

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment Reserved on 03.02.2015]

Judgment Pronounced on 12.02.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.409 of 2014
and
M.P.Nos.1 & 2 of 2014

P.Mathiyas

... Appellant

V.

- 1.The Secretary to Government,
Department of School Education,
Fort St. George, Chennai - 06.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 02.
- 3.The Director of School Education,
D.P.I. Campus, College Road,
Chennai - 02.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Judgment dated 04.03.2014 made in W.P.No.6021 of 2014. Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Calling for the records of the 2nd respondent pertaining to his notification No.4 dated 14/02/2014 and quash the same.

For Appellant	: Mr.R.Siva Kumar
For Respondents 1 & 3	: Mr.N.Sakthivel Government Advocate
For 2 nd Respondent	: Mr.C.N.G.Niraimathi

JUDGMENT

M.VENUGOPAL, J.

The Appellant has preferred the present Writ Appeal as against the order dated 04.03.2014 in W.P.No.6021 of 2014 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 04.03.2014 in W.P.No.6021 of 2014, in paragraph No.7, had, among other things, observed that '... Having regard to the said fact, I have to state that the petitioner cannot be aggrieved by the inclusion of those two vacancies in the present advertisement, because the petitioner is neither a Most Backward Community nor Scheduled Caste (Women) candidate. If any challenge is made by any candidate belonging to MBC or SC (Women), then it may be a case to be considered by this Court. I only state that the petitioner cannot feel aggrieved by the inclusion of those two vacancies which are earmarked for MBC and SC (Women). Therefore, the petitioner cannot have any grievance regarding the inclusion of those two vacancies in the present advertisement' and consequently, dismissed the Writ Petition.

3.According to the Learned Counsel for the Petitioner, the impugned order passed by the Learned Single Judge in W.P.No.6021 of 2014 dated 04.03.2014 is an erroneous one because of the fact that it is the specific case of the Appellant in pending W.P.No.6412 of 2011 that the Rule of Reservation was applied deliberately in a wrong manner to select persons of their choice and ultimately the Appellant/Petitioner was prejudiced because of the wrong selection in M.B.C. turn.

4.The Learned Counsel for the Appellant submits that the Learned Single Judge had failed to consider that in the counter affidavit of the 2nd Respondent/Service Commission in W.P.No.6412 of 2011, it was admitted that for the third turn M.B.C./B.C. General was filled up by one V.R.Gnanaprakasam (Registration No.11101035) being the third rank holder in M.B.C. Category and this aspect was not taken into consideration by the Learned Single Judge at the time of passing the impugned orders.

5.The Learned Counsel for the Appellant urges before this Court that according to the 2nd Respondent/Service Commission, the first and second rank holders in M.B.C. Category viz., P.Suresh and M.Priya with subject specialisation as history were not eligible because of the reason that the vacancy against history subject was already filled up by one Balamurali (Registration No.00105140), who belongs to B.C. Category and the stand of the 2nd Respondent is self contradictory in view of the fact that while they were considering the candidate for third turn M.B.C. Category, the vacancy in the BC category, which was at the 4th turn could not have been filled up.

6.It is represented on behalf of the Appellant that while the third turn for M.B.C. category was taken up, vacancies were available for the subjects of Chemistry, English, History and Physics and by following the same methodology applied to the 1st and 2nd turn, the top rank holder in the M.B.C. Category should have been considered against the available vacancy, in which event, P.Suresh who was the 1st rank holder in the M.B.C. Category with history specialisation should have been selected because the vacancy in the subject of history specialisation.

7.Expatiating his submission, the Learned Counsel for the Appellant takes a plea that the Learned Single Judge had failed to appreciate that if the name of P.Suresh, being the first rank M.B.C. Category, was considered against the history vacancy, then when the 4th turn was taken up for Backward Class (BC) category, the Appellant with 265.50 marks would be the 1st rank holder for the available vacancy in the said category and also the vacancy would be available against his specialized subject English.

8.The Learned Counsel for the Appellant contends that the stand of the 2nd Respondent/Service Commission that those two vacancies of the year 2008 were earmarked to M.B.C. and Scheduled Caste (Women) is factually incorrect and further, if the Rule of Reservation was applied in strict sense, it could not be said that those two vacancies were earmarked towards the said two categories.

