

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 17.11.2016

Orders pronounced on : 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.7243 of 2015
and M.P.Nos.1 and 2 of 2015

D.Murugan

... Petitioner

Vs.

1. The Teachers Recruitment Board,
Represented by its Member-Secretary,
EVK Sampth Maaligai, 4th Floor,
DPI Campus, College Road,
Chennai-600 006.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Chief Educational Officer,
Tiruvannamalai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, dated 'Nil', published in the Official Website so far as it declares that the petitioner (Registration No.14.PG.10250126) is not within the cut-off zone and quash the same and consequently direct the first respondent herein to award 2 marks to the petitioner for teaching experience and consequently select and appoint the petitioner to the post of PG Assistant (Commerce) in B.C. (General) Category/Physically handicapped category in the selection pursuant to the notification in advertisement No.8 of 2014, dated 07.11.2014.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr.K.Venkataramani, Addl. Advocate General
assisted by Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, dated 'Nil', published in the Official Website so far as it declares that the petitioner (Registration No.14.PG.10250126) is not within the cut-off zone and quash the same and consequently direct the first respondent herein to award 2 marks to the petitioner for teaching experience and consequently select and appoint the petitioner to the post of PG Assistant (Commerce) in B.C. (General) Category/Physically handicapped category in the selection pursuant to the notification in advertisement No.8 of 2014, dated 07.11.2014.

2. It is the case of the petitioner that he had completed X Standard and thereafter XII Standard and subsequently completed B.Com and M.Com. Hence, he is fully qualified for appointment to the post of P.G. Assistant (Commerce). The first respondent issued a Notification in Advertisement No.8 of 2014, dated 07.11.2014, inviting applications for the post of P.G. Assistant/Physical Directors (Grade-I) and the petitioner applied as per the said Notification under the physically handicapped category. He wrote the written examination held on 10.01.2015 and the result was published. He secured 96 marks and was also called for Certificate verification. As per the Notification issued, the scheme of selection contains a written examination out of 150 marks and based on the cut-off mark, the candidates are called for Certificate verification. As per Clause 11 of the Notification, weightage marks are given for period of wait after registration in the Employment Exchange and also for experience of teaching in Classes--11 and 12 in any recognised School in the PG Degree major subject. The petitioner, as per the said Clause, is entitled for 3 marks for weightage in the Employment Exchange, since the petitioner's wait in the Employment Exchange is between 5 and 10 years. Accordingly, the petitioner is also entitled for 2 marks for teaching experience having taught in St.Joseph Higher Secondary School at C.Nammiandal, Chengam Taluk, Tiruvannamalai District, from 02.08.2011 to 31.08.2014, i.e. 3 years and 1 month.

3. It is further stated by the petitioner that the first respondent-TRB issued the Teaching Experience Certificate format in Annexure-III, specifying the format in which the teaching experience should be obtained. As per the said Annexure, the Teaching Experience Certificate ought to be counter-signed by the third respondent-Chief Educational Officer, Tiruvannamalai

District. The format was published in the Official Website of the first respondent. The School in which the petitioner taught, also gave the Certificate as early as on 05.01.2015, certifying the fact that the petitioner has taught in the school from 02.08.2011 to 31.08.2014 and taught Commerce in XI and XII Standards. The petitioner was under the impression that the third respondent would ask the petitioner to produce the Attendance Register of the School where the petitioner worked and the petitioner also obtained the Attendance Register from the School and tried to see the third respondent even in February 2015.

4. Accordingly, the petitioner approached the third respondent immediately in order to get the counter-signature. The petitioner visited the office of the third respondent for the first time on 12.01.2015 to get the counter-signature of the third respondent. The petitioner was informed that the incumbent in the post of the third respondent was one Thiru.Ponnaiyan. The Superintendent and the Personal Assistant in the Office of the third respondent refused to permit the petitioner to meet the third respondent and they informed the petitioner that the third respondent cannot affix his signature and again asked the petitioner to come on another day. Again the petitioner went on 09.02.2015 and sought for the signature of the third respondent. It is the grievance of the petitioner that he being a handicapped person, finds it difficult to travel about 30 Kms. to the third respondent's office every time. It was again stated that on 09.02.2015, the third respondent's office stated that the third respondent will not be in a position to counter-sign and asked the petitioner to come on another day. In the meantime, on 10th and 11th February, 2015, the petitioner could not attend the office of the third respondent, since he was suffering from fever. The petitioner received copy of the proceedings of the first respondent, dated 09.02.2015 to come for Certificate verification on 17.02.2015. On receipt of the said proceedings, he immediately went to the office of the third respondent on 12.02.2015 and again tried to meet the third respondent. The Superintendent and the Personal Assistant went into the office of the third respondent and came back and informed the petitioner that for the past four years, the Chief Educational Officer, Thiruvannamalai does not counter-sign the Experience Certificate and further informed the petitioner that there is a Court Order which does not permit him to counter-sign the Experience Certificate. Even after the Certificate verification, the petitioner approached the third respondent on several occasions from 28.02.2015 to 07.03.2015. The petitioner was again informed that the third respondent has informed the Superintendent and the Personal Assistant in a meeting that he will not be in a position to counter-sign the Experience Certificate and not to entertain any such person seeking

