



W.A.(MD)No.995 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.995 of 2018

and

C.M.P.(MD)Nos.6786 of 2018 & 1099 of 2022

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Higher Education,
Fort St.George, Secretariat,
Chennai – 600 009.

2.Teachers Recruitment Board,
Rep. by its Chairman,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Compound, College Road,
Chennai – 600 006.

...Appellants

/Vs./

K.Shanthi

...Respondent

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to
set aside the order dated 19.01.2018 passed in W.P.(MD)No.21272 of
2014.



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For Appellants : Mr.V.Om Prakash (A1)
Government Advocate
Mr.VR.Shanmuganathan (A2)
For Respondent : Mr.Maniananth
for Mr.R.Maheswaran

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The appellants were the respondents in the writ petition and have challenged an order of the Writ Court dated 19.01.2018. The writ petitioner is orthopedically challenged and belongs to the Backward class community (BC). She had participated in the selection process for the post of Assistant Professor (English) in the Government Arts and Science College.

2. She was called for certificate verification as well as for the interview. She claimed, and rightly so, to be the only woman candidate in BC category, who attended the interview. Being unsuccessful, she



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challenged the provisional selection list published by the Teachers Recruitment Board (TRB), specifically the selection of male candidates in BC Ortho category and sought her appointment in that position instead.

3. The Writ Court had, at the time of admission, directed the appellants to keep one post of Assistant Professor (English) vacant subject to the decision in the writ petition. At the time of hearing, the appellants had clarified the position that a corrigendum had been issued on 09.07.2013 to the effect that 100 point communal roster would be applicable to the present selection process and hence, the selection or otherwise of the writ petitioner must be seen in the context of that corrigendum.

4. The writ petition came to be allowed on 19.01.2018 accepting the writ petitioner's contention that she was the only eligible candidate falling under the sub-reserved category. The learned Judge



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notes that her assertion was not denied and that her qualifications to the post were also not questioned. That position continues even today before us.

5. As regards the application of the corrigendum dated 09.07.2013, the learned Judge noted that the 3% of reservation provided for differently abled persons was to be made in accordance with law. According to the Writ Court, that corrigendum did not in any way take away the communal turn earmarked to BC woman category.

6. Thus and confirming the appointments made in favour of two male candidates, D.Prasad and Sakthivel as well, a direction was issued to the State and to TRB to appoint the petitioner to the post of Assistant Professor (English) in the Government Arts and Science College under the Tamil Nadu Collegiate Educational Service within a period of eight weeks from the date of receipt of that order.



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7. The State draws attention to the manner by which 3% reservation was to apply, which is as per G.O.Ms.No.87, Department of Social Welfare and Nutritious Meal Programme of Tamil Nadu, dated 17.07.2008. That GO, while applying the 100 point communal roster to appointments sets out the following methodology by which the appointments would be governed:

“திருத்தம்

அரசாணை நிலை எண் 200, சமூக நலம் மற்றும் சத்துணவுத்திட்டத் துறை, நாள் 22.12.2008 ல் தற்போதுள்ள பத்தி 5(அ)க்கு பதிலாக பின்வருமாறு மாற்றி யடிக்கவும்:

(அ) “இம்மாநிலத்திலுள்ள அரசு துறைகள், கழகங்கள் மற்றும் வாரியங்களில் 200 புள்ளி கணக்கீடு பதிவேட்டை 6 (ஆறு) கட்டங்களாக பிரித்து (ஊனமுற்றோரின் மூன்று இனங்களில் அதாவது பார்வையற்றோர், காதுகளாதோர், மற்றும் கைகால் ஊனமுற்றோர் ஆகியோருக்கு முடிந்த வரை தலா 1:1:1 வீதம் சமமாக வழங்கி) ஒவ்வொரு கட்டத்திலும் உள்ள 33 காலி பணியிடங்களுக்குள் ஒரு ஊனமுற்றோரை தேர்வு செய்து (உம், 1 – 33, 34 – 66, 67 – 100, 101 – 133, 134 – 166 மற்றும் 167 – 200) இன சமூகப் பட்டியலில் (communal roster) அவர் சார்ந்த இனத்திற்கு எதிராக அவரின் தேர்வை கணக்கிடும் முறையை கடைபிடிக்க அரசு ஆணையிடுகிறது.