9.The Learned Counsel for the Appellant submits that the Learned Single Judge had committed an error in holding that the aforesaid grievance of the Appellant is a subject matter in issue in W.P.No.4961 of 2010 and as such, it is for the Appellant to workout his remedy in the said Writ Petition.

10.In this connection, the Learned Counsel for the Appellant puts forward an argument that if those two vacancies are permitted to be filled up by the present selection process, even if the Appellant succeeds in the pending Writ Petition, there could not be any available vacancy to appoint him along with the candidates of 2008 batch and his entire seniority from the year 2008 would be defeated.

11.The Learned Counsel for the Appellant submits that the Learned Single Judge had failed to take into account of the contention of the 2nd Respondent/Service Commission that the Rule of Reservation does not stipulate subject or category wise application which is a misleading one. Also that, the 2nd Respondent had not come out with any valid reason for keeping the two vacancies unfilled for the last 5 years and as such, it is quite obvious that the entire selection process for the year 2008 is tainted with *mala fides*.

12.Conversely, it is the submission of the Learned Counsel for the 2nd Respondent that the Notification No.4 dated 14.02.2014 issued

by the 2nd Respondent was challenged by the Appellant/Petitioner in the Writ Petition pertaining to filling up of 11 vacancies in the post of District Educational Officer by direct recruitment based on the ground that 11 vacancies include two out of six vacancies notified for the recruitment year 2008 which were withheld and not filled up and on 04.03.2014, this Court dismissed the Writ Petition by clearly observing that in the present advertisement two vacancies which were not filled up alone are included and further as against those two vacancies, the Appellant/Petitioner was not eligible for appointment as per earlier advertisement.

13.The Learned Counsel for the 2nd Respondent contends that the result of two candidates were withheld for the reasons (i) the result of the candidate whose Register No.00106192 was withheld since she claimed equivalence of qualification and that she had done M.Sc. Applied Physics (Instrumentation) and claimed to be equivalent to one of the Educational Qualifications prescribed in the Notification (viz., M.Sc. Physics) and in fact, her result was withheld subject to acceptance of her educational qualification; (ii) the other candidate was a MBC candidate bearing Registration No.00101035 who was selected against service category and his result was withheld because of pending certain Court Proceedings.

14.The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that out of the two vacancies, the withheld vacancy was kept for Ms.Amudha was to be offered to Ms.A.Renuka (next in rank to Ms.Amutha and with Physics subject) bearing Registration No.00107030 and in view of the fact that the educational qualification possessed by M/s.Amutha was later on declared to be not equivalent to the qualification prescribed in the notification, the selection of the said Renuka is a conditional one subject to the result of the W.P.No.20788 of 2013 filed by Amutha challenging the decision of the Equivalence Committee.

15.The Learned Counsel for the 2nd Respondent submits that taking into account the Rule of Reservation of appointment and the vacancies notified, the vacancy reserved/meant for BC category (Appellant/Petitioner being a BC candidate with English subject) was filled up by selecting Balamurali, a BC candidate higher in rank than the Appellant. Also that, the candidate bearing Registration No.00101035 with English subject whose selection was alleged to be illegal since she had scored 9 marks less than the Appellant, is a woman candidate selected against one woman vacancy and this vacancy was set apart for women and her subject of specialisation was English as that of the Appellant.

16.The Learned Counsel for the 2nd Respondent proceeds to take a plea that in view of the fact that the validity of select list for the recruitment year 2008 is in force till the drawal of next list for the current impugned notification, the selection and appointment

of two candidates whose results were withheld is not only legal and valid but it also points out that those two vacancies were not merged in the impugned notification.

17. In short, the Learned Counsel for the 2nd Respondent submits that the impugned order dated 04.03.2014 in W.P.No.6021 of 2014 passed by the Learned Single Judge, in dismissing the Writ Petition by holding that the Appellant/Petitioner was not entitled to claim any relief, may not be interfered with by this Court sitting in Appellate Jurisdiction.