counter-signature. They further informed the petitioner to approach the District Educational Officer, since the petitioner is working in an aided school. The petitioner informed them that the school is aided only upto 8th Standard and from 9th onwards, it is under the self-financing pattern. Still, they refused to co-operate with the petitioner in counter-signing the Experience Certificate.

5. It is further stated by the petitioner that inspite of best efforts, the petitioner could not obtain the counter-signature of the third respondent. Finally, the petitioner was informed by the office of the third respondent that it will not be counter-signed citing some order of the Court. Despite the fact that the petitioner has worked for three years and one month and despite the fact that the petitioner has got the Attendance Register and all other records to show that he has worked, for no fault of him, the third respondent refused to counter-sign the Experience Certificate. The petitioner attended the Certificate verification on 17.02.2015 and obtained 3 marks during the Certificate verification. The petitioner also informed the Committee of the first respondent-TRB, which conducted the Certificate verification with regard to the inability of the petitioner to get the counter-signature of the third respondent, inspite of which, the first respondent refused to award marks for the teaching experience on the ground that the Certificate was not counter-signed by the third respondent. Therefore, the petitioner was awarded only 3 marks for wait in the Employment Exchange and hence, he obtained 96 marks + 3 marks, totally 99 marks. During the Certificate verification, the petitioner was assured that he would get a post, since he belongs to physically handicapped category.

6. The petitioner was awaiting selection list on the hope that he would be selected even without 2 marks for the teaching experience. But when the select list was published on 25.02.2015, he learnt that his name did not find a place in it. But, an individual who obtained 99 marks, same as that of the petitioner, was in the select list in the physically handicapped category on the ground that he was older than the petitioner. Even in BC (G) category, the last selected candidate obtained 100 marks. Had the petitioner been awarded 2 marks, he would have obtained 101 marks and would have thus got selected in the BC (G) category itself, even without availing of the physically handicapped category. The result published in the website of the first respondent with respect to the petitioner is shown as 'not within cut-off zone'. Hence, challenging his result, the petitioner has come forward with the present Writ Petition, for the above relief.

7. This Court, at the stage of hearing the Writ Petition in the admission stage, upon hearing the learned counsel for the parties, passed the following order on 16.03.2015:

"The petitioner was not given marks for experience on account of the fact that the experience certificate was not countersigned by the Chief Educational Officer. Though the petitioner is entitled to two marks and in case the said two marks are included with the total marks secured by him, he would be eligible for appointment under the category B.C (General)/Ortho. According to the petitioner, he made an attempt to get the certificate countersigned by the Chief Educational Officer. However, the employees of Chief Educational Office refused to permit him to meet the Chief Educational Officer for the purpose of attestation.

2. The learned Additional Government Pleader seeks time to take instructions.

3. There shall be an interim direction to the third respondent to verify the experience certificate issued by the concerned Institution dated 5.1.2015.

4. The third respondent is further directed to personally inspect the registers maintained by the Institution in question and after satisfying himself about the genuineness of the experience certificate issued by the Institution, countersign it and issue the certificate to the petitioner, by 23.03.2015 forthwith on production of a copy of this order.

5. There shall be an interim direction to the first respondent to keep one post of P.G. Assistant (Commerce) vacant, until further orders.

6. Issue notice to the respondents, returnable by 23.03.2015. Private Notice is also permitted."

8. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the petitioner has secured 96 marks in the examination and 3 marks were awarded for Certificate verification. The cut-off mark was 100 in BC (G) category. Had the petitioner obtained 2 marks for teaching experience, he would have been selected in physically handicapped category. In the typed set of papers filed along with this Writ Petition, the petitioner produced a copy of the

Teaching Experience Certificate (Annexure-III) obtaining the signature of the Head Master of St. Joseph Higher Secondary School, C.Nammiandal, which would show that the petitioner had taught in that school from 02.08.2011 to 31.08.2014, i.e. for three years and one month. When the petitioner approached the third respondent on several occasions for getting the counter-signature in the Teaching Experience Certificate, the petitioner was denied the same in each and every occasion for one reason or the other. Hence, without obtaining the counter-signature of the third respondent, the petitioner has produced the Certificates during the course of Certificate verification, but since there was no counter-signature of the third respondent, necessary marks had not been awarded for the same.

