relaxation has been provided to transgender applicants, for whom the cut-off would be 38 marks.

1. I submit that despite being allowed to appear in the examination by this Hon’ble Court and having performed extremely well in the examination by scoring 30 marks, my enrolment number has not been included in the provisional list and I have not been called for physical endurance test because the prescribed cut-off is 38 marks. However, the Respondent No. 1 has extended a relaxation to Destitute Widow applicants with respect to cut-off marks as well whereby they have to score a minimum of 29 marks to be called for the physical endurance test. If I were to get the same relaxation in cut-off marks as Destitute widows category, I would be eligible to be considered for the post.
2. I submit that transgender persons are a socially and educationally backward class of persons and face many obstacles in seeking educational opportunities and finding sustainable employment. However, transgender applicants have been clubbed with other applicants from Backward Classes, Most Backward Classes, Denotified Communities for the purpose of reservations, age relaxation and cut-offs without recognising the unique discrimination and difficulties they face in accessing education and employment opportunities. While the Respondent No. 1 has recognised the difficulties faced by Ex-Servicemen and Destitute Widow applicants and have accordingly provided a further age relaxation and relaxation in cut-off marks, no such relaxation has been provided to transgender persons. As a result, despite crossing many hurdles, completing my education and scoring high marks in the written examination, I have been denied the opportunity to appear for the physical endurance test.
3. I submit that the decision of the Respondent No. 1 not to provide age relaxation as well as relaxation in cut-off mark to transgender persons ignores the fact that they have faced discrimination historically and are not given the right to employment or equal access in education. This is supported by the study commissioned by the National Human Rights Commission (NHRC) in 2017 titled ‘Study on Human Rights of Transgender as a Third Gender’. The NHRC Report noted that only 46% of transgender persons in India are literate and 94% are either unemployed or employed in the informal sector. This Report has also noted that almost 30% of transgender persons have never attended school and only 20% have completed primary education. Further, only 6% of transgender persons were found to be employed, and no transgender person was found to be employed in the government sector. Therefore, it is clear that transgender persons as a category have low levels of education and remain under represented in the public sector. In this scenario, despite scoring 30 marks, which is 1 mark more than the cut off marks set for the Destitute Widows (29) applicants under the MBC, I am unable to appear for the physical endurance test and secure employment with the Tamil Nadu State Police Force.
4. I submit that in ***NALSA v. Union of India and Ors.* [2014 (5) SCC 438]** (hereinafter ‘*NALSA*’)***,*** the Hon’ble Supreme Court held that Article 14 guarantees to everyone the equal protection of laws, and therefore transgender persons are also entitled to equal protection of the law. While noting the centuries of discrimination faced by the transgender community, the Hon’ble Supreme Court directed that steps and measures are required to be taken by the Centre and State Governments to integrate the transgender community into society and held that:

“***We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.***”

1. I submit that despite this, Respondent No.1 chose to provide significant age relaxation up to 35 years for Destitute Widows and up to 45 years for Ex-Servicemen and also provided relaxation in cut-off marks for Destitute Widows and Ex-Servicemen. However, no relaxation was provided to transgender applicants. In fact, my score of 30 marks is more than the cut-off marks fixed for Destitute Widows (29) and had a similar relaxation in cut-off marks been extended to me, I would have qualified for the physical endurance test.
2. I submit that I have aspired to join the Tamil Nadu Police Force since my childhood and the Tamil Nadu Police Force is a major source of employment for transgender persons. Many transgender persons have been employed by the Respondent No. 1 in the past and continue to work in the Tamil Nadu Police Force. However, the failure of the Respondent No. 1 in providing age relaxation and relaxation in cut-off marks similar to other categories severely restricts the chances of transgender persons to secure stable employment and is discriminatory.
3. I submit that in fact, in ***The Chairman, Tamil Nadu Uniformed Services Recruitment Board v. Aradhana, Writ Appeal No. 330 of 2018*** (hereinafter referred to as *Chairman v. Aradhana*), this Hon’ble High Court held that:

“***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.***”

Therefore, the observations of this Hon’ble Court with respect to extending relaxation of age to transgender applicants applies to all relaxations and concessions in equal measures and therefore, transgender applicants should also be provided with relaxation in the cut-off marks along the lines of relaxation provided to other categories.