2.தமிழ்நாடு மாநில மற்றும் சார்நிலைப் பணிகளின் பொதுவிதி 22 (2A)க்கு பணியாளர் மற்றும் நிர்வாக சீர்திருத்தத் துறையில் தேவையான திருத்தம் வெளியிடப்படும்.
(ஆளநரின் ஆணைப்படி)”



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8. In order to satisfy ourselves that the application of G.O.Ms.No.87, Department of Social Welfare and Nutritious Meal Programme of Tamil Nadu, dated 17.07.2008 had been done in a proper manner, we had sought for records as well as various particulars from the appellants.

9. There were a total of number of 150 vacancies that were notified for the post of Assistant Professor (English), out of which, 20 were backlog vacancies and 130 were current vacancies. On an application of G.O.Ms.No.87, Department of Social Welfare and Nutritious Meal Programme of Tamil Nadu, dated 17.07.2008, the posts earmarked for three physically challenged category ie., ortho, deaf and blind in the details of backlog and current vacancies have been supplied as follows:-



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S. No	Clarification Sought	Particulars			
		1)Total number of Notified Vacancies for the post of Asst. Prof. In English;			150
1.	Out of 150 vacancies, Howmany are backlog and howmany are current vacancies	2) Number of Backlog Vacancies among the 150 Notified Vacancies.			20
		3) Number of Current Vacancies among 150 Notified vacancies			130
2.	How many posts earmarked for physically challenged, each category wise I.e., Ortho, Deaf, Blind	No. of posts earmarked for	No. of Backlog Vacancies	No. of Current Vacancies	Total No. of Vacancies
		1)Ortho	2	1	3
		2)Deaf	6	2	8
		3)Blind	3	3	6
		Total	11	6	17
3.	How many got selected with all their details in that physically challenged category.	No. of posts earmarked for	No. of Backlog Selected	No. of Current Selected	Total No. Selected
		1)Ortho	1	1	2
		2)Deaf	0	0	0
		3)Blind	2	3	5
		Total	3	4	7
		(Details of Selection of Physically Challenged Candidates enclosed separately)			
					



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10. The appellants have also filed an abstract of appointments of physically challenged candidates in the General merit list. This abstract comprises a total number of 6 candidates, of which only two ie., D.Prasad and Sakthivel, who were standing at Serial Nos.1 and 2 have been selected in Ortho Category. The name of the writ petitioner is at serial number 4.

11. Since there were only a total number of 150 vacancies, there would only be five turns in toto, of which, D.Prasath and Sakthivel, who have obtained 31 and 26 marks have been rightly selected. S.Vinoth Kumar, who obtained 24 marks in Ortho category stood third and was eliminated as unsuccessful. Thus, there is no merit in the writ petitioner's prayer for appointment as she had obtained only 18 marks standing fourth on the merit list.

12. As regards her claim for selection as BC woman, for which one seat was earmarked, admittedly, that seat has been taken by more



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qualified candidate, who had obtained far higher marks than what the writ petitioner had obtained (General category). To be clarified that annexure 1, which sets out the estimate of vacancies and the basis of reservation had been withdrawn to be replaced by the corrigendum issued on 09.07.2013.

13. With the issuance of corrigendum dated 09.07.2013, it becomes incumbent upon the appellants to apply the rules of reservation as contained in G.O.Ms.No.87, Department of Social Welfare and Nutritious Meal Programme of Tamil Nadu, dated 17.07.2008, which is what is seen to have been done in the present case.

14. It appears that G.O.Ms.No.87, Department of Social Welfare and Nutritious Meal Programme of Tamil Nadu, dated 17.07.2008 was not produced before the Writ Court, as there is no reference to that GO in order dated 19.01.2018. However the G.O, being a public document having been produced before us along with the



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records as well as the basis upon which the selection has been made, we find no infirmity in the procedure adopted for appointment. This writ appeal is allowed and order dated 19.01.2018 of the writ Court is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

[A.S.M.J.] & [R.V.J.]
17.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes



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AND
R.VIJAYAKUMAR, J.

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Dated:
17.08.2023