18. At this stage, it is relevant for this Court to make a significant mention that the Appellant/Petitioner, in his affidavit in W.P.No.6021 of 2014, had averred that the 2nd Respondent/Service Commission issued an Advertisement No.193 dated 23.01.2009 for Direct Recruitment of six vacancies of District Educational Officer in the Tamil Nadu Education Service 2008, in the subjects of Chemistry, English, Physics, Tamil and Zoology respectively. Also, it was further stated that the candidates from open market as well as the person who were already working as Teachers are eligible for consideration. Out of six vacancies, five vacancies including in English were earmarked for open market and as per the qualification prescribed, the Appellant/ Petitioner is fully eligible for consideration and therefore, he applied for the vacancy in English. Further, in pursuant to the said Notification, a written examination as well as an oral test were conducted. He had secured 265.5 marks in aggregate, which is the first mark in the English subject. Whereas when the final selection was published on 18.12.2009 and he was not selected despite being the topper of the list for English subject. The individual, who was selected as against the English subject, had secured almost 9 marks lesser than him. Since the 2nd Respondent had deliberately applied the Rule of Roster wrongly with a *mala fide* intention to favour the candidates of their choice, he filed W.P.No.4961 of 2010 before this Court seeking a direction to the 2nd Respondent to forbear the 2nd Respondent/Service Commission from filling up the post of District Educational Officer in English by two named persons, who were the Respondents 3 and 4 and in fact, the said Writ Petition is pending.

19. Apart from the above, the Appellant/Petitioner, in his affidavit in the Writ Petition, had stated that the 2nd Respondent/Service Commission deliberately applied the Rule of Roster in a wrong manner with a view to accommodate the individuals of their choice, excluding him and moreover, the 2nd Respondent for his application dated 09.02.2010 under the Right to Information Act, through its reply dated 05.04.2010, had specifically admitted that the result of those two persons were withheld because of the reason that their original applications were not still admitted and he came to know that those two vacancies were not filled up till date. Furthermore, out of the six vacancies only four vacancies were

filled.

20.It is on behalf of the Appellant/Petitioner that based on the recommendations of the 2nd Respondent/Service Commission, the 1st Respondent, by means of G.O.(3D).No.95, School Education Department dated 13.07.2010, appointed only four persons as against the six vacancies for the year 2008 and that the Petitioner filed W.P.No.6412 of 2011 challenging the said G.O.No.95 dated 13.07.2010. In reality, W.P.No.4961 of 2010 and W.P.No.6412 of 2011 are pending.

21.The main grievance of the Appellant is that without finalising the selection process and appointment against those two vacancies which arose in the year 2008, the 2nd Respondent/Service Commission issued the Notification No.4 dated 14.02.2014 to fill up 11 number of vacancies of District Educational Officers by means of Direct Recruitment and further, he came to know that the 2nd Respondent/ Service Commission had combined the two vacancies of the year 2008 also in the present Notification and the 2nd Respondent is not correct in combining those two vacancies for the present selection process, without finalising that selection process.

22.Yet another contention of the Appellant/Petitioner is that during the year 2008 when the selection process had commenced, he was fully eligible for the recruitment but he lost his option due to the irregularities of the 2nd Respondent/ Service Commission and if the Commission was permitted to proceed with the selection process for all 11 vacancies then his chances for consideration against the 2008 vacancy would get prejudiced.

23.On behalf of the 2nd Respondent/Service Commission, the details in regard to marks, community and subject qualification of 18 candidates admitted to Oral Test in the ratio of 1:3, are mentioned as under:

S.No	Register No.	Community	Mark	Name	Subject
1	00101004	BC	235.50	Ilangovan. B.	Chemistry
2	00101035	WITH HELD		Gnanaprakasam	(Chemistry)
3	00101040	MBC/DC	240.00	Babu. R.	Chemistry
4	00101096	BC F	256.50	Usha. P.	English
5	00102089	BC	265.50	Mathias P.	English
6	00102151	BC F	253.50	Vijaya M.	English
7	00104115	MBC/DC	270.00	Suresh. P.	History

S.No	Register No.	Community	Mark	Name	Subject
8	00105086	MBC/DC F	253.50	Priya. M.	History
9	00105140	BC	271.50	Balamurali R.	History
10	00106192	WITH HELD		Amutha. P.	(Physics)
11	00107030	SC F	145.50	Renuka. A.	Physics
12	00107061	SC	216.00	Sivaraman K.	Physics
13	00109049	BC	273.00	Ravichandran. P.	Tamil
14	00110114	BC F	277.50	Rathika. V.	Tamil
15	00111083	BC	279.00	Ganesh Moorthy	Tamil
16	00111175	SC F	195.00	Vijayalakshmi. J.	Zoology
17	00111209	SC	235.50	Pugazhendi	Zoology
18	00113078	SC	214.50	Bodhaguru	Zoology