1. I submit that the Respondent No.1 is set to conduct Physical Tests for the post of Grade II Police Constable (AR) from 06.11.2019, for which I cannot appear on account of the fact that my score of 30 is 8 marks short of the cut-off for the General Women Category.
2. I submit that having no other alternative and equally efficacious remedy, I am approaching this Hon’ble Court through the present Amendment Petition, seeking appropriate reliefs on the following, among other, grounds.

**GROUNDS**

1. **THAT** transgender persons face discrimination, prejudice and violence from all sections of society, from the police and face lack of access to medical facilities, health care and housing. Further, transgender persons are also face socio-economic disadvantages due to their low levels of education and consequent limited access to employment opportunities and on this basis, the Hon’ble Supreme Court in *NALSA,* recognised that transgender persons are a socially and educationally backward class.
2. **THAT** in *NALSA*, the Supreme Court recognized the significance of providing reservations for transgender persons to ensure that there is representation from the transgender community and they are able to participate in mainstream society. Accordingly, it directed the Centre and the State Governments to treat transgender persons as a socially and educationally backward classes of citizens and to provide them with reservations in educational institutions and in public employment. However, by failing to give age relaxation and relaxation in cut-off marks to transgender persons along the lines of relaxation given to other categories of applicants like Destitute Widows, the Respondent No.1 has undone the directions of the Hon’ble Supreme Court and has made it extremely difficult for transgender persons to successfully clear the selection process for the post of Grade II Police Constable. Therefore, the failure to provide relaxation in cut-off marks is against the spirit of the decision in *NALSA*.
3. **THAT** in *NALSA*, the Hon’ble Supreme Court noted the centuries of discrimination faced by transgender persons and held that “*…[a]rticle 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country*…*Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India*.” Hence, in order to seek equal opportunities to overcome centuries of such discrimination, it is crucial that age relaxation and relaxation in cut-off marks at least similar to the other categories like Destitute Widows ought to be provided in the public employment for the transgender persons.
4. **THAT** in *Chairman v. Aradhana*, this Hon’ble Court held that transgender persons should be provided the same concessions and relaxations to secure employment, similar to relaxations being provided to other categories. This would include relaxation in age and cut-off as well, which has not been provided to transgender persons by the State of Tamil Nadu. Therefore, the actions of the Respondents in failing to provide relaxations to transgender persons are contrary to the decision of this Hon’ble Court and therefore, deserves the intervention of this Hon’ble Court.
5. **THAT** in ***Tharika Banu v. The Secretary to Government & Ors. W.P. No. 26628 of 2017***, while granting admission to a transgender woman in a Siddha medical course in Tamil Nadu, this Hon’ble Court noted the discrimination faced by transgender persons and also directed the State Government to issue guidelines on reservation in employment in respect of the third gender, in order to streamline the procedures to be followed by Governmental agencies in selecting transgender candidates for appointment in Government services. However, no such steps to frame a policy or guidelines for providing public employment to transgender persons has been taken by the State of Tamil Nadu. Providing age relaxations and relaxation in cut-off marks to transgender persons should form part of any policy or guidelines that are framed in this regard.
6. **THAT** in ***Prithika Yashini v.* *Tamil Nadu Uniformed Services Recruitment Board & Ors.* [W.P. 15046/2015]**, vide order dated 27.07.2015, this Hon’ble Court recognised that reservations for transgender persons should be horizontal in nature and that if the cut-off level was reached by the Petitioner with respect to any horizontal category, then the Petitioner would be able to qualify for the written test. Therefore, relaxation in cut-off marks was extended to the Petitioner in this case under the OC woman category. This fact was also noted by the Hon’ble Court in the final order dated 03.11.2015. Therefore, in the present case as well, the precedent set by this Hon’ble Court should be followed and relaxation in cut-off as provided to Destitute Widow applicants should extended to the Petitioner.
7. **THAT** the Respondent No. 1 has called for applications for 2465 posts of Grade II Police Constable (AR) from only women and transgender applicants. However, by not providing any relaxation in cut-off for transgender persons, while simultaneously providing a relaxation in cut-off limit for Destitute Widows and Ex-Servicemen applicants, the Respondent No. 1 has virtually made it impossible for the Petitioner and other transgender persons to successfully apply for the said post and gain employment in the Tamil Nadu Police Force, which is against the decision of the Hon’ble Supreme Court in *NALSA* and this Hon’ble Court in *Chairman v. Aradhana*. Therefore, the Respondent No. 1 ought to provide relaxation in cut-off marks to transgender persons as well, along the lines of the relaxation granted to the other categories like Destitute Widows.
8. **THAT** the decision of the Respondent No. 1 to not provide relaxation in cut-off marks to transgender persons while providing the same to Destitute Widows and Ex-Servicemen, despite the fact that transgender persons have been recognised as a socially and educationally backward class, is arbitrary and without any rational or reasonable basis, and as such violates Article 14 of the Constitution of India, 1950.
9. **THAT** the Respondent No. 1 is set to conduct the physical endurance test for the post of Grade II Police Constable (AR) on 06.11.2019. I submit that if I am not allowed to appear for the physical endurance test pending the hearing and disposal of the writ petition and after hearing the petition, if this Hon’ble Court comes to the conclusion that transgender applicants are eligible for relaxation in the cut-off marks, I would be severely disadvantaged and would lose my chance at securing employment with the Tamil Nadu State Police Force. Therefore, it is imperative that this Hon’ble Court, by way of interim relief, direct the Respondent No. 1 to permit me to take the Physical Tests for the post of Grade II (Police Constable), pending the hearing and final disposal of the writ petition.

