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

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

**(Special Original Jurisdiction)**

**W.P. No. 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. 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

**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 herein and, I am well acquainted with the facts and circumstances of the case and am 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 present 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 and direct the Respondent No.1 to permit me and other transgender applicants to appear for the written examination for the said post which is to be conducted shortly.
4. 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.
5. 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.
6. 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)
7. I submit that the I have 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 Backward Class Community, the age limit applicable to me is 26 years. However, as I was born prior to 01.07.1993 and my age presently is 29 years, my application was not accepted and could not be uploaded to the online application portal. When I filled in my details, I was informed that “*you are overaged for this recruitment*”.
8. It is significant to note that the upper age limit prescribed by the Impugned Notification for other categories of applicants such as SC/ST persons is 29 years, for Destitute Widow applicants is 35 years, and for Ex-Servicemen applicants is 45 years, which is a relaxation of 3 years, 9 years and 19 years respectively when compared to persons from Backward Classes, Most Backward Classes, Denotified Communities and Transgender persons. No separate age relaxation of any kind has been provided to transgender persons as they have simply been grouped under the category of Most Backward Classes. The Impugned Notification does not take into consideration that transgender persons are a socially and educational backward class who have compromised access to education and employment opportunities, on account of which they should be provided with relaxations in the application process.
9. I submit that the Impugned Notification has provided no reasons for providing such a strict upper age limit for transgender persons when categories of applicants like SC/ST persons, Destitute Widows and Ex-Servicemen have been provided further relaxations in the upper age limit. In fact, for the purpose of fixing upper age limit, there is no rationale in clubbing transgender applicants with other applicants from Most Backward Classes category especially when transgender persons face many hurdles and difficulties in accessing education and gaining employment.
10. I further submit that as per the Impugned Notification, the Respondent No. 1 has also provided that Destitute Widows should be provided with 3% reservations from the posts that are vacant (or reserved) for women and transgender persons. Therefore, on the one hand, the Respondent No. 1 has made it virtually impossible for transgender persons to apply for the post of Grade II Police Constable by fixing an age limit of 26 years, when most transgender persons are unable to complete their education and are forced to leave their homes due to harassment. However, at the same time, Destitute Widows are provided with 3% of the vacant seats that are reserved for women and transgender persons, which will reduce the number of posts available to transgender persons.
11. I submit that the decision of the Respondent No. 1 not to provide age relaxation 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, even not allowing transgender persons to apply for post of Grade II Police Constable due to age barriers amounts to a major obstacle for the transgender community as a whole.
12. I submit that the Hon’ble Supreme Court in ***NALSA v. Union of India and Ors. 2014 (5) SCC 438,*** held that the right to equality guaranteed under Article 14 has been declared as a basic feature of the Constitution of India, 1950 and that Article 14 guarantees to everyone the equal protection of laws so that everyone including transgender persons are afforded 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. However, despite providing reservations for transgender persons, the Respondent No. 1 does not make it possible for transgender persons to in fact apply and take advantage of such reservations by failing to provide sufficient relaxation of age limit for transgender applicants. I submit that even as per Notification No. 2/2019, which is for the recruitment for the posts of Sub-Inspector of Police (Taluk, Armed Reserve), the Respondent No. 1 had prescribed the age of 30 years as upper limit for Backward Classes, Most Backward Classes, Denotified Communities and Transgender persons. However, for instance, the upper age limit for Destitute Widow applicants as per that notification is also 35 years. Therefore, the Respondent No. 1 continues to deny equal rights for transgender persons without understanding their unique problems.
2. I submit that even the Respondent No. 2 provides monthly pension of Rs.1000/- to the transgender persons who are above the age of 40 years as per G.O.(Ms) No. 235 dated 02.08.2012, considering the living conditions of transgender persons and the difficulty they face in finding employment. Despite this, and despite having recognised the difficulties faced by transgender persons on a daily basis, the Impugned Notification fails to extend any form of age relaxation to transgender persons.
3. I submit that as a transgender person, I have faced humiliation and harassment while applying for employment. 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 to transgender persons is in the nature of discriminatory treatment against transgender persons and the decision to prescribe a strict upper age limit of 26 years for transgender applicants has made impossible for me to apply for the post of Grade II Police Constable.
4. 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.***”