24.Also, the Table when arranged as per mark runs as follows:

S.No	Register No.	Community	Mark	Name	Subject	Status
15	00111083	BC	279.00	Ganesh Moorthy	Tamil	Selected
14	00110114	BC F	277.50	Rathika. V.	Tamil	Passed over
13	00109049	BC	273.00	Ravichandran. P.	Tamil	Passed over
9	00105140	BC	271.50	Balamurali R.	History	Selected
7	00104115	MBC/DC	270.00	Suresh. P.	History	Passed over
5	00102089	BC	265.50	Mathias P.	English	Passed over
4	00101096	BC F	256.50	Usha. P.	English	Selected
6	00102151	BC F	253.50	Vijaya M.	English	Passed over
8	00105086	MBC/DC F	253.50	Priya. M.	History	Passed over

S.No	Register No.	Community	Mark	Name	Subject	Status
2	00101035	MBC/DC WITH HELD		Gnanaprakasam	(Chemistry)	Provl
3	00101040	MBC/DC	240.00	Babu. R.	Chemistry.	Passed over
1	00101004	BC	235.50	Ilangovan. B.	Chemistry	Passed over
17	00111209	SC	235.50	Pugazhendi	Zoology	Selected
12	00107061	SC	216.00	Sivaraman K.	Physics	Passed over
18	00113078	SC	214.50	Bodhaguru	Zoology	Passed over
16	00111175	SC F	195.00	Vijayalakshmi. J.	Zoology	Passed over
10	00106192	SC (W) WITH HELD		Amutha. P.	(Physics)	selected
11	00107030	SC F	145.50	Renuka. A.	Physics	Passed over

25. Moreover, admittedly Roster/Distribution of vacancies proceeds as follows:

S.No.	Nature of turn	No. of vacancies
1	Nature of turn	1
2	GT	1
3	SC	1
4	MBC/DC	1
5	BC	1
6	GT (Women)	1
	TOTAL 6 VACANCIES	

S.No.	Subject	Source of recruitment
1	Tamil	Direct Recruitment
2	Physics	Direct Recruitment
3	Zoology	Direct Recruitment

S.No.	Subject	Source of recruitment
4	English	Direct Recruitment
5	History	Direct Recruitment
6	Chemistry	Service candidate/Teacher category

26.Further, the selection was made as follows:

S. No.	S.No. in the table above	Name and subject	Turn against which selected
1	15	Ganesh Moorthy - Tamil	GT
2	13	Balamurali - History	BC
3	4	Usha.P. - English	GT (W)
4	17	Pugalendhi - Zoology	SC
5	2	Gnanaprakasam - Chemistry	MBC/Service Candidate
6	10	Amutha P. - Physics	SC(W)/Equivalence satisfaction

27.It cannot be lost sight of that in W.P.No.1543 of 2012 (filed by P.Amutha), this Court, on 04.12.2012, in paragraph 2 to 4, had observed as follows:

"2.The learned counsel appearing for Tamilnadu Public Service Commission has now produced an order dated 02.08.2012 stating that the petitioner has been selected conditionally and provisionally for appointment by direct recruitment to the post of District Educational Officer in the Tamil Nadu Educational Service for the year 2008, subject to the acceptance of equivalence of qualification.

3.In view of the above said publication of results and the Provisional Selection, the impugned order dated 18.12.2009 has become infructuous.

4.Hence, the writ petition is disposed of with a direction to the 3rd respondent to issue the consequential letter of appointment to the petitioner, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous

Petitions are closed."

28.Also that, M.P.No.1 of 2013 in Review Application Sr.No.25672 of 2013 filed by the 1st Respondent/State Government came to be dismissed on 09.04.2013 with an observation that 'As the equivalence committee has found that petitioner's decree is not equivalent as per the decision dated 07.01.2013 the order passed by this Court need not be reviewed and hence the condone delay in filing the review petition is dismissed.'