**PRAYER**

THEREFORE, in light of the above facts and circumstances, it is prayed that this Hon’ble Court may be pleased to permit the petitioner to amend the relief prayed for in the above-mentioned writ petition **FROM**:

“it is 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 further direct the Respondent No. 1 to allow the Petitioner to apply for the post of Grade II Police Constable (AR), on the online application portal and accept the application of the Petitioner and to permit her to appear for the written examination; and pass any other order in the interests of justice and equity.”

**TO:**

“It is 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 Respondent No. 1 to issue a Corrigendum providing for relaxation of age and cut-off marks to transgender persons seeking to apply for the post of Grade II Police Constable up to 45 years, and fixing the cut-off mark and 29 marks, similar to the age relaxation and relaxation in cut-off marks provided to other categories like Destitute Widows and pass any other order in the interests of justice and equity.”

and pass such further or other orders and thus render justice.

THEREFORE, it is prayed that pending the hearing and final disposal of the Writ Petition, this Hon’ble Court may be pleased to direct the Respondent No.1 to permit the Petitioner to participate in the Physical Measurement Test, Endurance Test & Physical Efficiency Test (PMT, ET & PET) for the post of Grade II Police Constable (AR) which is scheduled to be held from 06.11.2019 and pass any other order in the interests of justice and equity.

Solemnly affirmed at Chennai Before me

On this \_\_\_\_ day of October,2019

And signed his name in my presence Advocate: Chennai

**MEMORANDUM OF WRIT MISCELLANEOUS PETITION**

**Under Article 226 of Constitution Of India**

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**PETITION FOR AMENDMENT**

THEREFORE, in light of the above facts and circumstances, it is prayed that this Hon’ble Court may be pleased to permit the petitioner to amend the relief prayed for in the above-mentioned writ petition **FROM**:

“it is 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 further direct the Respondent No. 1 to allow the Petitioner to apply for the post of Grade II Police Constable (AR), on the online application portal and accept the application of the Petitioner and to permit her to appear for the written examination; and pass any other order in the interests of justice and equity.”

**TO:**

“It is 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 Respondent No. 1 to issue a Corrigendum providing for relaxation of age and cut-off marks to transgender persons seeking to apply for the post of Grade II Police Constable up to 45 years, and fixing the cut-off mark and 29 marks, similar to the age relaxation and relaxation in cut-off marks provided to other categories like Destitute Widows and pass any other order in the interests of justice and equity.”

and pass such further or other orders and thus render justice.

Dated at Chennai on this the day of October,2019

Counsel for Petitioner

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Chennai – 600 009 …Respondents

**INTERIM RELIEF PETITION**

For the reasons stated in accompanying the affidavit, it is prayed that pending the hearing and final disposal of the Writ Petition, this Hon’ble Court may be pleased to direct the Respondent No.1 to permit the Petitioner to participate in the Physical Measurement Test, Endurance Test & Physical Efficiency Test (PMT, ET & PET) for the post of Grade II Police Constable (AR) which is scheduled to be held from 06.11.2019 and pass any other order in the interests of justice and equity.

Dated at Chennai on this day of October, 2019

Counsel for Petitioner

**Under Article 226 of Constitution Of India**

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Dated at Chennai on this day of October, 2019

Counsel for the Petitioner