

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4602 of 2014

1.P.Rajarajan

2.P.Gokulvanan

... Petitioners

Vs

1.The Secretary to Government,
Social Welfare and Disabled Persons
Welfare Department,
Secretariat, Fort St. George, Chennai.

2.The State Commissioner,
The State Commission for Disabled Persons,
Training Complex,
Jawaharlal Nehru Inner Ring Road,
K.K.Nagar, Chennai - 78.

3.The Assistant Director,
District Employment Office,
Thiruppur District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the petitioners under the disabled category as per section 2 (i) (vi) of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act 2005 and to provide the petitioners the opportunity of employment under disabled category.

For Petitioner : Mr.S.Arokiamaniraj

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

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O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to consider the petitioners under the Disabled category as per section 2 (i) (vi) of the Persons with Disabilities (Equal opportunities,

Protection of Rights and Full Participation) Act 2005 and to provide the petitioners the opportunity of employment under the Disabled category.

2.The learned counsel appearing for the writ petitioners made a submission that the writ petitioners are differently abled persons and they are assessed mentally retarded to the extent of 60% to 70% respectively. The learned counsel further submits that the Employment Officer has given a reply by stating that the mentally retarded candidates are not eligible for public employment. Except this communication sent under the Right to Information Act, there is no material to show that the writ petitioners have properly submitted the applications for recruitment to any one of the post in order to participate in any process of selection. There are suitable posts for certain categories of differently abled persons and whenever the notifications are issued by the State/Union in this regard, the petitioners are at liberty to submit the application for participating in the open competitive process. They can even apply under the quota for differently abled persons, and without even participating in the competitive process, no prayer as such can be sought for in this writ petition for appointment.

3.Appointment can never be claimed as a matter of right. All appointments to the public post are to be undertaken only under the constitutional scheme by following the recruitment rules in force. Reservations are to be provided under the recruitment rules and the candidates eligible under the particular category shall apply to the post under the category notified by the State. This Court neither issue any direction straight away to consider the case of the writ petitioners for appointment, nor issue any such direction in the nature of recommendation. It is left open to the writ petitioners to participate in the open competitive process and secure employment in accordance with the recruitment rules in force.

4.Thus, the prayer as such sought for neither be granted nor the writ petitioners shall be construed as aggrieved persons in the eye of law. The writ petitioners have to establish atleast the Semblance of Right so as to consider the grounds raised in this writ petition. Establishment of right is pre condition for entertaining the writ petition under Article 226 of the Constitution of India. This being the minimum requirement which is to be considered while at the time of entertaining the writ petition, the writ petitioners in this writ petition have not established any legal right so as to issue any such direction as such sought for in this writ petition.

5. Accordingly, the writ petition stands dismissed.
However, there is no order as to costs.

-sd/-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Secretary to Government,
Social Welfare and Disabled Persons
Welfare Department,
Secretariat, Fort St. George, Chennai.

2. The State Commissioner,
The State Commission for Disabled Persons,
Training Complex,
Jawaharlal Nehru Inner Ring Road,
K.K.Nagar, Chennai - 78.

3. The Assistant Director,
District Employment Office,
Thiruppur District.

+1 cc to MR.S.AROKIA MANIRAJ Advocate SR.NO. 72437

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RD 13/11/2017

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