

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram

**The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mr.Justice K.Ravichandrababu**

**W.P.No.13350 of 2017
and
W.M.P.Nos.24616 of 2017**

Tamilnadu Association for the Rights of All types of
Differently Abled and Caregivers – TARATDAC,
Registered No:292/2010,
Represented by its State Secretary S.Namburajan,
No.69, V.G.P. Road, Saidapet, Chennai – 600 015.

...Petitioner

Vs.

1. The Secretary to the Government,
Welfare of Differently Abled Persons Department,
State of Tamilnadu, Secretariat,
Fort St. George, Chennai – 600 009.
2. The State Commissioner of Disabled,
State of Tamilnadu,
Kamarajar Salai, Chennai – 600 005.

3. The Teachers Recruitment Board,
Rep. by its Chairman,
4th Floor, EVR Sampath Maligai, DPI Compound,
College Road, Chennai – 600 006.

...Respondents

Writ Petition , filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the notification issued by the third respondent in Advertisement No.03/2017 dated 09.05.2017 for the direct recruitment of Post Graduate Assistant / Physical Education Directors Grade – I in School Education and Other departments for the year 2016-2017 and quash the same and consequently direct the 3rd respondent to issue a fresh notification providing 4% reservation as per section 34 of The Rights Of Persons With Disabilities Act, 2016 framing new roster to that effect and also to remove the restriction imposed upon the persons with disabilities under the category such as OA (one arm), OL (one leg) and BL(both legs) suffering with 40% - 70% shall alone apply leaving out persons with 70 % - 100 % disabilities which is against the G.O.Ms.No.13, Welfare of Differently Abled Persons Department, dated 02.03.2016.

For Petitioner : Mr. K.C.Karl Marx
For Respondents : Mr. K.Venkataramani,
Additional Advocate General
assisted by T.N.Rajagopalan
Government Pleader (i/c)

ORDER

(Order of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Mr. K.C.Karl Marx, the learned counsel appearing for the petitioner and Mr. K.Venkataramani, the learned Additional Advocate General, assisted by T.N.Rajagopalan, the learned Government Pleader (i/c) appearing for the respondents.

2. The petitioner is the Tamil Nadu Association for the Rights of All Types of Differently Abled and Caregivers, a registered Association in the Tamil Nadu Cooperative Societies Registration Act.

3. In this Writ Petition, the petitioner challenges the notification issued by the third respondent for direct recruitment to the post of Post Graduate Assistant / Physical Education Directors Grade – I in School Education and Other Departments for the year 2016-2017, and to quash the same, and consequently, to direct the third respondent to issue fresh notification, providing 4% reservation, as per Section 34 of the Rights Of Persons With Disabilities Act, 2016 by framing new roster to that effect and also to remove the restriction imposed upon the persons with disabilities

under the category, such as OA (one arm), OL (one leg) and BL(both legs) suffering with 40% - 70% shall alone apply leaving out persons with 70 % - 100 % disabilities, which is against the G.O.Ms.No.13 of Welfare of Differently Abled Persons Department, dated 02.03.2016.

4. When the Writ Petition was entertained, the Bench, taking note of the petitioner's specific case that, appropriate Government does not have any power to specify the percentage of the disabilities, in other words, the issue is whether the Government has statutory power to specify different percentage of the disabilities for different persons, by order, dated 02.06.2017, passed a limited interim order to the effect that the Government shall proceed with processing of the applications received pursuant to the impugned employment notification, bearing Advertisement No.3 of 2017, dated 09.05.2017, but shall not make any appointments. Subsequently, the matter was heard on several dates, and when the case came up for hearing on 03.08.2017, the Bench directed the respondents 1 and 2 to take a definite stand, as to how, such percentage was arrived, for which purpose, the respondents 1 and 2 were directed to file counter affidavit. Accordingly, the first respondent have placed a counter affidavit before the Bench and the

Court has issued directions, in its order, dated 07.08.2017. The operative portion of the order is extracted as herein below :-

" Be it noted that the Government has constituted an Expert Committee as stipulated in Section 33(ii) of the Rights of Persons with Disabilities Act, 2016, vide G.O.Ms.No.10, Welfare of Differently Abled Persons (DAP 3.2) Department, dated 7.4.2017 and G.O.Ms.No.16, Welfare of Differently Abled Persons (DAP 3.2) Department, dated 12.5.2017. The Expert Committee has also held two meetings on 30.5.2017 and 3.8.2017 respectively with regard to identification of Group-A and Group-B posts for the newly added categories of disabilities. It is stated that the genuine grievances of the differently abled persons with regard to the suitability for different Group-A and Group-B posts shall be taken into consideration while issuing fresh orders under Section 34 of the Rights of Persons with Disabilities Act, 2016.