29.In fact, in M.P.No.2 of 2013 in W.P.No.20788 of 2013 (filed by P.Amutha) against the State of Tamil Nadu and two others, this Court on 29.07.2013 had passed an order stating that any appointment was subject to the result of the Writ Petition and made it clear that if any person was appointed in the post the said person shall be notified that the Writ Petition is pending and his appointment is subject to the result of the Writ Petition and accordingly, the Miscellaneous Petition was disposed of.

30.This Court has given anxious consideration to the contentions advanced on either side and noticed the same in right earnestness.

31.As far as the present case is concerned, one cannot brush aside a primordial fact that the selection of candidates in terms of previous advertisement is subject matter of challenge in two Writ Petitions and if the Appellant/Petitioner is able to establish his case, then, he is undoubtedly to reap the benefits. It cannot be gainsaid that in the present advertisement those vacancies which were filled up, were not included and the said two vacancies which were not filled up, they are only included in the present advertisement. Moreover, the Appellant/Petitioner is not an affected/aggrieved person because the two vacancies were earmarked for M.B.C. and Scheduled Caste (Women).

32.At this juncture, it is to be borne in mind that the Appellant/ Petitioner does not belong to a Most Backward Community or a Scheduled Caste (Woman) candidate. Besides that, without knowing the results of the pending two Writ Petitions, it is not proper on the part of the concerned Respondents to issue a fresh advertisement. It is to be remembered that Roster is prescribed by the Government from time to time and that the 2nd Respondent/Service Commission, in law, has no power to change the roster and in any event, the mere non- publication of the candidate details (whose result was withheld) would not in any manner affect the roster. Looking at from any angle, the Writ Appeal sans merits.

33.In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the order of the Learned Single Judge dated 04.03.2014 in W.P.No.6021 of 2014 is

affirmed by this Court for the reasons ascribed in this Appeal.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

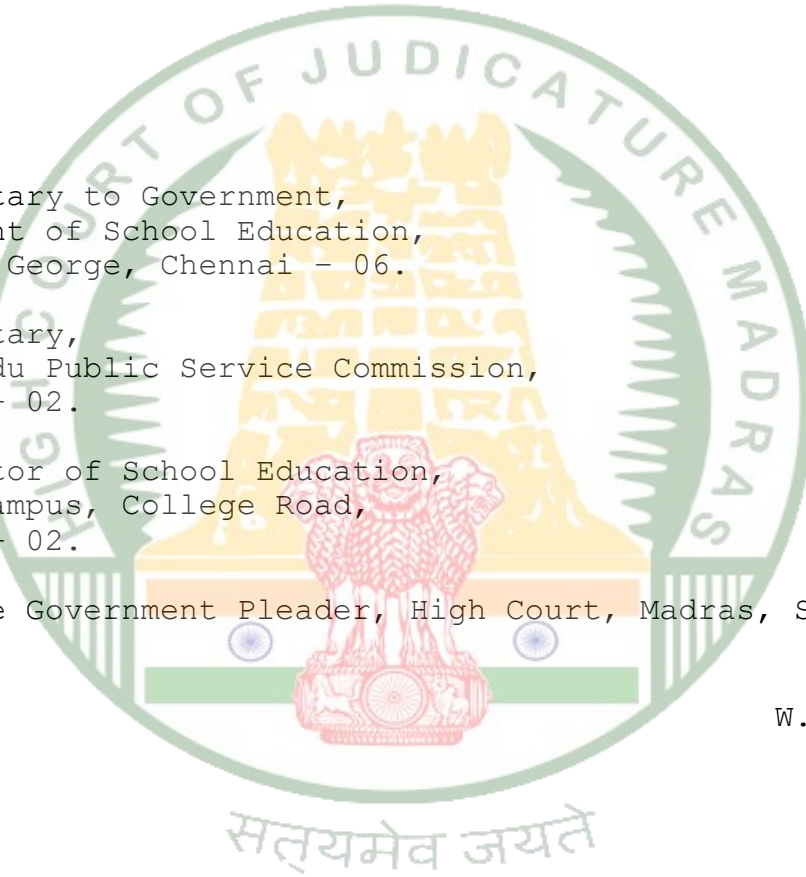
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To

- 1.The Secretary to Government,
Department of School Education,
Fort St. George, Chennai - 06.
 - 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 02.
 - 3.The Director of School Education,
D.P.I. Campus, College Road,
Chennai - 02.
- +1 CC to the Government Pleader, High Court, Madras, SR.No.7867

W.A.No.409 of 2014

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