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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Review Application(MD)No.37 of 2016 and CMP(MD)No.2254 of 2016
in
W.A.(MD)No.9 of 2016

C.Thangapandi

.... Petitioner/Appellant

vs.

1)The Principal Director,
Office of the Principal Director,
Highways Department,
Chepauk, Chennai-05

2)The Chief Engineer,
(Highways)
Quality Control and Research Office,
Sardar Vallabhai Patel Road, Kindi,
Chennai-25.

3)The Joint Director,
(Administration),
Office of the Principal Director,
Highways, Chepauk, Chennai-5.

4)The District Employment Officer,
Virudhunagar District Employment Exchange,
Virudhunagar District,
Virudhunagar.

...Respondents/Respondents

Appeal filed under Order 47 Rules 1 and 2 of CPC to review the order dated 06.01.2016 in W.A(MD)No.9/16.

Prayer in WA(MD).9/2016 : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.12.2015 made in WP (MD)No.21667 of 2015

Prayer in WP(MD).21667/2015:

Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of a Writ of Mandamus directing the respondents 1 to 3 to consider the Petitioner's representation dated 17.11.2015 within the stipulated period.

For Appellant

<https://hcservices.ecourts.gov.in/hcservices/>

: Mrs.Porkodi Karnan,

for M/s.Polax Legal Solutions



For Respondents : Mr.A.K.Baskara Pandian,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by Mr.Justice S.MANIKUMAR)

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The appellant has sought for review of the order made in W.A (MD)No.9 of 2016, dated 06.01.2016. Shorts facts leading to the impugned order made in W.A.No.9 of 2016, are that the appellant belongs to Scheduled Caste (Arunthathiyar) community. He was a Diploma Holder in Civil Engineering. He participated in the selection to the post of Junior Drafting Officer in Highways Department. Though the qualification for the post was only a Diploma in Civil Engineering, it was averred that the respondents had selected those candidates with higher qualification.

2. Contention has been made that neither the rules nor the notification indicate any preferential treatment to the candidates with higher qualification candidates, viz., Degree Holders and in such circumstances, preferential treatment ought not to have been given to degree holders. A Hon'ble Division Bench of this Court has dismissed the Writ Appeal.

3. Placing reliance on a decision of the Hon'ble Supreme Court in **P.M.Latha v. State of Kerala** reported in **2003 (3) SCC 541** and the grounds for review, Mrs.Porkodi Karnan, learned counsel for the review petitioner contended that when the qualifications prescribed for the post of Junior Drafting Officer, was Diploma in Civil Engineering, selection ought not to have been made, by considering the degree holders on preferential basis and that the abovesaid contention had not been adverted by the Hon'ble Division Bench, while dismissing the Writ Appeal.

4. Heard the learned counsel for the parties and perused the materials available on record.

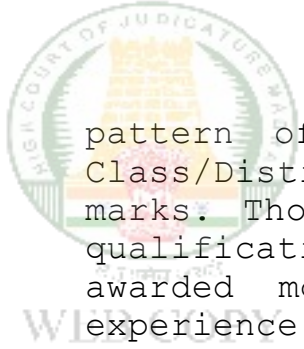
5. Vide letter No.1083/Admn 5(1)/2010-8, dated 28.03.2012, the Director General (Highways), has requested the Commissioner of Employment and Training to sponsor a Consolidated List of candidates, with the required qualifications for filing up of 146 posts of Junior Drafting Officer, by direct recruitment. Pursuant to the said request, the Commissioner of Employment & Training, Madras, vide letter No.Tho.Pa./10819/12, dated 29.05.2012, had sponsored a total number of 737 candidates, in the ratio of 1:5, based on the Statewide Employment Seniority and Communal Rotation. For the post of 8 reserved for Ex-servicemen, 50 candidates have been sponsored by the Joint Director, Directorate of Ex-Servicemen Welfare, vide letter R.C.No.13362/2012/C-2, dated 10.08.2012. All the 737 candidates have attended the interview on various dates. 50 Ex-servicemen have been called for the interview on some other

day. According to the respondents, the pattern of distribution of marks is as follows:

