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W.A.No.2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2396 of 2022

M.Ponnuramgam

... Appellant/Petitioner

-VS-

1. The Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.
2. The Secretary,
School Education Department,
Secretariat, Chennai-600 009.
3. The Director,
Directorate of School Education,
Chennai-600 006.
4. The Primary Education Officer,
Vellore.
5. The Deputy Director,
District Employment Office,
Vellore.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 10.06.2022 passed in W.P.No.17901 of 2017 on the file of this Court.



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For Appellant : Ms.S.Gajalakshmi
For Ms.Reshmi Christy
For Respondents : Mr.J.C.Durairaj
Addl. Govt. Pleader

J U D G M E N T

(By D.Krishnakumar,J.)

This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 10.06.2022 made in W.P.No.17901 of 2017, by which the Writ Petition filed by the Writ Petitioner/Appellant herein, was dismissed on the ground that the Writ Petitioner had not shown any reservation for orphans.

2. It is the case of the Writ Petitioner / Appellant herein that he had completed SSLC in the year 1988 and passed higher secondary examination, in addition to the possession of under-graduation and other skills. The appellant, while studying in the 3rd standard, lost his father and thereafter, his mother passed away, when he was pursuing 10th standard, on account of which, he became an orphan. It is further case of the Appellant that he belongs to Vishwakarma community, which is notified as Backward Class Community. The Appellant also registered his name in the District Employment Office. It is also the case of the appellant that the Government had issued a Government Order in G.O.(Ms) No.188, Personnel and Administrative Reforms (Personnel-P) Department dated 28.12.1976 for giving preference to the legalheirs,



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namely, son and daughter, who lost their parents and have been staying and studying in the orphanage conducted by the private and Government institutions and they are eligible for priority base certificate issued by such institutions. Further, the Government revisited the issue of priority for the orphans and confirmed it vide G.O.(Ms) No.8 dated 10.01.2000, by which the Government of Tamil Nadu acknowledged the same contents as found incorporated in G.O.188 dated 28.12.1976 with regard to employment of orphan children on a priority basis.

3. The grievance of the Appellant is that he, despite having completed higher secondary and graduation, was not issued any call letter ever after registration of the priority base certificate issued by the concerned Tahsildar with the 5th respondent. In the meantime, the 2nd respondent had issued a publication on 22.04.2015, inviting application from the eligible candidates for the post of Laboratory Assistant under the category subordinate service on direct recruitment. Pursuant thereto, the appellant applied for the said post with all necessary certificates and he appeared for the written test conducted on 31.05.2015 as well and secured 79 marks under the priority category of orphans. It is stated that though the 4th respondent directed the appellant to appear for certificate verification held on 11.04.2017, in the list of selected candidates released by the 4th respondent on 19.04.2017, the name of the appellant was not found.

4. According to the appellant, candidates, who were selected and appointed



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had scored lesser marks than the appellant and his name had not been considered for the aforesaid post, even though he belonged to the special status as orphan, which is a priority category under the Government Order. Being aggrieved by the act of the respondents 3 and 4, the appellant made a representation to the authority concerned and there was no response from them, which necessitated him to approach the Writ Court by filing the Writ Petition with the prayer to appoint him in the post of Lab Assistant under the priority category of orphan.

5. The 4th respondent had filed a counter affidavit before the Writ Court, stating that the appellant had already crossed the prescribed age limit. However, in the counter affidavit, it was admitted that there were two Government Order Nos.188 dated 28.12.1976 and 8 dated 10.01.2000 issued for considering the names of candidates placed under priority base in the matter of selection and appointment.

6. From the counter affidavit filed before the learned Single Judge, it is obvious that the appellant's name was not considered for selection to the post of Lab Assistant on the main ground that he was overage. According to the appellant, since he belongs to Backward Class Community, there is no upper age limit prescribed in the Notification issued by the School Education Department dated 22.04.2015. The relevant Note (remarks) indicated in the said Notification is extracted hereunder:



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“குறிப்பு-

ஆ.தி., ஆதி(அ)., மி.பி.வ / சீ.ம., பி.வ., பி.வ.(மு) ஆகிய வகைகளைச் சார்ந்தோர் மற்றும் அனைத்து வகுப்புகளையும் சார்ந்த ஆதரவற்ற விதவைகள் ஆகியோர் குறைந்தபட்ச பொதுக்கல்வித்தகுதியைக் காட்டிலும் மேற்பட்ட கல்வித் தகுதியைப் பெற்றிருப்பின் அதாவது புதுமுகவகுப்பு / மேல்நிலைப்பள்ளி / பட்டயப்படிப்பு/ பட்டப்படிப்பு ஆகியவற்றில் தேர்ச்சி பெற்றவர்களுக்கு உச்ச வயது வரம்பு இல்லை.”

7. Admittedly, the appellant, who had completed his graduation, namely, B.A. (Tamil) belongs to Backward Class Community, in addition to the fact that he is in possession of the priority base certificate issued by the Tahsildar dated 25.09.2001 and therefore, the upper age limit fixed by the respondents insofar as the appellant herein has no relevance and the same is not applicable to the case of the appellant. The specific stand taken by the Chief Educational Officer, Vellore in the counter affidavit dated 08.06.2018 that the name of the appellant has not been considered owing to his overage has no relevance at all in terms of the Government Order Nos.188 dated 28.12.1976 and 8 dated 10.01.2000 and there is no proper application of mind on the part of the Chief Educational Officer, Vellore in coming to such conclusion. In our view, the reason adduced in the counter affidavit is liable to be rejected and the order of the learned Single Judge needs to be interfered with.



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directions:

8. Accordingly, this *Writ Appeal is disposed of* with the following

i) The Chief Educational Officer, Vellore is directed to consider the application of the appellant without taking a stand again that the appellant is overage, for the post of Lab Assistant in consonance with both the Notification dated 22.04.2015 and the Government Order Nos.188 dated 28.12.1976 and 8 dated 10.01.2000

ii) The Chief Educational Officer, Vellore shall take appropriate decision and pass suitable orders by considering the candidature of the appellant to the post of Lab Assistant, if he is otherwise found eligible as per the Notification of the year 2015;

iii) In the event of consideration of the name of the appellant for the said post and issuance of appointment order subsequent thereto, the appellant is not entitled to claim any seniority or any other monetary benefits on par with his batch mates, as the appointment should be treated as a fresh recruit in respect of the post of Lab Assistant;

iv) The respondents, more particularly, the Chief Educational Officer, Vellore shall complete the entire exercise within a period of twelve (12) weeks from the date of receipt of a copy of this judgment. No costs.

[D.K.K., J.,]

[K.B., J]

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Index: Yes / No



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Internet: Yes / No
Speaking Order/Non Speaking Order
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