6. There are about 3,456 vacancies. Educational institutions cannot possibly function with such a large number of vacancies in teaching posts or for that matter, even non-teaching posts. In our view, keeping appointment of 3456 vacancies in abeyance would be

against the interest of students and, therefore, not be in public interest, since only 4% of the posts are reserved for the differently abled.

7. Pending categorization of posts and determination of suitability of differently abled persons with different degrees of disabilities in reserved posts, which would only be 4% of the total number of posts, i.e., approximately 140 posts out of 3456 posts advertised, the respondent authorities may fill up the posts of the "General" Category and posts reserved for categories other than the differently abled. The reserved posts shall not be filled up for the time being to avoid exclusion of persons with higher degrees of disabilities, who might on reconsideration be considered eligible.

8. In filling up the vacancies, the reservation roster, if any, shall be followed. Needless to mention that the filling up of the vacancies shall abide by the result of the writ petition and those differently abled persons whose appointment is deferred would be entitled to restoration of their seniority from the date on which others get their appointment."

5. Pursuant to the above direction, the Government has passed orders, vide G.O.(Ms) No.31 of Welfare of Differently Abled Persons (DAP.3.2) Department, (hereinafter, referred to G.O.(Ms)No.31, dated 28.08.2017. In the said Order, the Government has accepted the recommendation of the State Commissioner for the Differently Abled, who has identified the posts, which are suitable for the differently abled persons.

6. The learned counsel appearing for the petitioner would submit that the petitioner/Association is satisfied with the identification of the posts suitable for the differently abled persons, and requests that the respondents should be directed to complete the selection process at an early date.

7. Pursuant to the order, dated 07.08.2017, approximately, 140 posts have been kept un-filled, for accommodating persons with different degrees of disability under reservation category.

8. The learned Additional Advocate General for the respondents would submit that, since the Government has passed orders, vide G.O(Ms.)No.31 dated 28.08.2017, the respondents will complete the

selection process in respect of the posts, which have been kept unfilled within the shortest time. Since the Government has now identified suitable posts for the differently abled persons, and issued G.O(Ms.)No.31, dated 28.08.2017, it goes without saying that, fresh notification for filling up the subject posts should be issued within a period of one week from the date of receipt of a copy of this order. Such notification will be issued and the respondents will endeavour to complete the entire selection process at the earliest.

9. In the light of the above, this Writ Petition is disposed of, by directing the respondents to issue fresh notification for filling up the reservation category of posts, and endeavour to complete the entire process within a period of three months from the date of receipt of a copy of this order. The learned counsel appearing for the petitioner, in the course of arguments, expressed another difficulty, in respect of the candidates, who have participated in the earlier selection and secured higher marks, but not accommodated on account of stay granted by the Court. If those, candidates are eligible to apply under the fresh notification, it is open to them to do so, and if there are any other individual grievance, then, that can agitated by

way of separate proceedings and the present order will not put an embargo on the those candidates/persons, to agitate their rights in the manner known to law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

**T.S.S.J., & K.R.C.B.J.,
15.12.2017**

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Index : yes/no

Note : Issue order copy on **19.12.2017**

To

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Welfare of Differently Abled Persons Department,
State of Tamilnadu, Secretariat,
Fort St. George, Chennai – 600 009.
2. The State Commissioner of Disabled,
State of Tamilnadu,
Kamarajar Salai, Chennai – 600 005.
3. The Teachers Recruitment Board,
Rep. by its Chairman,
4th Floor, EVR Sampath Maligai, DPI Compound,
College Road, Chennai

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