

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.23046 of 2014
and
M.P.Nos.1 and 2 of 2014
and
W.M.P.No.4327 of 2017

K.Anandharaj

.. Petitioner

Vs.

1.The Tamil Nadu Public Service Commission
rep. by its Secretary,
Chennai - 3.

2.The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy,
Chennai - 32.

3.The Secretary to Government,
Public Works Department,
Secretariat, Chennai - 9.

4.Sreenivasa Rao

5.The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai - 9.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records on the file of the first respondent herein in (1)the select list dated 27.07.2011 (2)Memo No.2384/OTD-B1/2007 dated 16.07.2013 issued by the first respondent inso far as allotment of the fourth respondent on his appointment to the post of Assistant Geologist to the Department of Geology and Mining and allotment of the petitioner on his appointment to the post of Assistant Geologist in the Public

Works Department and all other consequential proceedings and quash the same and to consequently direct the respondents herein to issue appropriate orders posting the petitioner as Assistant Geologist in the Geology and Mining Department in the place of the fourth respondent and to grant all consequential service and monetary benefits attached to the said post w.e.f. 12.09.2011.

For Petitioner .. Mr.M.Ravi

For Respondents.. Mr.M.Devendran for R1
Mr.A.Zakkir Hussain,
Govt. Advocate for R2, R3 and R5
R4 - No appearance

ORDER

The petitioner has approached this Court seeking the following relief:

to call for the records on the file of the first respondent herein in (1)the select list dated 27.07.2011 (2)Memo No.2384/OTD-B1/2007 dated 16.07.2013 issued by the first respondent inso far as allotment of the fourth respondent on his appointment to the post of Assistant Geologist to the Department of Geology and Mining and allotment of the petitioner on his appointment to the post of Assistant Geologist in the Public Works Department and all other consequential proceedings and quash the same and to consequently direct the respondents herein to issue appropriate orders posting the petitioner as Assistant Geologist in the Geology and Mining Department in the place of the fourth respondent and to grant all consequential service and monetary benefits attached to the said post w.e.f. 12.09.2011.

2.The case of the petitioner is that the petitioner belongs to Scheduled Caste community. In pursuance of the Advertisement/Notification No.229 dated 17.02.2010, the petitioner applied for recruitment to the post of Assistant Geologist. The petitioner, being fully qualified for appointment to the said post, was subjected to written and oral test and had come out successful by securing 196.5 marks and on the basis of his performance in the selection, he was selected and appointed as Assistant Geologist in the Ground Water Wing of Public Works Department.

3.While applying for the post, the candidates were asked to give their willingness in terms of Clause 7 of Notification dated 17.02.2010, as per which, the petitioner had given preference as stated in the affidavit, which is extracted below:

1.Code No.1863 - Assistant Geologist in Geology and Mining Department.

2.Code No.1924 - Assistant Geologist in Industries and Commerce Department.

3.Code No.1750 - Assistant Geologist in Ground Water Wing in Public Works Department.

4.The fourth respondent, who also participated along with the petitioner in the selection, had also been selected for appointment to the post and he had secured 162 marks, which was much less than the petitioner. However, he also belongs to Scheduled Caste community. Although the petitioner had secured much higher marks than the fourth respondent, instead of accommodating him in the Geology and Mining Department as per his option as a first choice, the fourth respondent had been accommodated in preference to the petitioner. In the said circumstances, the petitioner had represented on 10.09.2011 for re-allotment to the Department of Geology and Mining on the basis of the marks secured by him. However, notwithstanding the representation and the factual position of scoring higher marks than the fourth respondent, the appointment order was issued to the petitioner on 30.08.2011 appointing him as Assistant Geologist in the Ground Water Wing, Public Works Department.

5.While matter stood thus, there was no response from the competent authority as to why the fourth respondent who had secured much lesser marks had been accommodated as Assistant Geologist in Geology and Mining Department. On verification, the petitioner was informed that the fourth respondent belongs to Arunthathiyar community, wherein a special reservation has been provided for within the Scheduled Caste community. According to the petitioner, at the time when the vacancies arose and the Notification issued, there was no policy reservation available for Arunthathiyar community within the Scheduled Caste community and therefore, such special reservation cannot be applied to the fourth respondent for accommodating him in preference to the claim of the petitioner. In the said circumstances, the petitioner has approached this Court, challenging the selection dated 27.07.2011 and also the order of allotment to the fourth respondent to the post of Assistant Geologist in the Department of Geology and Mining and with the consequential reliefs.

