

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.2192 of 2011
and
MP.No.1 of 2011

P.N.Rajkumar ... Appellant/Petitioner

vs.

- 1.The Secretary,
Selection Committee for Recruitment
to the post of Section Officer,
The Tamil Nadu Dr. Ambedkar Law University,
No.5, Greenways Road,
Chennai - 600 028.
- 2.The Registrar,
The Tamil Nadu Dr. Ambedkar Law University,
No.5 Greenways Road,
Chennai - 600 028.
- 3.Haridass, Section Officer,
The Tamil Nadu Dr. Ambedkar Law University,
No.5, Greenways Road,
Chennai - 600 028.
- 4.Baskaradass, Section Officer
The Tamil Nadu Dr. Ambedkar Law University,
No.5, Greenways Road,
Chennai - 600 028.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 09.12.2010 passed by the learned Single
Judge of this Court in W.P.No.10765 of 2005.

WP NO.10765/05 DATED 09.12.2010:

Writ Petition filed Under Article 226 of the Constitution
of India praying that for the issuance of writ of Declaration,
declaring the appointment of the 3 and 4 respondents as Section

Officer as null and void since it is contrary to the notification dated 21.07.2004 and further direct the first respondent and second respondents to appoint the petitioner as Section Officer in the notified reserved vacancy.

For Appellant : Mr.R.Saseetharan

For R1 & R2 : Notice served

JUDGMENT

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

Challenging the correctness of the order passed by a learned Single Judge in WP.No.10765 of 2005, this intra-court appeal is filed by the writ petitioner.

2.For the purpose of convenience, the parties are referred to as per their rank in the writ petition.

3.The petitioner has filed the aforesaid writ petition, seeking a writ of declaration, declaring the appointment of the respondents 3 and 4 as Section Officers as null and void, since it is contrary to the notification dated 21.07.2004. He has also sought a direction to the respondents 1 and 2 to appoint him as Section officer in the notified reserved vacancy.

4.By the order impugned herein, the learned Single Judge has disposed of the aforesaid writ petition, directing the respondents 1 and 2 to give notification in the press, as was done earlier through notification dated 21.07.2004 and call for applications for the post of Section Officer, which is reserved for SC candidates from scheduled Caste candidates and complete the selection process as per procedure and to appoint within four months from the date of receipt of a copy of the order.

5.Heard the learned counsel for the petitioner and perused the materials placed before this Court.

6.From the records, it could be seen that the second respondent had called for applications from the qualified candidates, to fill up two posts of Section Officer in the respondent University through direct recruitment. Out of two posts, one post is reserved for the candidates from Scheduled Caste Community and another is earmarked for open category. The second respondent conducted the interview on 23.08.2004, in which, six candidates participated. However, pursuant to the direction of this Court in WP.No.24897 of 2004, the petitioner attended the interview on 21.09.2004. Though seven candidates had appeared for interview, none was selected for the post of

Section Officer reserved for SC community and the second respondent appointed the respondents 3 and 4 belonging to non-SC category as Sections Officers, since, according to the respondents 1 and 2, no candidate belonging to SC category was found suitable and the recommendation of the Selection Committee not to select any one out of the available SC candidates, due to the said reason, was approved by the Syndicate of the second respondent. Aggrieved against the same, the petitioner has come with the writ petition in WP.No.10765 of 2005, which was disposed of by the learned Single Judge, directing the respondents 1 and 2 to give a fresh notification and call for applications for the post of Section Officer, which is reserved for SC category, from Scheduled Caste candidates. Hence, this intra-court appeal by the petitioner.

7.A perusal of the communication dated 21.09.2011 issued by the second respondent reveals that pursuant to the order of the learned Single Judge, an advertisement dated 12.06.2011, was issued, inviting applications for the post of Section Officer on regular basis in the category of SC, in Daily Thanthi (Tamil Nadu Edition), in response to which, 19 applications were received.

8.On 31.07.2012, while admitting this intra-court appeal, this Court has granted an interim order, which reads thus:

"It is stated that though notification was issued on 12.06.2011, no selection and appointment is made. If that is the case, further course of action as per the above notification is stayed and the respondents are directed not to proceed with the above notification further."

9.Despite service of notice and the name of the respondents 1 and 2 having been printed in today's cause list, there is no representation for the respondents 1 and 2.

10.There is no dispute with regard to the selection of the candidate for the post of Section Officer under OC quota. What was disputed is the selection of the candidate for the post in question, which is reserved for SC category.

