

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.6.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.715 of 2013

1.Dr.E.Kanniyappan
2.Dr.K.Paulraj
3.S.Paramasivam
4.Dr.K.Thandavamoorthy Appellants/Petitioners

vs.

1. Govt. of Tamilnadu,
rep. by its Secretary to Govt.,
High Education Dept.,
Fort St. George, Chennai-9.
2. The Director of Collegiate Education,
Chennai.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai. ... Respondents/Respondents

Prayer: Appeal is filed against the order dated 22.2.2013, made in W.P.10698/2012.

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaratin declaring that Cro.Msi No.104, Higher Educational(F2) Department dated 18.05.2009 is null and void so far it relates to term "Consistently good Academic Record"and consequently direct the 3rd respondent to include the name of the Petitioners in MBC/DNC quota and call upon them to attend for oral test and select them to the part of college Librarian otherwise they are eligible to said post.(Prayer amended as per order of this court dated 18.07.2014 in M.P.No.1 of 2014 in WA.715 of 2013)

For appellants : Mr.G.Ethirajulu
For respondents : Mr.P.Karthikeyan, Govt. Advocate
1 & 2
For Respondent-3 : Mr.N.S.Nandakumar

JUDGMENT
[by V.Ramasubramanian, J.]

The Writ Appeal arises out of the dismissal of the Writ Petition filed by the appellants challenging their non-selection to the post of College Librarians in the Government Colleges.

2. Heard Mr.G.Ethirajulu, learned counsel for the appellants, Mr.N.S.Nandakumar, learned standing counsel for the Tamil Nadu Public Service Commission and Mr.P.Karthikeyan, learned Government Advocate for the State.

3. A notification dated 17.2.2010 was issued by the Tamil Nadu Public Service Commission [TNPSC] inviting applications for direct recruitment to 56 posts of College Librarians in Government Colleges. The last date for receipt of the applications was 19.3.2010. The written examinations were to be held on 20.6.2010.

4. A total of 810 candidates including the appellants herein applied. Out of them, 124 candidates including the appellants were admitted for the written examination. Out of them, only 110 candidates wrote the written examination. The appellants also wrote the written examination. After the initiation of the process of selection, the number of vacancies to be filled up was reduced from 56 to 37. Since this recruitment took place after the introduction of a 200 Point Roster in Schedule-III to the General Rules for Tamil Nadu State and Subordinate Services in the year 2009, the distribution of 37 vacancies as per the communal roster was as follows:-

Category		Distribution of vacancies
		College Librarian in Government Colleges
GT	General	7
	Women	3
	PH-Blind	1
BC-OM	General	6
	Woman	3
BCM	General	1
MBC/DC	General	6
	Women	2

Category		Distribution of vacancies
		College Librarian in Government Colleges
SC	General	4
	Women	2
SC[A]	General	1
	Woman	1
Total		37

5. From out of the candidates who appeared for the written examination, the TNPSC shortlisted about 51 candidates for the oral test conducted on 28.3.2012. On the basis of the performance in the oral test and the written examination, the final select list appears to have been released in April, 2012.

6. Finding that their names did not find a place in the select list, the appellants/writ petitioners came up with a Writ Petition in W.P.No.10698 of 2012, seeking a mandamus to direct the TNPSC to include their names in the quota reserved for Most Backward Communities. At the time when the Writ Petition was admitted, this Court passed an interim order directing the respondents to keep four posts vacant. It appears that thereafter, a blanket order was granted on 17.8.2012 staying further proceedings in respect of the selection process. This led to some other selected candidates coming up with an application for impleadment. Thereafter, the Writ Petition itself was taken up for hearing.

7. By an order dated 22.2.2013, the learned Judge dismissed the Writ Petition holding that there were no irregularities in the process of selection. Aggrieved by the said order, the appellants came up with the above Writ Appeal.

8. After the filing of the Writ Appeal, the appellants filed M.P.No.1 of 2014 seeking permission to amend the prayer contained in the main Writ Petition.

9. As we have stated earlier, the original prayer in the Writ Petition was only for a mandamus to direct the 3rd respondent to consider the claims of the appellants for appointment against the vacancies reserved for Most Backward Communities. But the amended prayer that the appellants sought was to challenge the Government Order in G.O.Ms.No.104, Higher Education [F2] Department, dated 18.5.2009, which sought to incorporate an additional criteria, namely, that the candidate should have a 'consistently good academic record'. The petition for amendment was allowed on 18.7.2014 by the

Bench. Therefore, today, the prayer in the Writ Petition was not only for a mandamus to consider the claims of the appellants, under the category of MBC/BC, but also for a declaration that G.O.Ms.No.104 was illegal.

10. In the above background of facts, it is seen from the records in the Writ Petition that non-selection of the appellants was challenged by them primarily on four grounds. They were, [i] that there was no clarity with regard to the expression, 'Consistently Good Academic Record'; [ii] that the State Government cannot prescribe a qualification that is inconsistent with the prescription issued by the University Grants Commission; [iii] that in respect of two cases, the Government had appointed unqualified hands as College Librarians; and [iv] that the rule of reservation as enunciated in Rule 22 of the General Rules has not been followed.

11. The learned Judge rejected all the four contentions, holding that the expression, 'Consistently Good Academic Record', cannot be said to be an arbitrary expression and that the same had its source in G.O.Ms.No.104, dated 18.5.2009. The learned Judge also held that the original prescription emanated from the University Grants Commission Regulations and that therefore, the second ground of attack had no legs to stand. On the third contention, the learned Judge held that one illegality cannot lead to another illegality. On the fourth contention, the learned Judge accepted the statement on oath made by the TNPSC that the rule of reservation had been followed.