6.Mr.M.Ravi, learned counsel appearing for the petitioner would contend that the vacancies, which was the subject matter of the Notification dated 07.12.2010, admittedly arose in 2007-

2008. The Government issued orders providing for special reservation vide G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department dated 27.05.2009. He would draw this Court's attention particularly to paragraphs 3 and 5 of the Government Order. In this Government Order, there is a direction that special reservation provided for Arunthathiyar requires an amendment to the Tamil Nadu State and Subordinate Service Rules and necessary action need to be taken in amending the Rules accordingly. In pursuance to the direction contained in G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department dated 27.05.2009, the Subordinate Service Rules came to be amended providing for inter alia reservation for Arunthathiyar as provided for in Schedule III in Item No.2 vide G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010. This Court's attention is drawn to the particular statement incorporated in the form of explanation which is extracted below:

"Explanation:- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the said date."

7.Learned counsel appearing for the petitioner would specifically emphasise the fact that the vacancies arising on and from 29th April 2009 alone shall be filled up as per Schedule III and admittedly the present vacancies arose in the year 2007-2008. Therefore, the accommodation of the fourth respondent in preference to the claim of the petitioner in the Department of Geology and Mining is without the sanction of law and cannot be sustained.

8.Upon notice, Mr.M.Devendran, learned counsel entered appearance on behalf of the first respondent and Mr.A.Zakir Hussain, learned Government Advocate entered appearance on behalf of respondents 2, 3 and 5 and the first respondent has filed counter affidavit.

9.In the counter affidavit, it is also admitted that the vacancies arose in the year 2007-08. However, at the time of Notification, G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department dated 27.05.2009 was already in place and therefore the direction contained in the said Government Order had been complied with by providing for special reservation for Arunthathiyar within the Scheduled Caste community. Since the Tamil Nadu Public Service Commission is governed by the orders passed by the Government, the same has been complied with in its letter and spirit. According to the counter, the date of

Notification alone should be reckoned for the purpose of application of Government Orders or Rules in force regardless of the date of orders.

10. At this, learned counsel appearing for the petitioner would contend that G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 is very clear that reservation as provided for in the consequential direction would apply only to the vacancies which arise after 29.04.2009. Therefore, he would submit that the present impugned action by the first respondent cannot stand the test of judicial scrutiny and therefore, the same is liable to be quashed.

11. Although, notice has been served on the fourth respondent and his name is printed in the cause list, there is no representation on his behalf and he is also not present.

12. This Court, upon consideration of the rival submissions of the learned counsels and upon perusing the materials and pleadings thereof, is of the considered view that the vacancies which were admittedly arose during the year 2007-08 are not required to be filled up by applying special reservation for Arunthathiyar within Scheduled Caste community since the rules were amended admittedly only vide G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 and the Rules clearly stipulate that the reservation shall be applied only to the vacancies which arise after 29.04.2009. In the face of such clear position, this Court does not find any hesitation in holding that the appointment of the fourth respondent in preference to the claim of the petitioner as Assistant Geologist in Geology and Mining Department is illegal and contrary to the Government Orders and beyond the contents of the Notification dated 17.02.2010. It is seen that both the petitioner and the fourth respondent belong to Scheduled Caste community and admittedly the petitioner has secured much higher marks than the fourth respondent. Moreover, the learned counsel for the first respondent is unable to show any other provision as to how the person with lower marks can be preferred against the persons with the higher marks when they belong to the same community. This Court is also conscious of the fact that Arunthathiyar enjoys the special reservation within the Scheduled Caste community but however such reservation can be applied only after 29.04.2009 and not for the vacancies which arose in 2007-08.

13. In the light of the above discussion and the narrative, this Court finds merit in the contention put forth by the learned counsel appearing for the petitioner. In the said circumstances, the impugned orders are set aside and respondents 1 to 3 are directed to accommodate the petitioner as Assistant

Geologist in Geology and Mining Department and grant him all attendant and consequential benefits. The competent authorities are also directed to expedite the possibility of accommodating the petitioner without disturbing the fourth respondent. In case, there is no such possibility, the above direction shall be complied with. The entire exercise shall be initiated and completed by the competent authorities within a period of two months from the date of receipt of a copy of this order.

14.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 3.

2.The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy,
Chennai - 32.

3.The Secretary to Government,
Public Works Department,
Secretariat, Chennai - 9.

4.The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai - 9.

+ 1 cc to Mr.M. Ravi, Advocate SR.56983
+ 1 cc to Mr.M. Devedran, Advocate Sr.56686

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CS-V
EU 7.09.17