

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :- 02.11.2016

Orders Pronounced on :- 18-11-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.25472 of 2016

and

W.M.P.No.21794 of 2016

Dr.L.Shanthi

.. Petitioner

Vs.

1. The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-9.
2. The Director of Collegiate Education,
EVK Sampath Maaligai,
College Road, Chennai-600 006.
3. The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
College Road, Chennai-600 006.
4. The Member Secretary,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
College Road, Chennai-600 006.

.. 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 relating to the impugned order of the fourth respondent in R.C.No.152/L1/2016, dated 21.03.2016 rejecting the representation of the petitioner, dated 04.01.2016 to consider her for selection to the post of Assistant Professor in Business Management in the non-joining duty vacancy pertaining to the Recruitment 2012 and quash the same as illegal and consequently direct the third and fourth respondents to

include the petitioner in the selection list GT (W) Communal Turn and forward the same to the first respondent and consequently direct the first and second respondents to appoint her in the non-joining duty vacancy as Assistant Professor in Business Management within the time frame as may be fixed by this Court.

For Petitioner : Mrs.Dakshayani Reddy
For Respondents : Mr.R.Venkatesh, Govt. Advocate

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the fourth respondent in R.C.No.152/L1/2016, dated 21.03.2016 rejecting the representation of the petitioner, dated 04.01.2016 to consider her for selection to the post of Assistant Professor in Business Management in the non-joining duty vacancy pertaining to the Recruitment 2012 and quash the same as illegal and consequently direct the third and fourth respondents to include the petitioner in the selection list GT (W) Communal Turn and forward the same to the first respondent and consequently direct the first and second respondents to appoint her in the non-joining duty vacancy as Assistant Professor in Business Management within the time frame as may be fixed by this Court.

2. It is the case of the petitioner that she has passed SSLC in March 1989 and did her +2 in the year 1991. She obtained Bachelor's Degree in Science in Bharathiyar University, Coimbatore in April 1994 and secured First Class. She completed her Master's Degree in Business Administration (Business Management) in Bharathiyar University in December 1996 and secured 63.08% marks. She did her M.Phil in Madurai Kamaraj University in January 2003 and pursued her Ph.D. in Management in Bharathiyar University and got her Doctorate in July 2012. She appeared for SLET and completed the same in November 1999 in the SLET conducted by the Bharathidasan University, Trichy. It is her further case that she belongs to BC (Yadava) community. She has been serving as Assistant Professor in Sree Narayana Guru College, K.G.Chavadi, Coimbatore from 02.07.1997 to 13.07.2007 and from 04.01.2008 till date.

3. It is further stated that the fourth respondent, by Notification in Advertisement No.4 of 2012, dated 28.05.2013, invited applications from eligible candidates for appointment to the post of Assistant Professor in various subjects in the Tamil Nadu Collegiate Educational Service in the Government Colleges for the Recruitment Year 2012. It is further stated that two posts were notified in respect of the subject--Business

Management and two vacancies are to be filled up in the communal turn of GT(W) and SC(G) respectively. The petitioner being a Post-graduate degree holder in Business Management with M.Phil and the requisite Ph.D. and SLET qualifications, submitted her application, which was accepted and assigned Registration No.1614444. She was directed to appear for Certificate Verification on 06.12.2013 in Lady Wellington Institution of Advanced Study in Education, Chennai and her Roll Number was 13AP1614444. She appeared before the Certificate Verification Board and produced all her certificates for verification and was awarded 15 marks for teaching experience and 9 marks for educational qualification. She was directed to appear for interview on 19.12.2014 in Government Quaid-e-Milleth College, Chennai, where she appeared and answered all the questions and was awarded 7 marks. The fourth respondent published the provisional mark list of candidates after oral interview in respect of some subjects including Business Management on 24.12.2014. In the aforesaid merit list, one Dr.S.Usha with Roll No.13AP1613053 belonging to B.C. community with 32 marks, was placed in Rank 1 and in Serial Number 1. The petitioner with 31 marks, was placed in Rank 2 and in Serial No.2. One M.Thiagarajan, with Roll No.13AP1637400 belonging to the SC community with 27 marks was placed in Serial No.14 of the merit list.

