

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition No.6842 of 2013

S.Saibulla

... Petitioner

Vs.

The Secretary,
Tamil Nadu Public Service Commission,
Chennai 2

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondent to select the petitioner who had scored 223.50 marks being the cut off mark, for an appointment as Assistant in the combined sub-ordinate services examination 2009-2011 conducted by the respondent under Backward Class Muslim General quota since candidates those who had scored lesser marks are selected by the respondent under Backward Class Muslim General quota, (BCMG quota).

For Petitioner : Mr.S.Selvathirumurugan
For Respondent : Mr.M.Loganathan,
Standing Counsel

ORDER

Heard Mr.S.Selvathirumurugan, learned counsel appearing for the petitioners and Mr.M.Loganathan, learned Standing Counsel appearing for the respondent.

2.The case of the petitioner is that the Government of Tamil Nadu had called upon eligible candidates for direct recruitment to various posts in Combined Subordinate Services Examination. The competitive examination for filling up the posts consisted of written examination and oral test. The petitioner bearing Registration No.11302026 belongs to B.C.Muslim general category (BGMG) and had scored 223.50 marks. The cut off marks fixed for B.C.Muslim general category (BGMG) is 223.50 and cut off marks for BC Muslim Women (BCMW) is 214.50. According to the petitioner, in the tentative list of candidates selected provisionally for counselling, a Backward Class Muslim General (BCMG) category candidate with registration

No.16003266 who had scored 220.50 marks, was shown to have been provisionally selected for the post code 2205. Likewise, a Backward Class Muslim General category post, for the post code No.2206 who had scored 220.50 marks was selected and another Backward Class Muslim General category who has scored 222 marks was also shown as selected for the job code No.2226. Since the respondent had chosen to select candidates who had scored lesser marks than the marks fixed for BCMG category, the petitioner has filed this writ petition.

3.Learned Standing Counsel appearing for the respondent would submit that three phases of counselling was conducted to fill up 3475 vacancies. While selecting the candidates for admission for counselling, the candidates were picked up each communal category, the first from common posts, then for Assistant in Finance Department, Assistant in Law Department, Personal Clerk in Finance Department and Personal Clerk in Secretariat other than the Finance Department based on the qualifications possessed by the candidates. In the process, certain candidates who have obtained lesser marks than those who possessed common qualifications have been admitted though counselling by virtue of possessing specific qualifications prescribed for the posts than the common posts. He further submitted that in the concept of counselling, a candidate has full opportunity to select any of the posts for which he or she is eligible. Therefore, countering the arguments of the petitioner, he would submit that the BCM(G) candidate called for counselling under BCM(W) opted for the post of Assistant in Prison Department reserved for BCM(G). The cut off marks, qualification and date of birth for BCM(G), is 223.50 marks, degree and 10.05.1973. Though the petitioner had scored 223.50 marks and had acquired a degree, his date of birth was 09.05.1975 (ie.) after 10.05.1973 and hence, the petitioner was not short listed for counselling since the candidates senior to him was available to be considered against 1:1:5 ratio.

4.I am unable to agree with the reasoning of the respondent. It is not in dispute that the petitioner had scored 223.50 marks and that he belongs to Backward Class Muslim General BCM(G), the petitioner who had scored 223.50 marks ought to have been placed in the selection list for appointment under BCM(G) quota instead of selecting the candidates who had scored lesser marks under the said quota. The conduct of the respondent in conducting counselling in three phases and permitting the candidates who have scored lesser marks to select any post is not backed by any regulation. In the absence of any regulation, choosing a candidate who had scored lesser marks than that of the petitioner and by accommodating him in the earlier round of counselling would only raise doubt as to whether the respondent had adopted the aforesaid method to select candidates of their

choice. As the petitioner scored 223.50 marks, the respondent ought to have placed her name in the selection list for appointment under BCM(G) quota instead of selecting candidates who had scored lesser marks.

5. Under such circumstances, the petitioner is liable to succeed in the writ petition. Consequently, the respondent is directed to select the petitioner to the post of Assistant in the Combined Services of Examination 2009-2011 under BCM(G) quota. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

6. With the above observation, the writ petition stands allowed. No costs.

sd/
Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

sms

TO

The Secretary,
Tamil Nadu Public Services Commissioner,
Chennai-2.

+1cc to Mr.M.Loganathan, Advocate SR.No.1404.

Pre-delivery order made in
Writ Petition No.6842 of 2013

CNR(CO)
GN(07/02/2017)

सत्यमेव जयते

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