1. In light of this decision of this Hon’ble Court, I submit that vide letter dated 13.04.2019, I have made a representation to the Respondent No. 1 seeking relaxation in age for transgender persons. However, no response to this representation has been issued by the Respondent No. 1 and no positive steps to provide age relaxation to transgender persons has been taken by the Respondent No. 1.
2. I submit that transgender persons should be extended relaxations in upper age limit which aligns with the relaxation in upper age limit provided to other categories of applicants such as SC/ST persons, Destitute Widows and Ex-Servicemen and be given age relaxation up to 45 years. Even if the Respondent No. 1 had set the upper age limit as 29 years similar to what has been set for SC/ST applicants, I could have successfully submitted my application for the post of Grade II Police Constable as a transgender applicant as I am 29 years old but am not eligible to apply under the limited age relaxation currently given to the Most Backward Classes category.
3. I submit that the last date for making online application for the post of Grade II Police Constable has lapsed and the Respondent No. 1 is set to conduct the written examination for the post of Grade II Police Constable shortly. However, I would not be able to appear and take this exam as I have not been able to apply for the said post as the Respondent No. 1 has failed to provide relaxation in age to transgender persons.
4. I submit that having no other alternative and equally efficacious remedy, I am approaching this Hon’ble Court through the present Writ 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.
2. **THAT** transgender persons are a socially and educationally backward class of persons as recognised by the Hon’ble Supreme Court in ***NALSA* v. *Union of India,*****(2014) 5 SCC 438** (hereinafter referred to as *NALSA*)*,* as they have faced discrimination and harassment in all avenues of social and professional life, and have faced great difficulty in accessing employment opportunities.
3. **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 and accordingly 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 to transgender persons along the lines of relaxation given to other categories of applicants like SC/ST persons, Destitute Widows and Ex-Servicemen, 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 apply for, let alone clear, the selection process for the post of Grade II Police Constable.
4. **THAT** the Impugned Notification of the Respondent No.1 places unjust conditions on transgender persons by fixing 26 years as the maximum age for being eligible to apply for the recruitment for the post of Grade II Police Constable while simultaneously extending age relaxation of 3 years to SC/ST applicants, 9 years to Destitute Widows and 19 years to Ex-Servicemen, which ignores the reality of the living conditions of transgender persons and is in violation of *NALSA* and the decision of this Hon’ble Court in *Chairman v. Aradhana*.
5. **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 should be provided in the public employment for the transgender persons.
6. **THAT** the decision of the Respondent No. 1 to not provide age relaxation to transgender persons while providing the same to SC/ST persons, Destitute Widows and Ex-Servicemen is arbitrary and without any rational or reasonable basis. Other categories of applicants have been specifically identified and given separate age relaxations under the Impugned Notification. However, transgender applicants have been included under the Most Backward Classes category despite the fact that transgender persons face many difficulties and hurdles in accessing education and employment categories and are have been recognised as a vulnerable group by the Hon’ble Supreme Court in *NALSA*. Therefore, the failure of the Respondent No. 1 in providing a separate age relaxation to transgender applicants while providing separate age relaxations to other categories of applicants violates Article 14 of the Constitution of India, 1950.
7. **THAT** in *NALSA*, the Hon’ble Supreme Court noted that the category of ‘sex’ under Article 15 includes two attributes, namely biological characteristics and gender identity. The action of the Respondent No. 1 in providing age relaxation other categories of vulnerable applicants like SC/ST persons, Destitute Widows and Ex-Servicemen and not to transgender persons amounts to discrimination on the basis of gender and is contrary to Right to Equality under Article 14 and Right against Discrimination enshrined under Article 15 of the Constitution of India.
8. **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 fixing an upper age limit of 26 years for transgender persons, while simultaneously setting an upper age limit for women, who can claim age relaxation of 29 years if they are SC/ST women or of 35 years if they are Destitute Widows, but transgender applicants are arbitrarily treated unequally by only having the age relaxation up to 26 years, making it virtually impossible for the Petitioner and other transgender persons to successfully apply for the said post and gain employment in the Tamil Nadu Police Force. Transgender persons often are unable to access to education and are forced to drop out of school and discontinue their studies and as a result, lose many years before they are able to stand on their own feet and support themselves. However, the Respondent No. 1 has not borne these facts in mind and has failed to provide a separate age relaxation for transgender applicants, while arbitrarily providing age relaxations to other categories of applicants, which is in violation of Article 14 of the Constitution of India.
9. **THAT** apart from being made ineligible by the restrictive age conditions set by the Respondent No. 1 for transgender persons in the Impugned Notification, I am qualified and eligible to apply for the post of Grade II Police Constable. However, I am unable to apply for the post purely because of the different and restrictive age limit set by the Respondent No. 1 for transgender persons who have been historically discriminated against and have limited access to public employment.
10. **THAT** transgender persons have faced immense difficulty in securing employment due to their gender identity and due to the actions of the Respondent No. 1 in the present case, being a transgender person, I am once again losing an opportunity to secure stable employment in the Tamil Nadu Police Force. This action of the Respondent No. 1 is contrary to the spirit of the decision of the Hon’ble Supreme Court in *NALSA* and this Hon’ble Court in *Chairman v. Aradhana*.
11. **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 to transgender persons should form part of any policy or guidelines that are framed in this regard.
12. **THAT** the Respondent No. 1 is set to conduct the written examination for the post of Grade II Police Constable (AR) shortly and if the relief prayed for in the present petition is not granted prior to the examination being conducted, the present Petition would become infructuous as I would not be able to apply for the post of Grade II Police Constable (AR) and take the said examination. As a result, I would suffer immeasurable harm and would lose an opportunity to gain stable employment. Therefore, it is imperative that this Hon’ble Court, by way of interim relief, direct the Respondent No. 1 to accept my application and permit me to take the written examination for the post of Grade II (Police Constable), during the pendency of the present Petition.