Sl.No	DISTRIBUTION	MARKS	
			Maximum
1	<u>Diploma in Civil Engineering</u>		10
	Possession of Educational Qualification higher to DCE	5	
	Possession of DCE in 1 st Class/Distinction	5	
2	<u>Time period from year of passing</u>		10
	Above 5 years	10	
	Between 2 to 5 years	5	
3	<u>Experience</u>		10
	<u>In Private Enterprises</u>		
	More than 5 years	5	
	Within 5 years	3	
	<u>In Government Enterprises/Undertaking</u>		
	More than 5 years	10	
	Within 5 years	5	
4	<u>Knowledge of candidate in the Interview</u>		20
	General Knowledge	10	
	Technical Knowledge	10	
	Total		50

6. Based on the marks obtained and following communal rotation, 141 candidates have been selected and appointed as Junior Draughting Officers, vide Proceedings No.1083/Admn 5(1)/2010, dated 04.03.2013, in different places and they have joined duty. Sofar as the candidates sponsored by the Directorate of Employment and Training, two posts were reserved for Scheduled Caste Arunthathiyar Non-Priority, one for Schedule Caste Arunthathiyar Priority and one for Schedule Caste Arunthathiyur Women, from out of total 146 posts. From out of the total 16 sponsored and called for interview under the Schedule Caste Arunthathiyur Community - Women (Priority & Non-Priority), 15 candidates (2 women, 4 General Priority & 9 Non-Priority) had attended the interview.

7. According to the respondents, the appellant did not possess Diploma in Civil Engineering in 1st Class or with Distinction. Therefore, he was not awarded any marks, as per the



pattern of distribution of marks. Those who had acquired 1st Class/Distinction in Diploma in Civil Engineering, were awarded 5 marks. Those who had acquired higher qualification or any other qualification, incidental to the basic qualification, have been awarded more marks. The appellant had more than 5 years experience from the year of his passing DCE and therefore, he was awarded 10 marks. He had experience of more than 5 years with private enterprises and hence, awarded 5 marks. In the interview, he had secured 17 marks and thus, he was awarded 32 marks, out of 50 marks.

8. Mr.N.Rathinasamy, one of the candidates sponsored under the Schedule Caste (Arunthathiyur) General Non-Priority category, possessed B.E. (Civil Engineering), for which, he was awarded 5 marks. Further, 5 marks were awarded for passing Diploma in Civil Engineering in First Class. He was awarded another 5 marks for his experience in private enterprise. He had more than 5 years from the year of passing of DCE, for which, he was awarded 10 marks. In the interview, he had secured 16 marks. Thus, he had secured 41 marks from out of 50 marks. The candidates, who had secured marks in the selection under Scheduled Caste Arunthathiyur category, is tabulated hereunder:

Sl.No.	NAME	CATEGORY	MARKS SCORED
1	C.Karthikeyan	General Priority	36/50
2	M.Sivagami	Women Priority	33/50
3	N.Rathinasamy	General Non-Priority	41/50
4	K.Baburaj	General Non-Priority	35/50
5	C.Thangapandi	General Non-Priority	32/50
6	D.Dhanapal	General Non-Priority	20/50
7	S.Santhiya	Women Priority	32/50

9. In **P.M.Latha v. State of Kerala** reported in **2003 (3) SCC 541**, recruitment was to the post of lower primary/upper primary teachers in the Government Schools of the State of Kerala. Qualifications prescribed in the Government Notification was pass in Teachers Training (Certificate). Instead of selecting those holding Teachers Training Certificate, others were selected on the ground that B.Ed., qualification was higher than Teacher Training Certificate. When selection was challenged, a learned single Judge of Kerala High Court allowed the Writ Petitions, holding that B.Ed. candidates could not have been included in the select or rank list, as they were not eligible, in terms of the advertisement. The learned single judge also issued directions to



the State Public Commission to prepare the rank list afresh by excluding B.Ed. candidates. A further direction was issued that all orders of appointment issued in favour of B.Ed. degree holders be cancelled. A Hon'ble Division Bench upheld the abovesaid order. But it upset the directions made in favour of the appellants therein as TTC candidates. Testing the correctness of the reversal of the directions, TTC candidates approached the Hon'ble Supreme Court. While declining to accept the contention that B.Ed., qualification is higher qualification than TTC, the Apex Court observed that trained Teacher Training Certificate is given to teachers specially trained to teach young children in primary classes, whereas, for B.Ed. degree, the training imparted, is to teach students of classes above primary. At Paragraph 10, the Hon'ble Supreme Court observed as hereunder:

"10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible."