9. The sum and substance of the submissions made by the learned counsel for the petitioner is that for no fault of the petitioner, he could not obtain the counter-signature of the third respondent in the Teaching Experience Certificate. However, pursuant to the interim direction issued by this Court on 16.03.2015 directing to keep one post vacant, one post in P.G. Assistant was kept vacant and the respondents could not fill up the vacancy due to non-availability of the suitable candidate and moreover, since the vacancy is available, the respondents may be directed to appoint the petitioner. Learned counsel for the petitioner invited the attention of this Court to Rule 22(aa) of the Tamil Nadu State and Subordinate Services General Rules, which reads as follows:

Rule 22(aa): (i)(aa) Out of the total number of appointments reserved in the categories referred to in clause (a) in the case of appointment made by direct recruitment one percent in each such category shall be separately reserved for the blind, deaf and orthopaedically handicapped candidates and the appointment shall be made in turn and in the order of rotation as specified in Schedule-III-A to this part.

(ii) Provided that the appointment of physically handicapped candidates against the reserved turns shall be subject to availability of such candidates.

(iii) Provided further that if no qualified and suitable candidate is available from a particular category of handicapped, namely the blind, the deaf or the orthopaedically handicapped, the vacancy can be filled up by candidates belonging to any of the other two categories."

10. Thus, according to the learned counsel for the petitioner, in the instant case, a candidate in the category of P.G. Assistant referred in Rule 22(aa) is not available. Therefore, as per Rule 22(aa) of the said Rules, the respondents may be directed to appoint the petitioner in the post of P.G. Assistant by awarding 2 marks for teaching experience, since the petitioner has obtained counter-signature pursuant to the interim direction of this Court, dated 16.03.2015 and further, there was also a direction by this Court to keep one post vacant.

11. Countering the above submissions, learned Additional Advocate General, assisted by the learned Special Government Pleader appearing for the respondents, by filing counter/additional counter affidavits, submitted that the petitioner herein was specifically instructed by the TRB by letter dated 09.02.2015 to produce the relevant records. The petitioner has not produced the Teaching Experience Certificate before the first respondent at the time of Certificate verification on 17.02.2015. In the absence of production of the Teaching Experience Certificate, duly counter-signed by the third respondent, the first respondent-TRB cannot be expected to award 2 marks contrary to the orders. The petitioner has not submitted either in person or through post the Experience Certificate issued by the School in which he is said to have worked, to the then third respondent for counter-signature. Learned Additional Advocate General further submitted that the petitioner himself has admitted that he was under the impression that the third respondent would ask the petitioner to produce the Attendance Register of the School where the petitioner worked. The third respondent is not under statutory obligation to address the School where the petitioner worked, get the details, counter-sign the Experience Certificate and handover the same to the petitioner. It is the duty of the petitioner to approach the School concerned, get the xerox copy of the Attendance Register and submit the same for counter-signing of the Experience Certificate by the third respondent. To overcome his lapses, he accuses the then third respondent. Learned Additional Advocate General further submitted that the Head Master of the School where the petitioner worked, had signed the papers pertaining to the petitioner, to the third respondent's office only on 03.03.2015 and it was submitted to the office of the third respondent only on 19.03.2015.

12. Learned Additional Advocate General further contended that the petitioner neither submitted the Attendance Register of the School, nor met the then third respondent, nor the Superintendent, nor the Personal Assistant in the office of the third respondent earlier. The petitioner never visited the

office of the third respondent before 19.03.2015 for the purpose of obtaining the Experience Certificate, counter-signed by the then third respondent. In respect of one candidate, namely Thiru.V.Sathiyaraj (Roll No.14.PG.0750528) who appeared and was selected in the exam for P.G Assistant (Zoology), has submitted the xerox copy of the Attendance Register of the School where he worked and got his Experience Certificate duly counter-signed by the then third respondent for production before the first respondent, vide Re.No.2083/B1/2015, dated 12.02.2015 for Certificate verification. Likewise, with regard to another candidate, by name, N.Neelavannan (Roll No.14.PG.10270276) who appeared and was selected in the exam for appointment to the post of P.G. Assistant (Commerce), has submitted the Certificate/xerox copies in support of his claim to the effect that he has taught XI Sd. and XII Std. in P.G Degree major subject, in Sacred Heart Girls' Higher Secondary School, Vandavasi and got his Experience Certificate duly counter-signed by the then third respondent, vide Ref.No.4100/B1/2015, dated 09.04.2015 for production before the first respondent at the time of Certificate verification. When the third respondent counter-signed two Certificates in respect of the above said two candidates, there is no reason to deny such a Certificate to the petitioner. Learned Additional Advocate General further contended that the cut-off marks for selection in B.C.(General) category/physically handicapped category (Ortho) is 100 and as the petitioner has secured only 99 marks, he was not selected for appointment to the post of P.G. Assistant (Commerce).