4. It is further submitted by the petitioner that she was placed in Sl.No.2 inspite of two more candidates being in the merit list with 31 marks each on the basis of the Date of Birth. The petitioner is older than two candidates who also got 31 marks like that of the petitioner and are placed in the merit list accordingly. The petitioner has no grievance against the respondents regarding the provisional list of candidates after oral interview.

5. The fourth respondent published the provisional selection list of candidates in respect of some subjects including Business Management on 27.01.2015. Dr.S.Usha belonging to BC community with 32 marks, was provisionally selected in GTW turn and M.Thiagarajan belonging to S.C. community with 27 marks, was provisionally selected in Scheduled Caste General (SCG) turn. Thus, the above two candidates were selected in the communal turn against the notified vacancies by the fourth respondent. The petitioner has no grievance against the respondents regarding the selection of the aforesaid candidates for recruitment as Assistant Professor in Business Management in the notified communal turn. But later, Dr.S.Usha, who was selected, was given appointment order, dated 23.07.2015 by the first respondent and she was appointed in the Government Arts College, Kuzhithalai, Trichy District. Thereafter, the said Dr.S.Usha did not join duty at the place of posting, even after a lapse of 6

months, which is the maximum permissible time limit extended to a candidate in special circumstances to report for duty. The said Dr.S.Usha, belonging to BC with 32 marks, who was selected and appointed in the GTW turn, failed to join duty and the petitioner belonging to BC with 31 marks, who is ranked as Rank No.2 in the merit list, ought to have been selected and appointed in the GTW turn in the non-joining duty vacancy. It is further submitted that it is a settled position of law that if a selected candidate in respect of a particular communal turn, does not join duty, the next candidate with the highest marks in the merit list, who is eligible to be fit into the roster turn, shall be selected.

6. In the above context, the petitioner made a representation, dated 04.01.2016 to select and appoint her as Assistant Professor in Business Management in the consequential vacancy that arose due to the non-joining of a selected candidate, namely Dr.S.Usha. Since that representation was not considered, earlier, she filed W.P.No.1411 of 2016 before this Court with a prayer to issue a Writ of Mandamus to direct the respondents to consider and pass orders for appointment of the petitioner as Assistant Professor in the Business Management based on her marks secured in the provisional list of the candidates after the oral interview (2nd rank) published in July 2015 based on the representation of the petitioner, dated 04.01.2016 within a reasonable time. The said Writ Petition No.1411 of 2016 was disposed of by this Court on 25.01.2016 by directing the respondents to consider the said representation and pass orders on merits and in accordance with law, within six weeks from the date of receipt of a copy of the order. The said representation was accordingly disposed of by the fourth respondent on 21.03.2016. Challenging the same, the petitioner has come forward with this Writ Petition for the relief stated supra.

7. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the fourth respondent rejected the representation of the petitioner by assigning the following reasons:

"It is stated that the petitioner has secured only 31 marks and hence she was not considered for selection under GT(W) category for which category only she is eligible to be considered. Further the Board has forwarded provisional selection list to the User Department. The User Department shall take follow up action and the Board may not pursue further until the User Department communicates the Board in this regard. Hence, the Board has no knowledge about the status of the selected candidates.

It is also stated that according to rules in

vogue, in a recruitment when a candidate is selected under a particular communal turn, the turn is exhausted and if such candidates fail to join duty, such non-joining vacancies would be carried forward to the next recruitment only. Further, Government have issued Orders for filling up of 611 vacant posts of Assistant Professor in various subjects including all the existing vacancies for the ensuing recruitment as per G.O.Ms.No.501 (Higher Education (F2)) Department, dated 29.12.2015. The Board has also initiated the selection process pursuant to issuance of Government Order.

For the above facts, the petitioner's claim to consider her for appointment as Assistant Professor (Business Management) cannot be complied with.

The representation of the petitioner is disposed of accordingly."

