

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1082 of 2017

and

C.M.P.No.15058 of 2017

Jayapradha, E. ... Appellant

-vs-

1.Government of Tamil Nadu,
rep.by Secretary to Government,
School Education Department,
Secretariat,
Chennai-600 009.

2.Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai-600 006. ... Respondents

Writ Petition No.13431/2017

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in R.C.NO.923/L2/2017, dated 5.5.2017, passed by the Second Respondent and quash the same and consequently direct the Second Respondent to appoint the petitioner as Post Graduate Assistant in Bio-Chemistry as notified in the advertisement NO.2/2013, dated 9.5.2013.

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.13431 of 2017 dated 03.07.2017.

For Appellant :: Mrs.Nalini Chidambaram,
Sr.Counsel for Ms.C.Uma

For Respondents :: Mr.K.Venkataramani,
Addl.Advocate General
assisted by

Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by this Court in W.P.No.13431 of 2017 dated 03.07.2017.

2.Originally, pursuant to the advertisement of the Teachers Recruitment Board, the second respondent herein, in Advertisement No.2/20 dated 09.05.2013 for recruitment to 16 posts of Post Graduate Assistant / Physical Education Director Grade-I for the year 2012-2013, more specifically for the subject of Bio-Chemistry, the appellant wrote the examination and secured 99 marks. But her name was not shown in the selected list. However, one V.Thailappan who was placed above the appellant was also not selected. It is stated that the said Thailappan filed a writ petition before this Court challenging his non-appointment to the post of Post Graduate Assistant, but the same was withdrawn. It is also stated that the appellant was a party to the said writ petition. In the said circumstances, the appellant claimed that she is entitled for appointment to the post of Post Graduate Assistant in the place of the said Thailappan. Earlier, the appellant filed a writ petition in W.P.No.623 of 2017 and by order dated 10.01.2017, this Court directed the authorities to consider and dispose of the appellant's representation dated 09.10.2016 on merits and in accordance with law. Pursuant to the said order, an order was passed on 05.05.2017 by the second respondent-Teachers Recruitment Board in which it is stated that the Board finalised the recruitment process of Post Graduate Assistants for the year 2012-2013 on 10.08.2014 itself and all the vacancies notified had been filled up and also that the Board has completed the subsequent recruitment process, ie., for the years 2013-14 and 2014-15 and all the vacancies including the backlog vacancies were filled up. Accordingly, the claim of the appellant was rejected by the Board.

3.Challenging the said order, the appellant filed a writ petition before this Court in W.P.No.13431 of 2017 and by order dated 03.07.2017, this Court dismissed the writ petition, stating that the person placed above the appellant, though not selected, was not appointed on account of his ineligibility and hence the same will not be taken as a ground by the appellant to seek appointment after the completion of two subsequent recruitment processes. It was also observed that mere passing /

appearance will not confer any right on a candidate to claim appointment as a matter of right.

4.Challenging the order passed in the writ petition, the present writ appeal has been filed.

5.The learned senior counsel appearing for the appellant has submitted that a candidate who has written the examination pursuant to Advertisement No.2/2013 dated 09.05.2013 having secured the highest mark among the eligible candidates, has a right to be appointed to the post of Post Graduate Assistant for the subject Bio-Chemistry. It is specifically submitted that when the candidature of the said Thailappan, who was placed above the appellant, was rejected and the writ petition filed by him was withdrawn, the vacancy in the post of Post Graduate Assistant for the subject Bio-Chemistry for the MBC/DNC remained vacant and hence the Board has got a legal obligation to fill up the vacancy by appointing the appellant.

6.A counter affidavit was filed on behalf of the second respondent, in which it is stated that the second respondent had called the candidates for certificate verification who secured up to 100 marks in MBC(W) category in the subject Bio-Chemistry and since the appellant had secured only 99 marks, she was not called for certificate verification for appointment to the said post.

7.A reply affidavit has been filed on behalf of the appellant, in which it is stated that the second respondent has not understood the concept of cut off marks; when the said Thailappan, who had secured 110 marks was found ineligible, the appellant who had secured 99 marks ought to have been called for certificate verification for the post reserved for MBC(W) category soon after the said Thailappan withdrew the writ petition filed by him, on 30.09.2016.

8.In the above backdrop, the learned Additional Advocate General, on instructions, has today, submitted before this Court that one post of Post Graduate Assistant in Bio-Chemistry has already been kept vacant under the category MBC(W) by the Board. He further submitted that the appellant and the similarly placed persons like that of the appellant herein, will be considered by the second respondent and orders will be passed for appointment to the said one post of Post Graduate Assistant in Bio-Chemistry under the category MBC(W) which has been kept vacant, in accordance with law.

9.The above submission made by the learned Additional Advocate General is recorded. It is for the second respondent to consider the case of the appellant and the persons similarly placed, for appointment to the said one post of Post Graduate Assistant in Bio-Chemistry under the category MBC(W) which has been kept vacant, in accordance with law.

10.The writ appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat,
Chennai-600 009.

2.Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai-600 006.

- 1 cc to Mr.C.Uma, Advocate Sr.No.76114
- + 1 cc to The Government Pleader Sr.No.76356

W.A.No.1082 of 2017

and

C.M.P.No.15058 of 2017

CO (MN)

RRI 21/11/2017

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