

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.04.2017
Delivered on : 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.11376 of 2014 and
M.P.Nos.1 and 2 of 2014

1.K.Manoharan
2.V.Porkody

...Petitioners

vs.

1. The Union of India,
Rep. by the Chief Secretary to
Government of Puducherry,
Puducherry.
2. The Secretary to Government (Education)
Chief Secretariat,
Government of Pondicherry,
Pondicherry.
3. The Director of School Education.
Government of Pondicherry,
Pondicherry.
4. The Central Administrative Tribunal,
Rep. by its Registrar,
Madras

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent relating to the order dated 25.03.2014 passed in O.A.No.217 of 2012 and quash the same in so far as it denies the petitioners appointment to the post of School Librarian and consequently direct respondents 1 to 3 to appoint the petitioners as per the petitioners concerned as School Librarian with effect from 22.11.2010 with seniority arrears of salary and all other attendant benefits.

For Petitioners: Ms. Anna Mathew

For Respondents: R. Syed Mustafa
Special Govt. Pleader (P) for R1 to R3
R4 Tribunal

O R D E R
K.K. SASIDHARAN, J.

This writ petition is directed against the order dated 25 March, 2014, in O.A.No.217 of 2012, whereby and where under, while directing the Government of Puducherry, to offer appointment to the applicants 1 and 2 in the original application, denied appointment to the petitioners on the ground that there were no vacancies to accommodate the petitioners, who were applicants 4 and 3, belonging to under Scheduled Caste and Most Backward Community.

Background :

2. The petitioners along with two other applicants filed Original Application in O.A.No.217 of 2012 before the Madras Bench of the Central Administrative Tribunal, directing the respondents 1 to 3 to appoint them in the post of Trainee School Librarian, from the date on which selected candidates were appointed.

3. The petitioners and the other two applicants in the Original Application submitted applications for appointment to the post of Trainee School Librarian, pursuant to the Notification, dated 18 December, 2009. During the pendency of the selection process, Recruitment Rules were amended. The new Recruitment Rules came into force on 19 January 2010. The respondents, therefore, confined the selection to 21 vacancies, which existed prior to the amendment to the Recruitment Rules. The petitioners and the other two applicants were placed in the waiting list.

4. When a challenge was made to the selection, the Tribunal found that the calculation of vacancies was not correct. According to the Tribunal, there were eight more vacancies existed prior to the cut-off date. The Tribunal found that out of the eight vacancies, six were in the Unreserved Category and one each in Other Backward Community (OBC) and Most Backward Community (MBC). The petitioners were not accommodated, as there were no vacancies in their category. The Tribunal directed the Government of Puducherry to appoint the other two candidates. The petitioners have come up with this writ petition with a contention that the Tribunal erred in fixing the vacancies at 8 and distributing the post among Unreserved Category, OBC and

MBC, without considering the material fact that roster point was neither correctly indicated and followed by the Union Territory of Puducherry.

Submissions:

5. The learned counsel for the petitioners contended that the Tribunal proceeded on the basis that there were no vacancies in MBC and SC category to accommodate the petitioners. According to the learned counsel, the respondents were not correct in absorbing a staff of the Bal Bhavan against the Scheduled Caste backlog vacancy. The learned counsel contended that there were 19 posts reserved for Scheduled Caste category. The Government have filled up only 18 vacancies and as such, there was one vacancy. Similarly, vacancy in MBC has also made out from the records. According to the learned counsel, the Tribunal failed to take into account the roster position and as such, the impugned order denying appointments to the petitioners is liable to be quashed.

6. The learned Government Pleader submitted that the Tribunal was correct in its finding with regard to the vacancies. According to the learned Government Pleader, irrelevant materials are produced before this Court to review the order passed by the Tribunal. It was contended that none of the materials now relied on were produced before the Tribunal and as such, it would not be possible to take up a contention while exercising judicial review of the order passed by the Tribunal.

Discussion:

7. The Government of Puducherry, issued a notification, dated 18 December, 2009 calling for applications for appointment to the post of Trainee School Librarian. The Government notified 30 vacancies, of which 15 were General Category, 6 MBC, 4 OBC and 5 SC. The petitioners submitted applications in accordance with the notification. The Government of Puducherry, in the meantime, amended the Recruitment Rules for the post of Trainee School Librarian. The Notification was gazetted on 19 January, 2010. The Government, therefore, calculated the total vacancies as on the date of notification of the amended Recruitment Rules. Accordingly, the Government appointed 21 candidates. The names of the petitioners and 6 other candidates were included in the waiting list.

8. The petitioners along with two others filed Original Application before the Tribunal in O.A.No.217 of 2012 challenging the selection. Before the Tribunal, the petitioners contended that the Government was not correct in restricting the appointment to 21 candidates, notwithstanding the 30 vacancies notified earlier.