13. With regard to the submission made by the learned counsel for the petitioner that the petitioner could be appointed in the vacancy reserved for P.G. Assistant (Commerce) pursuant to the interim direction of this Court, dated 16.03.2015, it is the reply made by the learned Additional Advocate General that at the time of selection, six vacancies could not be filled up due to non-availability of candidates in the communal turn and the first respondent-TRB kept the vacancies as reserved. The first respondent-TRB issued provisional selection in respect of 135 vacancies on 25.02.2015.

14. With regard to the interim direction given by this Court on 16.03.2015, it is the submission of the learned Additional Advocate General that the Board issued provisional selection in respect of 135 vacancies on 25.02.2015, whereas the petitioner, after release of the provisional selection list by the TRB, obtained interim order only on 16.03.2015. However, at the time of selection, the following vacancies could not be filled up due to non-availability of the candidates in the following communal turn and the TRB kept the vacancies as reserved:-

Sl.No. as in selection list	Turn	No. of vacancies
42	GT (BL)	1
83	BCM (T)	1
110	MBC (T)	1
129	SC (G)	1
130	SC (T)	1
135	ST (T)	1
	Total	6

As the above vacancies fell vacant due to non-availability of suitable candidates, the TRB conducted another Certificate verification on 10.04.2015 and subsequently, the candidate referred by the petitioner, namely K.Neelavannan, was called for Certificate verification in S.C.(G) turn. The petitioner could not be called for Certificate verification on 10.04.2015, as there is no vacancy in BC (G) or physically handicapped (Ortho) category, which the petitioner belongs to. Since the Certificate verification was scheduled on 10.04.2015, the TRB accepted the Teaching Experience Certificate, counter-signed by the third respondent on 09.04.2015, issued before the Certificate verification. Since no candidate was available in BG (BL) category, the above vacancy was not filled.

15. Learned Additional Advocate General, by producing a copy of the letter, dated 16.06.2016 in Letter No.21765/F2/2015-5, issued by the Secretary to Government, Higher Education Department, Secretariat, Chennai, addressed to the Chairman of the TRB, Chennai, submitted that as per Section 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, where, in any recruitment year, any vacancy under Section 33, could not be filled up due to non-availability of a suitable person with disability or for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also, suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person other than a person with disability. Therefore, though the candidates are not available in the BG (BL) category, as per

Section 36 of the said Act, it has to be carried forward to the next year. Hence, for all these reasons, learned Additional Advocate General prayed for dismissing the Writ Petition.

16. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

17. Though very many contentions have been raised by both sides on factual aspects of the case, it is seen that pursuant to the interim direction of this Court, dated 16.03.2015, the third respondent has counter-signed the Teaching Experience Certificate on 19.03.2015. Though this Court has also given direction to keep one post vacant, even prior to such direction, the provisional selection list was issued on 25.02.2015. However, as on date, one category was not filled up due to non-availability of candidate.

18. It is the only submission made by the learned counsel for the petitioner that since already this Court has given direction, as per Rule 22(aa) of the Tamil Nadu State and Subordinate Services General Rules, the said vacancy can be filled up from any one of the categories, and hence, the petitioner being physically handicapped person, can be appointed in the said category.

19. At this juncture, it is appropriate to extract Sections 33 and 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act:

Section 33: Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from-

- i. blindness or low vision
- ii. hearing impairment
- iii. locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification exempt any establishment from the provisions of this section.

.. .. .

Section 36: Where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with disability or

for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled up by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government."

20. A reading of the above Sections shows that as per Section 36, such vacancy shall be carried forward to the subsequent recruitment and if in the subsequent recruitment also, the candidate is not available, it may be first filled up by inter-charge among the three categories of disabilities as per the Act. When that being the position, this Court is not in a position to give direction as prayed for by the petitioner.

21. Hence, for all the reasons stated above, the Writ Petition is dismissed. No costs. The Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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1. The Teachers Recruitment Board,
Represented by its Member-Secretary,
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2. The Director of School Education,
DPI Campus, College Road,
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3. The Chief Educational Officer,
Tiruvannamalai District.

+lcc to Mrs.Dakshayani Reddy, Advocate Sr.71964

+lcc to the Government Pleader Sr.71687

W.P.No.7243 of 2015

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