8. Assailing the said reasons, learned counsel for the petitioner, by inviting the attention of this Court to Rule 4(e) of the General Rules (Part-2) to the Tamil Nadu State and Subordinate Services Rules, submitted that if an approved candidate selected by the Tamil Nadu Public Service Commission (TNPSC) for appointment by direct recruitment, fails to join duty ordinarily within three months from the date of receipt of the orders directing him to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he shall forfeit his right for appointment to the post and his name shall be removed from the approved list, provided that in special circumstances, the appointing authority may extend the time limit referred to in this sub-rule upto six months for valid reasons. Thus, the learned counsel for the petitioner submitted that if any candidate has not joined duty beyond the time limit of six months, then as per Rule 22(d) of the General Rules (Part-2) to the Tamil Nadu State and Subordinate Services Rules, if qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation (as per G.O.Ms.No.337, P and AR, dated 08.10.1992, with effect from 01.04.1989) and provided that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason,

a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the Reserve List. In support of his submissions, learned counsel for the petitioner relied on an order of this Court, dated 11.06.2015 passed in W.P.No.12411 of 2015 and also the judgment of the Division Bench of this Court in W.A.No.229 of 2013, dated 09.01.2015, wherein in identical situation, this Court has allowed the claim of the writ petitioner therein and directed the respondents therein to appoint the petitioner, since the selected candidate in those cases had not joined duty. Hence, learned counsel prayed that following the said order of this Court, the petitioner's claim in this case may also be considered favourably.

9. Countering the above submissions, learned Government Advocate appearing for the respondents submitted that the Teachers Recruitment Board (TRB) in the year 2012, through Notification / Advertisement, dated 28.05.2013, called for applications for selection to the post of Assistant Professors in various subjects including Business Management in the communal turns of GT(W) and SC(G) with one vacancy each. The petitioner was one among the candidates aspiring for the above post in Business Management and she was assigned with Reg.No.13AP1614444 and was found eligible and therefore, called for Certificate Verification on 06.12.2013. As per the Notification, she was awarded 9 marks for her qualification and 15 marks for teaching experience and in the interview, she was awarded 7 marks, altogether 31 marks. It is his further submission that when the provisional selection list was released, one S.Usha, who belongs to BC and who secured 32 marks, was considered for selection under GT(W) turn based on the merit and the Scheduled Caste (G) vacancy was filled with Scheduled Caste candidate named M.Thiagarajan who secured 27 marks. The petitioner who got only 31 marks, could not be considered in GT(W) vacancy, in which turn, she is eligible for consideration.

10. Learned Government Advocate further submitted that no doubt, the candidate S.Usha did not join duty. But the User Department, namely the Director of Collegiate Education, has not intimated about the non-joining of duty of the candidate S.Usha and there is also no such communication from the said candidate that she had deferred the appointment for the post of Assistant Professor (Business Management). Only if there is a communication from the selected candidate, the name of the petitioner who is in Rank No.2 can be considered for appointment. Since there was no communication from the selected candidate, the Teachers Recruitment Board could not accommodate the petitioner in the vacancy available. Moreover, all the vacancies notified are already filled up by the TRB which

forwarded the provisional selection list of Assistant Professors on 17.04.2015. Further, the Government have also issued G.O.Ms.No.501, dated 29.12.2015 notifying the vacancies proposed to be filled up through recruitment for the year 2015-2016 and the TRB, pursuant to the Government Order, initiated the process of issuing Notification for filling up the vacancies including the backlog vacancies. As such, the vacancies which have fallen in the previous recruitment, would be carried forward for the subsequent selection in the subsequent Notification. Hence, the contention of the petitioner that she has to be considered in the vacancies notified in the Government Order, is not sustainable in law. Hence, for these reasons, learned Government Advocate prayed for dismissal of the Writ Petition.

11. By way of reply, learned counsel for the petitioner submitted that it is incorrect to state that in G.O.Ms.No.501, the vacancies that were not filled up in the previous recruitment, were carried forward to the subsequent recruitment. In this regard, learned counsel for the petitioner submitted that by way of Right to Information Act, the petitioner also sought the Public Information Officer of the Directorate of Collegiate Education, for furnishing to her the details of the non-joining duty vacancy caused due to the non-joining of Dr.S.Usha (Reg.No.13AP1613053) as Assistant Professor in Business Management for the recruitment year 2012 Notification No.5112/A6/2012, dated 01.12.2013, has been clubbed with 611 vacancies proposed to be filled up as per G.O.Ms.No.501, Higher Education Department, dated 29.12.2015. For the said query under the RTI Act, the reply was given as "No". Thus, by relying upon the said G.O., learned counsel for the petitioner prayed for a direction to appoint the petitioner in the non-joining duty vacancy.