Observing further that B.Ed., candidates would not be treated as qualified to take classes for children, for primary classes and thus, B.Ed., candidates ought not to have been allowed to seek appointment, contrary to the directions given in the advertisement, the Hon'ble Supreme Court, at Paragraph 13, held as follows:

"13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law. The division bench forgot that in extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have



secured a better position in the Rank List to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections. The impugned judgment of the division bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the division bench, therefore, deserves to be set aside and of the learned single judge restored."

Facts in **P.M.Latha's** case (cited supra), are inapposite to the case on hand.

10. Pattern of distribution of marks awarded need not be disclosed in the notification. It cannot be contended that the employer has no right to select the candidates, with better or higher educational qualification, for the post notified. Only in the case where the educational qualifications, taken into consideration, by the employer, is not suitable to the post notified, a contention could be raised, as done in **P.M.Latha's** case.

11. In the case on hand, from the pattern of distribution of marks, extracted in the counter affidavit, by the Director General, Highways Department, Chennai, it would be deduced that the employer has taken four factors into consideration and accordingly, prescribed minimum and maximum marks. Factors taken into consideration are (1) Educational Qualification, (2) Experience from the date of passing of the qualification in service, (3) Experience in private and Government enterprises/undertaking and (4) Knowledge of the candidate in the interview, viz., General and Technical.

12. When the employer has devised a method for assessment and to award marks, it is not mandated under any statute to publish the same in the notification. It would also not disentitle the employer to devise a method, while selecting the candidates for a post.

13. In the case on hand, it is the case of the respondents that for 146 posts of Junior Drafting Officer, 737 candidates have been sponsored, in the ratio of 1:5, based on the Statewide Employment Seniority and Communal Rotation. Insofar as the candidates sponsored by the Directorate of Employment and Training, two posts were reserved for Scheduled Caste Arunthathiyar Non-Priority, one for Schedule Caste Arunthathiyar Priority and one for Schedule Caste Arunthathiyur Women, from out of total 146 posts. From out of the total 16 sponsored and called for interview under the Schedule Caste Arunthathiyur Community - Women (Priority & Non-Priority), 15 candidates (2 women, 4 General Priority & 9 Non-Priority) had attended the interview.



14. From the above tabular column, it could be deduced that the respondents have selected and appointed four candidates, who have secured higher marks in the interview, under the Schedule Caste Arunthathiyar category. When more number of candidates attend an interview, the method devised by the respondents, by considering the educational qualifications, cannot be said to be unreasonable. Judgement of the Hon'ble Supreme Court, relied on by the appellant, in strict senso, cannot be applicable to the facts of this case.

15. Though the learned counsel for the appellant has contended that the Hon'ble Division Bench of this Court has not adverted to the issue, considering the material on record in entirety, as discussed in the foregoing paragraphs, we do not find that the order, dated 06.01.2016 in W.A(MD)No.9 of 2016, requires any reversal. For the reasons, stated supra, the Review Application is dismissed. No costs. Connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

- 1)The Principal Director,
Office of the Principal Director,
Highways Department,Chepauk, Chennai-05
- 2)The Chief Engineer, (Highways)
Quality Control and Research Office,
Sardar Vallabhai Patel Road, Kindi, Chennai-25.
- 3)The Joint Director,
(Administration),
Office of the Principal Director,
Highways, Chepauk, Chennai-5.
- 4)The District Employment Officer,
Virudhunagar District Employment Exchange,
Virudhunagar District, Virudhunagar.

+1cc to the Special Government Pleader, Sr.No.25773

+1cc to M/s.Polax Legal Solutions, Advocate Sr.No.25330

Review Application(MD)No.37 of 2016 &
CMP(MD)No.2254 of 2016
29.04.2016