9. The Tribunal directed the Government of Puducherry to produce the details of vacancies, which existed prior to the amendment of Recruitment Rules. The Tribunal, on a perusal of the documents produced by the Government of Puducherry arrived at a finding that in addition to 21 posts, there were at least 8 more vacancies existed prior to the cut off date. The Tribunal has given a factual finding that out of 8 posts, 6 posts were in the unreserved category and one each in OBC and MBC category. The other two applicants were accommodated. The petitioners were not given appointment. The petitioners have now produced materials in support of their contention that there were sufficient vacancies to accommodate the Scheduled Caste and Most Backward candidates. None of these documents were produced before the Tribunal.

10. This Court is exercising the judicial review in respect of the order passed by the Central Administrative Tribunal. There is no question of conducting a roving enquiry by receiving additional materials for the purpose of testing the order passed by the Tribunal.

11. The Tribunal, on the basis of the records arrived at a finding with regard to the actual vacancies and the Reserved Category. The petitioners now wanted this Court to consider the roster point for each category right from the beginning to arrive at a finding with regard to the vacancies in the Reserved Category.

12. We are not in a position to entertain the plea that this Court has to consider the roster point from the beginning and re-do the entire exercise. In case there are documents to support their case, the petitioners ought to have produced the same before the Central Administrative Tribunal. The writ petition cannot be treated as an Original Application to consider the matter afresh. This Court is concerned only with the legality and correctness of the order passed by the Tribunal. The judicial review is not in the nature of first appeal entitling the parties to produce materials to take a different view. We are therefore of the view that absolutely, there is no merit in the contention taken by the petitioners.

13. In the up shot, we dismiss the writ petition. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CCC)

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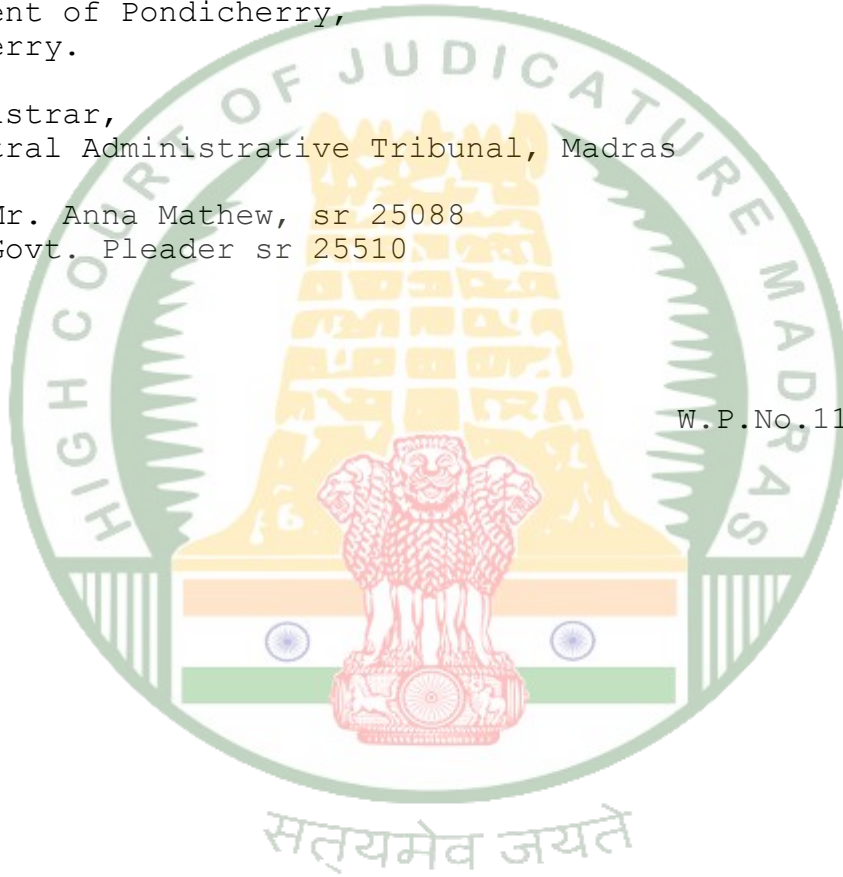
Sub-Assistant Registrar

To

- 1.The Chief Secretary
The Union of India,
Government of Puducherry, Puducherry.
 - 2.The Secretary to Government(Education)
Chief Secretariat,
Government of Pondicherry,Pondicherry.
 - 3.The Director of School Education.
Government of Pondicherry,
Pondicherry.
 - 4.The Registrar,
The Central Administrative Tribunal, Madras
- +1 CC to Mr. Anna Mathew, sr 25088
+1 CC to Govt. Pleader sr 25510

RK (CO)
sp/9/5

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