

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WRIT APPEAL NO.2054 OF 2010

1. The Chairman
Tamil Nadu Electricity Board
144 Anna Salai
Chennai 600 002.
 2. The Chief Engineer/Personnel
Tamil Nadu Electricity Board
144 Anna Salai
Chennai 600 002.
- ... Appellants
- Vs
- C. Kalidasan
- ... Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 8/12/2009 passed in W.P.No.17454 of 2009.

W.P. No 17454 of 2009:

Petition filed under Article 226 of the constitution of India praying this Hon'ble Court to issue a writ of Mandamus directing the respondents to implement the G.O. MS No 50 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.04.2009 and G.O. MS NO 61 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.05.2009 the respondent Board and give appointment to the petitioner as technical Assistant Electrical under S.C. Arunthathiyar quota.

For appellants ... Mrs.R.Varalakshmi

For respondent ... Mr.S.Packiaraj

J U D G M E N T
(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 08.12.2009 passed by this Court in W.P.No.17454 of 2009, the appellants / respondents have come up with the present writ appeal.

2. The writ petitioner has passed DEEE during 1994 and enrolled his name in the Employment Exchange, Thiruvannamalai District, vide No.10457/94, dated 6/10/1994. Thereafter, he has passed B.E.Electronics and Communication during 2001.

3. The appellants/Electricity Board had issued publication in the Tamil and English daily on 11/4/2007 and second publication on 15/9/2007 and 18/9/2007, respectively and thereafter, to the Employment Exchange, on 17/7/2008, calling upon the candidates for the post of Technical Assistant (Electrical).

4. In response to the letter issued by the Chief Engineer/Personnel, Chennai, the Special Commissioner and Commissioner, Employment and Training, Guindy, Chennai, had sent list of candidates, vide letter No.13282/08, dated 24/2/2009. In the instant case, the appellant Electricity Board had conducted selection by interview. The said interview for all 1100 posts were held between 6/7/2009 and 9/7/2009. In other words, the selection for the technical assistant had taken place much after the cut off date i.e., 29/4/2009, on which date special reservation for Arunthathiyar - sub caste within the Schedule Caste came into effect. The respondent/writ petitioner was called for interview and had participated in the selection process also. He was also informed that, the Government has issued G.O.Ms.No.50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29/4/2009, in exercise of powers conferred under sub-Section (3) of Section 1 of the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments of posts in the Services under the State within the Reservation for the Scheduled Castes) Act, 2009. The said Act has come to force with effect from 29/4/2009.

5. In the said order in G.O.Ms.No.50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29/4/2009, 3% of the seat is offered to the Arunthathiyars category. An illustration is also given as to how the roster point should be fixed. Out of 100 seats, 18 seats were reserved for Scheduled Castes in the following rotation:-

2	32	66
6	36	72
12	42	76
16	52	82
22	56	86
26	62	92

Among this, 18 seats were reserved for Scheduled Caste category. 3 posts shall be given to Arunthathiyars category, on horizontal reservation.

6. Thereafter, Government has issued G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department, dated 27/5/2009, modifying and revising 100 point roster prescribed in Schedule - III to the General Rules for the Tamil Nadu State and Subordinate Services into 200 point roster, providing reservation for the Backward Class Christians and the Backward Class Muslims at three and one-half percent respectively, within the 30% reservation available for Backward classes. The Government direct that even after filling up of the required appointments or posts reserved for Arunthathiyars on preferential basis, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the Scheduled Castes other than Arunthathiyars in the inter se merit among them. It was mandated by the Government that the roster prescribed in this order shall be made applicable in respect of those selection made on or after 29/4/2009. Even though specific reservation was given to Arunthathiyars caste, by way of G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD2) Department, dated 29/4/2009, benefit of selection was not given.

7. Aggrieved by the non-selection, the writ petitioner has preferred the writ petition in W.P.No.17454 of 2009 for implementation of G.O.Ms.No.50, dated 29/4/2009 and G.O.Ms.No.61, dated 29/5/2009 in the respondent Board for issuance of appointment to the petitioner as Technical Assistant (Electrical) under Scheduled Caste Arunthathiyar's quota.

