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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10/12/2021

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

REVIEW APPLICATION NOS.126 AND 127 OF 2016

IN

W.P.NO.4961 OF 2010 AND 6412 OF 2011

P.Mathais

... Petitioner/Petitioner in
Rev.Appl.No.126 of 2016 in
W.P.No.4961 of 2010

.Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 2.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 2.
3. Thiru. Gnanprakasam, D.E.O.,
P.G. Teacher in Chemistry,
Pachaiappa Higher Secondary School,
Kancheepuram.
4. Smt.Usha,
P.G. Teacher in English,
Govt. Higher Secondary School,
Thogaimalai, Karur.

... Respondents/Respondents in
Rev.Appl.No.126 of 2016 in
W.P.No.4961 of 2010

PRAYER:-

Review application filed under Order 47 Rule 1 of C.P.C.
read with 114 of CPC to review the order dated 10.08.2016 passed
by this Court in W.P.No.4961 of 2010.

PRAYER IN W.P.NO.4961 OF 2010:-

Petition filed under Article 226 of the Constitution of
India to issue a Writ of Mandamus forbearing the respondents



from fill up the post of District Educational Officer Vacancy in English with the candidate Register No.00101096 or with any other candidate and thereby verify the details related to this recruitment, the details of the candidate Register No.00101035 and the validity of his selection.

For Petitioner : Mr.P.Sesubalan Raja

For Respondent-1 : Ms.C.N.G.Niraimathi
Standing Counsel for TNPSC

For Respondent-2 : Mr.S.Gunasekaran
Additional Government Pleader

P.Mathais

... Petitioner/Petitioner in
Rev.Appl.No.127 of 2016 in
W.P.No.6412 of 2011

.Vs.

1. The State of Tamil Nadu,
The Secretary to the Government,
The Personnel and Administrative
Reforms Department,
Fort St. George, Chennai.
2. The State of Tamil Nadu,
The Secretary to the Government,
School Education Department,
Fort St. George,
Chennai.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
4. The Director of School Education,
DPI Compound, College Road,
Chennai.
5. Thiru Ganesamoorthy
6. Thiru A.Pugazhendi
7. Thiru R.Balamurali
8. Tmt.P.Usha

... Respondents/Respondents in
Rev.Appl.No.127 of 2016 in
W.P.No.6412 of 2011



PRAYER:-

Review application filed under Order 47 Rule 1 of C.P.C. read with 114 of CPC to review the order dated 10.08.2016 passed by this Court in W.P.No.6412 of 2011.

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PRAYER IN W.P.NO.6412 OF 2011:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order in G.O.(3D).No.95 of School Education (A1) Department, dated 13.07.2010 by appointing the Respondents 5 to 8 as District Educational Officer passed by the 2nd Respondent and quash the same as illegal, improper, unreasonable arbitrary and against the rule of Reservation and Roster points and thereby direct the Respondents 1 to 3 to appoint the Petitioner as District Educational Officer.

For Petitioner : Mr.P.Sesubalan Raja

For Respondents : Mr.S.Gunasekaran
1, 2 and 4 Additional Government Pleader

For Respondent-3 : Ms.C.N.G.Niraimathi
Standing Counsel
For TNPSC

COMMON ORDER

The petitioner filed writ petitions challenging his non-selection to the post of District Elementary Educational Officer on the ground that the candidates, who secured lesser marks were appointed, ignoring the highest marks obtained by him in the pretext of following rule of reservation.

2. According to him, from the counter affidavit filed by the Tamil Nadu Public Service Commission, it is crystal clear that the procedure followed by them in deviation of admitted terms of roster is error apparent on the face of the records. The petitioner's turn came second, whereas the Tamil Nadu Public Service Commission deliberately applied rule of roster in a hasty manner and accommodated a candidate of their choice and thereby depriving him of selection and this point was not considered by this Court while disposing of the writ petitions and hence, the orders passed in the writ petitions is error apparent on the face of the records and thus, the same has to be reviewed.