11.It is the submission of the learned counsel for the petitioner that the second respondent, after inviting the applications from the Scheduled Caste candidates and after conducting an interview, cannot refuse to appoint a person belonging to the Scheduled Caste Community, for the post earmarked for the said category. Referring to the decision of the Supreme Court in Akhil Bharatiya Soshit Karamchari Sangh (Railway) rep. by its Assistant General Secretary v. Union of India and others [AIR 1981 SC 298], the learned counsel for the petitioner submitted that a meritorious candidate among the

Scheduled Caste candidates alone has to be appointed for the post of Section Officer, as it is reserved for SC category. Placing reliance on the decision in S.S.Sharma and others v. Union of India and others [AIR 1981 SC 588], the learned counsel further submitted that owing to the interim order passed by this Court, selection list is yet to be declared.

12.It is an admitted fact that the petitioner belongs to the Scheduled Caste community and he is eligible to get appointment for the post earmarked for SC category.

13.It is no doubt true that the object of reservation policy is to give opportunity to the downtrodden classes to get a share in public employment and to come into main stream on par with others. In this context, it is apropos to refer to the observation of the Supreme Court in Akhil Bharatiya Soshit Karamchari Sangh (supra), at para 94, which runs thus:

"94.Trite arguments about efficiency and inefficiency are a trifle phoney because, after all, at the higher levels the harijan/girijan appointees are a micro-scopic percentage and even in the case of Classes III and II posts they are negligible. The preponderant majority coming from the unreserved communities are presumably efficient and the dilution of efficiency caused by the minimal induction of a small percentage of 'reserved' candidates cannot affect the over-all administrative efficiency significantly. In deed, it will be gross exaggeration to visualise a collapse of the Administration because 5 to 10% of the total number of officials in the various classes happen to be sub-standard. More over, care has been taken to give in-service training and coaching to correct the deficiency."

14.As noted above, this Court, while admitting this intra-court appeal, has stalled the new selection process, which order is still in force. It may not be out of place to point out here that the Supreme Court in S.S.Sharma (supra), has observed that as long as the select list was declared final, no officer could claim any right. Due to the continuance of the interim order, no recruitment was done by the respondents 1 and 2 from 2004 onwards.

15.In such circumstances, this Court feels that the interim order granted by this Court shall stand vacated and the selection process, if it is pending, shall be allowed to go on, so as to enable the petitioner as well as other interested persons, to participate in the same.

16.At this juncture, the learned counsel for the petitioner submitted that the selection process is over and the result is made ready for notification.

17.Such being the position, this Court is of the view that if the selection list is published, there would not be any ground for non-suitability of the candidate, etc., as raised by the respondents 1 and 2 before the learned Single Judge. Therefore, at this stage, the selection process shall not have been stalled, much less in the case on hand and the selection list is to be published and in such event, the issue involved herein would be settled. If there are mala fides in the selection list, then, a fresh cause of action would arise for the petitioner to take recourse to law.

18.Thus, having regard to the facts and circumstances of the case and taking note of the submissions made by the learned counsel for the petitioner and also in the light of the settled legal principles, to secure the ends of justice, this Court directs the respondents 1 and 2 to publish the selection list with regard to notification dated **21.07.2004,*** within a period of one month from the date of receipt of a copy of this judgment. If it is satisfactory to all concerned, then, there can be no impediment for the respondents 1 and 2 to proceed further as per law. Otherwise, the alternative course is open to the aggrieved parties to challenge the same in due process of law.

19.This intra-court appeal is disposed of as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-ix)

DT. 09/2/2018

Amended as per order dated 20.3.2018
in W.A.No.2192/2011

Sd/-

Assistant Registrar(CS-IX)

dt. 22.3.2018

//True Copy//

Sub Assistant Registrar

rk

To

1.The Secretary, Selection Committee
for Recruitment
to the post of Section Officer,
The Tamil Nadu
Dr. Ambedkar Law University,
No.5, Greenways Road,
Chennai - 600 028.

To be substituted to the
order already despatched
on 12.02.2018

2.The Registrar, The Tamil Nadu
Dr. Ambedkar Law University,
No.5 Greenways Road,
Chennai - 600 028.

+1cc to Mr.R.SASEETHARAN, Advocate, S.R.No. 88366

W.A.No.2192 of 2011

AD(CO)
TR(09/02/2018)
EU 22.3.2018



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