IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.3.2017

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.19041 of 2015
& M.P.No.1 of 2015

M.Vijaya ... Petitioner

Vs

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

2. The Registrar General, High Court,
   Madras.

3. The Secretary,
   Home (Courts) Department,
   Chennai-9. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to forthwith consider the claim of the petitioner on the basis of the merit ranking and that of the total marks of 249.75 obtained by her in any one of the unfilled vacant post of Civil Judge in any of the categories viz. Blind/Deaf/Ortho earmarked for under the Physically Handicapped category as per Statutory Rules and to also satisfy the quota intended for the physically handicapped pursuant to the Notification No.15/2014 dated 26.8.2014.

For Petitioners : Mr.L.Chandrakumar

For Respondent-1 : Ms.C.N.G.Niraimathi

For Respondent-2 : Mr.V.Ayyadurai,
Additional Advocate General

For Respondent-3 : Mr.P.S.Shivashanmugasundaram,
Special Government Pleader

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ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

This writ petition is instituted seeking a Writ of Mandamus by directing the respondents to forthwith consider the claim of the petitioner for appointment against one of the vacant posts of Civil Judge (Junior Division) against the vacancies meant to be filled in by candidates belonging to the challenged categories.

2. The case of the petitioner is that she hails from backward class community and she is an orthopaedically challenged person with 55% disability. She possesses bachelor of law degree and has responded to Notification No.15/2014 dated 26.8.2014. She appeared for the selection and ultimately, ended up securing 249.75 marks including the marks secured at the viva voce exam. The grievance of the writ petitioner is that one of the vacancies, which ought to have been filled with backward class candidates, should have been allocated for the orthopaedically challenged category and the writ petitioner should have been fitted in against the said slot.

3. Pursuant to the Parliamentary Enactment called the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, 3% of vacancies are required to be set apart to be filled in with persons having visual challenge, hearing impairment and orthopaedic challenge at the rate of 1% each. If candidates belonging to one of these categories are not available, such vacancies can be interchanged and filled up with persons from other variety of challenges. The vacancies earmarked to be filled in by challenged category personnel, not being a vertical reservation, but, is only horizontal reservation, it cuts across all the social segments such as open category, backward class category, most backward class category, scheduled caste and scheduled tribes.

4. The Public Service Commission, in paragraph 5 of the counter filed by it, has categorically pointed out that the candidature of the petitioner was considered under BC (Women) category and also under BC (General) category. She was also considered under Open Category/General Turn (General) (meant for both the sexes) and General Turn (Women). The last selected General Turn (General) candidate secured 289 marks. Similarly, the last General Turn (Women) candidate secured 276.25. The last selected BC (General) candidate secured 266 marks while the last selected BC (Women) candidate secured 257 marks, which are all more than 249.75 marks secured by the writ petitioner and hence, she did not stand a chance for selection and appointment as a Civil Judge (Junior Division).

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5. Therefore, there is no merit in the claim made by the writ petitioner for grant of relief as prayed for.

6. However, one post reserved for visually challenged was the subject matter of consideration before the Supreme Court in S.L.P.No.17223 of 2015 filed by one Mr.V.Surendra Mohan. In case the said special leave petition gets dismissed, the counter affidavit of the Public Service Commission, in paragraph 12, categorically pointed out that it is the writ petitioner - M.Vijaya, belonging to BC (OBCM) (W)(Ortho) category will be considered for appointment. The Public Service Commission would enter a further caveat by submitting that before the said special leave petition gets dismissed, no next batch of selection should be finalised for recruitment as Civil Judges (Junior Division). Once the next batch of selection gets finalised, the selections made in pursuance of Notification No.15/2014 dated 26.8.2014 lapse and then, the writ petitioner herein cannot be considered for appointment.

7. While taking note of the above caveat entered by the learned counsel on behalf of the Public Service Commission, we need to observe that the Public Service Commission will get regulated in the matter of filling up the vacancy as per the directions that might be issued by the Supreme Court in the above mentioned special leave petition. In that special leave petition, if the Supreme Court were to give a direction that the vacancy must be filled up with the next most meritorious candidate, the Public Service Commission, being bound by the principle enshrined behind Article 141 of The Constitution of India, has to give effect to such an order. But, not otherwise, if the next batch of selections gets finalised in the meantime.

8. With this observation, the present writ petition stands dismissed, however, making it clear that this decision will have no direct or indirect bearing upon the necessary follow up action that will have to be taken depending upon the result in S.L.P.No.17223 of 2015. No costs. Consequently, the above MP is also dismissed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

RS

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To

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

2.The Registrar General,
  High Court, Madras.

3.The Secretary,
  Home (Courts) Department,
  Chennai-9.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.16739
+1cc to the Government Pleader, S.R.No.17266

W.P.No.19041 of 2015
and
MP.No.1 of 2015

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