**PRAYER**

THEREFORE, in light of the above facts and circumstances, it prayed that this Hon’ble Court may be pleased to:

* 1. Issue a writ of in the nature of certiorari, 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;
  2. Issue a writ in the nature of mandamus directing 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;
  3. Pass any other order in the interests of justice and equity.

Solemnly affirmed at Chennai Before me

On this \_\_\_\_ day of April 2019

And signed his name in my presence Advocate: Chennai

**MEMORANDUM OF WRIT PETITION**

**UNDER Article 226 of the Constitution of India**

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

**(Special Original Jurisdiction)**

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

Thenmozhi

D/o Sendhur Pandian

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61/C5, MGR Nagar,

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Thoothukudi - 628 502 …Petitioner

-vs-

1. Tamil Nadu Uniformed Services Recruitment Board

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Through its Chairman

2. State of Tamil Nadu

Through the Ministry of Social Welfare

Tamil Nadu State Government

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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

**WRIT PETITION**

1. The Address for services of all notices and processes on the petitioner is C. Prabhu, at 12/2, Kamarajar Street, Ayanavaram, Chennai – 600 023.
2. The address for service of all notices and processes and the Respondents as stated above.
3. For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to:
4. Issue a writ of in the nature of certiorari, 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;
5. Issue a writ in the nature of mandamus directing 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;
6. Pass any other order in the interests of justice and equity.

Dated at Chennai on day of April 2019.

Counsel for the Petitioner

**MEMORANDUM OF WRIT MISCELLANEOUS PETITION**

**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**

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Through the Ministry of Social Welfare

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Through the Department of Labour and Employment

Tamil Nadu Government

Secretariat, Fort St. George

Chennai – 600 009 …Respondents

**PETITION FOR INTERIM RELIEF**

For the reasons stated in accompanying the affidavit it is prayed, pending the hearing and final disposal of the Writ Petition, this Hon’ble Court may be pleased to accept the application of the Petitioner for the post of Grade II Police Constable (AR) under the Notification No. 1/2019 dated 06.03.2019 and allow the Petitioner to appear for the written examination that is to be conducted by the Respondent No. 1 for the said post, and pass any other order which the Hon’ble Court deems fit in the interests of justice and equity.

Dated at Chennai on day of April 2019.

Counsel for the Petitioner

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

**(Special Original Jurisdiction)**

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

Thenmozhi

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| 3 | 13.04.2019 | Representation to the Respondent No.1 from the Petitioner |  |
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All the above copies are true copies of its originals.

Dated at Chennai on day of April 2019

Counsel for the Petitioner

**HIGH COURT OF MADRAS**

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

**AFFIDAVIT**

**C.PRABHU (Ms1020/17)**

**ADVOCATE**

12/2, IInd Floor, Kamarajar Street, Ayanavaram,

Chennai – 600 023

Contact No-9968210202

**Counsel for the Petitioner**