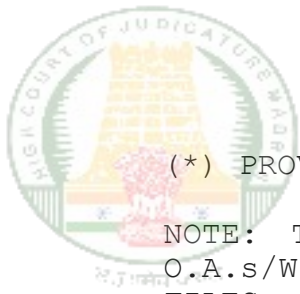


3. The respondent issued a Notification dated 23.01.2009 calling for direct recruitment to the post of District Educational Officer in Tamil Nadu Educational Services - 2008. Totally, six vacancies were for the subjects (i) Tamil (ii) English (iii) Physics (iv) Zoology (v) History and (vi) Chemistry. Out of these posts, Chemistry was earmarked for the candidates who are working as Teachers in the school and remaining posts from open market. The Tamil Nadu Public Service Commission conducted written tests and oral tests and the candidates were short-listed for selection. The details of candidates selected for appointment are given as under:-

"TAMIL NADU PUBLIC SERVICE COMMISSION

DETAILS OF THE MARKS OBTAINED BY THE CANDIDATES BOTH IN THE WRITTEN EXAMINATION HELD ON 03.05.2009 AND AT THE ORAL TEST HELD ON 25.11.2009 FOR APPOINTMENT BY DIRECT RECRUITMENT TO THE POST OF DISTRICT EDUCATIONAL OFFICER IN THE TAMIL NADU SCHOOL EDUCATIONAL SERVICE, 2008

REGR. NUMBER	COMM.	SEX	WRITTEN TEST MARKS	ORAL TEST MARKS	TOTAL MARKS	REMARKS
00101004	BC (OBCM)		205.50	30.00	235.50	(*)
00101035	WITHHELD					
00101040	MBC / DC		210.00	30.00	240.00	
00101096	BC (OBCM)	F	232.50	24.00	256.50	
00102089	BC (OBCM)		238.50	27.00	265.50	
00102151	BC (OBCM)	F	229.50	24.00	253.50	
00104115	MBC / DC		240.00	30.00	270.00	(*)
00105086	MBC / DC	F	223.50	30.00	253.50	
00105140	BC (OBCM)		241.50	30.00	271.50	
00106192	WITHHELD					
00107030	SCH	F	115.50	30.00	145.50	
00107061	SCH		186.00	30.00	216.00	
00109049	BC (OBCM)		246.00	27.00	273.00	(*)
00110114	BC (OBCM)	F	247.50	30.00	277.50	
00111083	BC (OBCM)		252.00	27.00	279.50	
00111175	SCH	F	165.00	30.00	195.00	(*)
00111209	SCH		205.50	30.00	235.50	(*)
00113078	SCH		184.50	30.00	214.50	



(*) PROVISIONAL

NOTE: THE SELECTION IS PROVISIONAL SUBJECT TO THE RESULT OF O.A.s/W.P.s., RELATING TO THIS POST PENDING (IF ANY) ON THE FILES OF THE TAMILNADU ADMINISTRATIVE TRIBUNAL/HON'BLE HIGH COURT, MADRAS/MADURAI BENCH OF MADRAS HIGH COURT AT MADURAI.

SECRETARY
TAMIL NADU PUBLIC SERVICE COMMISSION
CHENNAI - 600 002. "

4. The petitioner is a Graduate in English and he has secured 265.50 marks in the written and oral tests. According to him, he is the top scorer in respect of the subject English is concerned. According to him, the petitioner should have been selected for the post of District Educational Officer for the subject English. Instead, a candidate who had secured 253.50 marks was selected and appointed in the post reserved for the subject English. According to him, it is illegal.

5. It is also noted as per the extant instructions issued in G.O.(Ms) No.241, Personnel and Administrative Reforms (K) Department, dated 29.10.2007 read with G.O.(Ms) No.101, Personnel and Administrative Reforms (K) Department, dated 30.05.2008 and G.O.(Ms) No.206, Personnel and Administrative Reforms (K) Department, dated 06.11.2008, the respondent/TNPSC selected the candidates as per their merit ranking subject to rule of reservation. The roster points are extracted hereunder:-

1st turn	G.T
2nd turn	SC
3rd turn	MBC / DC
4th turn	BC (OBCM)
5th turn	GT (W)
6th turn	SC (W)

6. A perusal of the list of selected candidates goes to show that the person who has secured first rank is one Ganesamoorthy, who topped the list with 279 marks. His subject is Tamil. Therefore, he was accommodated in the vacancy earmarked for the subject Tamil. The other person who secured 277.5 marks and less were passed over and they did not get appointment as the vacancy in the subject Tamil got exhausted. Likewise, the second turn goes to Scheduled Caste. The person who was secured highest marks in that category was one Pugazhendi and he secured 235.05 marks. He was accommodated in SC turn and his subject is Zoology. Therefore, the vacancy for the subject Zoology got exhausted and those persons, who have secured more marks belonging to different communities were also passed over as the



communal roster was followed. The third turn belong to MBC. The top scorer in MBC category was happened to be V.R.Gnanaprakasam amongst the Teacher candidates with Chemistry as subject specialization. The other two persons who have secured 270 marks and 253.50 marks were passed over in that quota. Hence, the posts reserved for Chemistry subject was got exhausted. The 4th turn fell under BC category. One Balamurali, who secured 271.50 marks happened to be the top scorer in the subject History. He was appointed in BC category. Therefore, the History category was also exhausted. The 5th turn falls under General Turn (Women). One P.Usha belongs to BC category had secured 256.50 marks having English as a specialization. She was accommodated against BC (Women) category for the subject English. Thus, vacancy for the subject English also got exhausted.