8. The learned Single Judge on considering the factual aspects of the above matter, had given a positive direction to the appellants / respondents to consider the writ petitioner for appointment. The learned Single judge has elaborately dealt with the Tamil Nadu Act 4 of 2009 and has found that in case of internal reservation within a quota, it shall be implemented in the existing selection process also. The learned Single Judge

also relied on the judgment of the Hon'ble Supreme Court in UTTAR PRADESH PUBLIC SERVICE COMMISSION VS. SATYA NARAYAN SHEOHARE AND OTHERS [2009 (5) SCC 473] and has issued a positive direction.

9. Aggrieved over the judgment of the learned Single Judge, the present writ appeal has been preferred on the ground that the rule of reservation and preferential treatment would apply only to the vacancies which arose on and after 29/4/2009. Therefore, the direction issued by the learned Single Judge to implement the Government Order in G.O.Ms.No.50 and to appoint the petitioner is blatantly erroneous and illegal.

10. In the judgment of the Supreme Court, it is categorically held that the rule of reservation comes into effect from the date of notification. When the selection is under process, reservation shall be followed. In the instant case, 3% horizontal reservation within the quota meant for Schedule Caste is notified. Therefore, the selection process will not be hampered and cannot be held illegal.

11. It is also pertinent to note that similarly placed candidates underwent selection process to the Teacher Selection recruitment have also filed similar petitions, in W.P.Nos.12552, 10336 and 10337 of 2009. This Court had taken up all the cases together and passed an order, on 8/12/2009. The learned Single Judge, has dismissed the application of the rule of reservation and after the appointment date on 24/6/2009, had given a positive direction that the selection process were not over and the stand of the Government is also that the internal reservation giving preference to Arunthathiyar Community will also be counted in the existing selection, pursuant to G.O.Ms.No.145, dated 29/6/2009 and allowed the writ petitions by extending the benefit to the writ petitioners.

12. In so far as the present writ petitioner and the respondent Board is concerned, a direction was issued to enumerate the roster points and if the candidate is eligible, he should be appointed. Vide letter No.20635/K2/2009-4, dated 24/6/2009, a clarification has been sought for by the Tamil Nadu Public Service Commission, Chennai, as to whether special reservation to Arunthathiyars on preferential basis ordered by the Government Order in G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department dated 27/5/2009, shall be made applicable to the fresh Notification to be issued by the Commissioner on or after 29/4/2009.

13. The Government has directed that recruiting agencies shall apply the reservation on and after 24/9/2009, as per the revised roster, prescribed in G.O.Ms.No.65 dated

27/5/2009. Therefore, it is very clear that the Government has clear intention to implement G.O.Ms.No.65, dated 27/5/2009 on and after the appointed date viz., 29/4/2009. In the instant case, admittedly, the selection process had taken place only on 6/7/2009 and 9/7/2009. Therefore, it is very clear that in the existing selection process, the Government's intention to apply the reservation to Arunthathiyar's category shall be given effect to. The appellant Board should have applied the reservation as they are not going to expand the reservation of 15% meant for SCs' but are going to apply horizontal reservation within the quota. The writ petitioner / respondent in the writ appeal is a better qualified candidate from Arunthathiyar community. He appeared for the interview for the post of Technical Assistant (Electrical). In our considered opinion, when there is death of candidates, he should have been selected. But because of the non-adherence to the rule of reservation, he was deprived of his valuable employment when he was 34 years. Now, the writ petitioner is aged about 42 years. This Court is of the opinion that the order of the learned single Judge, directing the Electricity Department to consider him for appointment is correct and does not require any interference. Accordingly, a direction is issued to the Electricity Department to appoint the writ petitioner, by providing age relaxation. This exercise shall be completed within a period of three months from today.

14. In the result, the writ appeal is disposed of with the above modification to the order passed by the learned Single Judge. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai Chennai 2

2. The Chief Engineer/personnel
Tamil Nadu Electricity Board
144, Anna Salai Chennai 2

+1 CC to M/s. R. Varalakshmi, Advocate sr 11260

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