12. Aggrieved by the rejection of all the four contentions, the appellants are before us.

13. Primarily, the contentions of Mr.G.Ethirajulu, learned counsel for the appellants are as follows:-

a] that the TNPSC went into the whole process of selection without any guidelines as to how to determine the Consistently Good Academic Record of a candidate and hence the Government Order making such a prescription without laying down any guidelines was arbitrary offending Article 14 of the Constitution of India; and

b] that the mere statement on oath made on the part of the TNPSC that the rule of reservation had been followed, could not have been accepted by the learned Judge without any supporting material.

14. We have carefully considered both the contentions advanced by the learned counsel for the appellants.

15. Insofar as the first contention is concerned, the learned Judge rightly pointed out that the expression, 'Consistently Good Academic Record', is not incapable of being understood and applied at least in the academic field. The learned Judge cited the decisions of the Supreme Court in State of Orissa and another v. Mamta Mohanty

reported in [2011] 3 SCC 436 and the previous decision in Prit Singh [Dr.] v. S.K.Mangal reported in 1993 Supp [1] SCC 714. In addition, the TNPSC has given in a tabulation in para.15 of their counter affidavit before the learned Judge the percentage secured by all the four appellants in the Higher Secondary Education, Under Graduate Degree, Bachelor Degree in Library Science and Master Degree in Library Science. They have also relied upon a clarification to the effect that persons who have secured 60% and above or 55% and above from Higher Secondary to Post Graduation level were considered to be of, 'Consistently Good Academic Record'. Therefore, it is not as though the expression was left to the arbitrary discretion of the selecting authority. Hence, the first contention deserves to be rejected.

16. Insofar as the second contention is concerned, the learned standing counsel for the TNPSC produced the Roster Points against which the appointments have been made. We have extracted the tabulation statement.

17. As a matter of fact, the pleadings of the appellants in their Writ Petition fell far short of the requisite material to hold that the rule of reservation was not followed. In the grounds raised in the Writ Petition, the appellants have gone by a general presumption that if 56 vacancies are notified, a certain number of vacancies would fall for the candidates belonging to the Most Backward Communities, by simply applying the percentage of reservation. But a 200 Point Roster operates at a different level. Therefore, apart from the fact that the pleadings fell far short of any clarity, the TNPSC has now indicated the allotment of vacancies against the Roster Points. Therefore, the second contention of the appellants also does not appear to be validly made out on the facts of the case. Hence, the same also deserves to be rejected.

18. In fine, we find no grounds to interfere with the order of the learned Judge. Hence, the Writ Appeal stands dismissed. No costs. M.P.No.1/2013 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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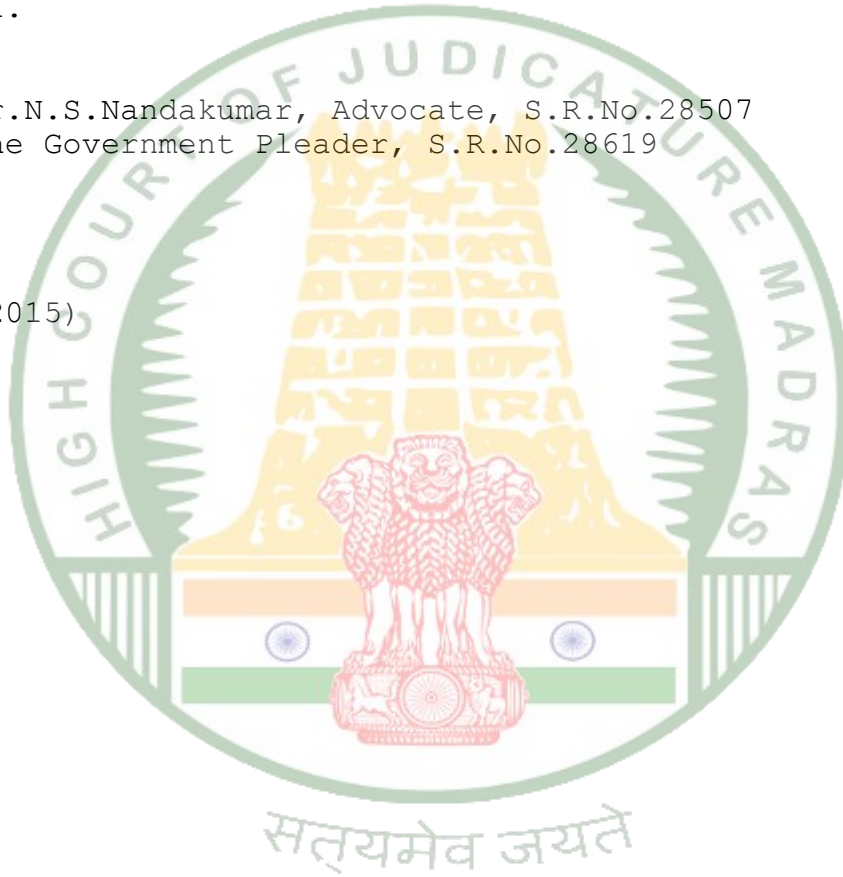
To

1. The Secretary to Govt.,
High Education Dept.,
Fort St. George, Chennai-9.
2. The Director of Collegiate Education,
Chennai.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

+1cc to Mr.N.S.Nandakumar, Advocate, S.R.No.28507
+1cc to the Government Pleader, S.R.No.28619

W.A.715 of 2013

KGK(CO)
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