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

13. It is the main contention of the learned counsel for the petitioner that since Dr.S.Usha, who was selected and placed in Rank No.1, has not joined duty, the respondents, by considering the representation of the petitioner, ought to have appointed the petitioner by considering her claim for appointment to the post of Assistant Professor in the non-joining duty vacancy pertaining to the Recruitment-2012. But instead of selecting the petitioner, they have passed the impugned order, rejecting the said request of the petitioner. In support of the said contentions, learned counsel for the petitioner relied on the order of this Court, dated 11.06.2015 in W.P.No12411 of 2015, wherein, this Court, while allowing the said Writ Petition, observed as follows:

"5. The aforesaid facts make it clear that Mrs.Begum Elavarasi refused to join the post and declined the offer for selection to the post of Assistant Professors (Physics), stating that she has already joined Anna University as Assistant Professor (Physics), on 17.03.2015. It is a different matter, if she joined the post and the same became vacant, since she .. the service thereafter. In the provisional selection list, three persons, who have secured more marks than the petitioner, were selected. As stated above, one among them, has not joined the post and declined the offer of appointment. Hence, the next candidate, who have secured highest mark in the Selection list, has to be given appointment. It is not the case of the respondent that someone else has secured higher mark in the Backward Class (Muslim) Women Category, than the petitioner.

6. It is admitted that the petitioner has secured the highest mark, next to the selected candidates and she ranked four in the Backward Class (Muslim) Women Category. Since one among the persons, selected for appointment, declined to join the post, the petitioner shall be included in the selection list and hence, I have no hesitation to allow this writ petition and give a direction as sought for.

14. Learned Government Advocate submitted that in the said case before this Court, a communication was received from the selected candidate declining to accept the offer of appointment. In the instant case, no such communication was sent by the selected candidate, namely Dr.S.Usha, and therefore, the non-joining duty vacancy was carried forward to the next selection. In this regard, learned Government Advocate relied on G.O.Ms.No.501, dated 29.12.2015, issued from Higher Education Department, wherein, the recruitment to 611 posts of Assistant Professor in various subjects including all the existing vacancies, for the year 2015-2016, are ordered to be filled up by the Government, based upon which, TRB initiated the process of issuing Notification for filling up the vacancies which also includes the backlog vacancies.

15. But, on a perusal of the said G.O., I find that it speaks only about the new vacancies and not with regard to the vacancies that had arisen due to non-joining duty vacancies of the Recruitment of the year 2012. However, it is also to be noted that the information gathered under RTI Act also reveals that there was negative reply with regard to the relief sought

for by the petitioner regarding the clubbing of 611 vacancies with the non-joining duty vacancy caused due to non-joining of duty by the candidate Dr.S.Usha for the recruitment year 2012.

16. Therefore, on a conjoint reading of the above said Rule 4(e) and Rule 22(d) of the General Rules (Part-2) to the Tamil Nadu State and Subordinate Services Rules, the petitioner has to be selected and appointed, as the selected candidate Dr.S.Usha failed to join duty within six months as stipulated in the proviso to Rule 4(e) and the next candidate shall be appointed in accordance with the ranking from the Reserve List in accordance with the proviso to Rule 22, which states that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the Reserve List.

17. Hence, I am of the opinion that the reasons assigned in the impugned order are not legally sustainable, in view of the above provisos to Rule 4(e) and Rule 22(d) of the said Rules. The petitioner is entitled for the relief sought for in this Writ Petition. The Writ Petition is allowed, quashing the impugned order of the fourth respondent in R.C.No.152/L1/2016, dated 21.03.2016 and the petitioner shall be appointed to the post of Assistant Professor in Business Management in the non-joining duty vacancy pertaining to the Recruitment 2012 and the third and fourth respondents shall include the petitioner in the selection list GT (W) Communal Turn and forward the same to the first respondent and consequently the first and second respondents are directed to appoint her in the non-joining duty vacancy as Assistant Professor in Business Management within a period of three weeks from the date of receipt of such proposal for inclusion of the petitioner in the selection list, from the third and fourth respondents. No costs. W.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-9.
2. The Director of Collegiate Education,
EVK Sampath Maaligai,
College Road, Chennai-600 006.
3. The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
College Road, Chennai-600 006.
4. The Member Secretary,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
College Road, Chennai-600 006.

+2cc to Mr.Dakshayani Reddy, Advocate, S.R.No.67457
+1cc to the Government Pleader, S.R.No.67511

nmi (CO)
md(09/12/2016)

W.P.No.25472 of 2016

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