7. Now that, the grievance of the petitioner is that allocation of English subject to a person, who had secured 256.50 marks, which is lesser than the petitioner's marks which is 265.50 is illegal and irregular and it is done on the whims and fancies of the respondent - TNPSC, who accommodated the person of their choice.

8. In a previous selection of District Educational Officer was challenged before this Court on the very same ground in the judgment in THE TAMIL NADU PUBLIC SERVICE COMMISSION VS. C.MUNUSAMY [CDJ 2006 MHC 035] wherein it is observed as under :-

" 13.The scheme as notified by the Commission proceeds that while making subject-wise selection based on the marks obtained by the candidates in the Written Examination and in the Oral test put together and also duly following the rule of reservation of appointments, if the vacancies in the particular subject are exhausted, subsequent candidates who are qualified in the said subject were passed over though they have secured higher marks and the next candidates in the ranking list who are qualified in the other subjects were selected against the vacancies in the respective subject. As rightly pointed out by the Commission, the said course is unavoidable while making selection for the recruitment of the special nature.

14. As rightly pointed out by the learned counsel for the petitioner/Commission, when a vacancy reserved for SC (W) category was available in the roster, the same had to be filled up from among the two candidates available in that category in the ranking list and they also possessed the qualification in the subject-Maths. As said earlier,



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failure to select a candidate against the said turn when candidates in that particular category were available would have resulted in serious violation and in the event if the first respondent had been selected, the said turn, viz., SC (W) Sl.No.14 would have been left unfilled and the same would have amounted to violation of the provision of the Constitutional right and that was the reason the first respondent herein was not selected for appointment. We are satisfied that the first respondent herein was not selected due to the accommodation given to a SC candidate (Maths). Though he was aware of the same, the first respondent has not impleaded the said SC (Maths) candidate in the Original Application filed before the Administrative Tribunal. We are satisfied that the selection made by the Commission is not erroneous as recorded by the Tribunal. In other words, the Commission had adopted the best method of selection and it is brought to our notice that all the selected candidates are working for nearly 7 years. If the order of the Tribunal is allowed to stand, it will certainly hamper the selection already made by the Commission and the selection for the subsequent recruitment for the same post. The Secretary of the Commission has also brought to our notice that there is no vacancy available in the post of District Educational Officer, since all the 14 vacancies were already filled up. It is also brought to our notice that the next selection for the post of District Educational Officer was already over and the results declared in October, 2000. The Tribunal without considering all the relevant materials and without assigning reasons, has passed a cryptic order, directing the petitioner to select the first respondent herein for appointment to the post of District Educational Officer which cannot be sustained. Though learned counsel for the first respondent has contended that the subject-wise selection/reservation is not being strictly followed and it varies year to year, we are concerned with the Notification of the Tamil Nadu Public Service Commission dated 12-7-95. Hence, there is no merit in the said contention."

9. The procedure adopted by the Tamil Nadu Public Service Commission as explained above was upheld by the Division Bench and it is held that the said course is unavoidable while making selection for recruitment of this nature. The procedure for selection in the present writ petitions also is very same in



nature and therefore, due to unavoidable circumstances, the petitioner though secured highest marks than the candidates in English subject, could not be accommodated and had to be passed over as the roster point for BC category was allotted to a person who has secured more marks than the petitioner in some other subject. The petitioner cannot complain of the procedure when it is uniformly applied and it is inevitable to deviate from communal roster while making such appointments. Therefore, I do not find any error apparent on the face of the record and the review applications merit no consideration and accordingly, stands dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary to the Government,
The Personnel and Administrative
Reforms Department,
Fort St. George, Chennai.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
3. The Director of School Education,
DPI Compound, College Road,
Chennai.
4. The Secretary,
School Education Department,
Fort St. George,
Chennai.

REVIEW APPLICATION NOS.126 &
127 OF 2016 IN W.P.NO.4961
OF 2010 AND 6412 OF 2011

SSI (CO)
PBS/20/01/2022