

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2016

Pronounced on : 02-02-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 5816 of 2015

and

M.P. Nos. 1, 2 and 3 of 2015

R.K. Jayanthi

.. Petitioner

Versus

1. The Chairman

Teachers Recruitment Board
4th Floor, E.V.K. Sampath Building
DPI Campus, College Road
Chennai - 600 006

2. The Director of School Education

DPI Campus, College Road
Chennai - 600 006

3. S. Deepa (14PG06290189)

C/o. Teachers Recruitment Board
4th Floor, E.V.K. Sampath Building
DPI Campus, College Road
Chennai - 600 006

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned provisional select list of candidates after certificate verification issued by the first respondent through its official website on 25.02.2015 and to quash the same in so far as the inclusion of name of the third respondent is concerned and consequently directing the respondents 1 and 2 to select and appoint the petitioner (14PG06300128) to the post of PG Assistant (Botany) in the vacancy earmarked for Scheduled Caste (Arunthathiyar) Women Category (SCAW).

For Petitioner : Mr. G. Sankaran

For Respondents : Mr. M.S. Ramesh
Additional Government Pleader
for RR1 and 2
Mrs. Suseela Giri for R3

ORDER

The petitioner seeks to quash the provisional select list of candidates published by the first respondent after completion of certificate verification in so far as it relates to the selection of the third respondent to the post of PG Assistant (Botany) in the vacancy earmarked for Scheduled Caste (Arunthathiyar) Women Category (SCAW) and to appoint the petitioner to the said post in Scheduled Caste (Arunthathiyar) Women Category (SCAW).

2. The petitioner would contend that she belong to Scheduled Caste Arunthathiyar (SCA) Community and in response to the notification dated 07.11.2014 issued by the first respondent for selection and appointment to various posts in Government Higher Secondary Schools, she has applied for being appointed to the post of the Post Graduate Assistant under the Scheduled Caste Arunthathiyar Community (Women) category. As per the notification dated 07.11.2014 of the first respondent, 95 vacancies have been earmarked for the post of Post Graduate Assistant (Botany). According to the petitioner, the selection includes written examination and certificate verification of short listed candidates to be called in the 1 : 1 ratio and marks secured in the written examination and certificate verification will form the basis for selection. Further, as per the prospectus, weightage marks will be awarded for employment exchange seniority. On the basis of her application, the petitioner was called for a written examination, which she had attended on 10.01.2015, the results of which were published by the first respondent on 06.02.2015 in which she has secured 103 marks. According to the petitioner, she has secured the highest marks under the Scheduled Caste Arunthathiyar Community and therefore her name was included in the provisional select list of candidates called for certificate verification under the Scheduled Caste Arunthathiyar Community in Serial No.103 thereof. By a communication dated 09.02.2015, the petitioner was further called upon to appear for a certificate verification on 17.02.2015 and her certificates were duly verified. At the time of such certificate verification, based on the period of waiting after registration of her name in the employment exchange, the petitioner was awarded 5 marks. Thus, totally, the petitioner has secured 108 (103 + 5) marks.

3. According to the petitioner, the third respondent has been included in the provisional list of candidates in Schedule Caste Women Category in Serial No.5 inasmuch as she submitted her application for appointment to the post of PG Assistant (Botany) only under the Schedule Caste Women Category. The name of the third respondent was also included in the shortlisted candidates under the Scheduled Caste Women Category. However, when the first respondent published the impugned select list on 25.02.2015, the name of the petitioner was not included under the Scheduled Caste Arunthathiyar Women Category, instead the name of the third respondent was included

in that category namely Scheduled Caste Arunthathiyar Women Category in Serial No.92. According to the petitioner, the third respondent never applied for the post of PG Assistant (Botany) under the Scheduled Caste Arunthathiyar Women Category and she applied for the post only under Scheduled Caste Women Category. However, while publishing the impugned select list, the name of the third respondent was included under the Scheduled Caste Arunthathiyar Women Category and she was selected to the post of PG Assistant (Botany). It is the vehement contention of the petitioner that she is the top scorer under the Scheduled Caste Arunthathiyar Women Category and therefore, she ought to have been selected to the post of PG Assistant (Botany). Thus, according to the petitioner, there was a serious irregularity committed by the respondents 1 and 2 while processing the application submitted by the third respondent for selection to the post of PG Assistant (Botany) and therefore, she has come forward with this writ petition questioning the selection of the third respondent to the post of PG Assistant (Botany) under the Scheduled Caste Arunthathiyar Women Category.

4. The learned counsel for the petitioner would contend that the petitioner submitted her application to the post of PG Assistant (Botany) and during the selection process, she secured 108 marks. As far as the third respondent is concerned, she has submitted her application only under the Scheduled Caste Women Category. However, when the impugned selection list was published, the name of the third respondent was included in Scheduled Caste Arunthathiyar Women Category under which category she never applied as could be evident from the call letter issued to the third respondent to attend the certificate verification. Therefore, according to the learned counsel for the petitioner, there cannot be any switching over of candidates before the certificate verification and after such verification. Therefore, the learned counsel would contend that inter-changing the community under which a candidate applied prior to certificate verification and thereafter is legally impermissible. In this context, the learned counsel for the petitioner relied on the decision of the Division Bench of this Court in (Dr. M. Vennila vs. Tamil Nadu Public Service Commission) 2006 (3) CTC 449 as well as the decision of the subsequent Division Bench of this Court in (Dr. A. Rajapandian vs. State of Tamil Nadu, represented by its Secretary and others) (2006 (5) CTC 529 to contend that when the third respondent has submitted her application for appointment to the post of PG Assistant (Botany) under Scheduled Caste Women category, her claim for appointment has to be considered only in that category. It is further stated that the third respondent ought to have been vigilant in submitting her application by indicating her communal status precisely and non-indicating the same in the application submitted by her will not enable her to get appointed to the post in some other community to which she has not even applied.

5. The learned Additional Government Pleader appearing for the respondents 1 and 2, by placing reliance on the counter affidavit of the first respondent, would contend that the first respondent published the notification dated 07.11.2014 inviting applications for filling up 1807 vacancies in various subjects, out of which 95 vacancies were earmarked for Botany subject. Out of the 95 vacancies, the vacancies earmarked for Schedule Caste and Schedule Caste (Arunthathiyar) category is as follows;-

SC (G)	SC (TM)	SC (W)	SC (W) T	SCA (G)	SCA (W) T	Total
8	2	3	1	2	1	17

6. According to the learned Additional Government Pleader, the posts to which the notification was issued will be filled up based on the marks secured in the written examination as well as weightage of marks awarded after certificate verification by duly following the communal reservation in force. The learned Additional Government Pleader would further state that it is true that the petitioner participated in the selection process under Scheduled Caste Arunthathiyar Women Category and secured a total of 108 marks. Whereas, the third respondent, who participated in the selection process under the Schedule Caste Women Category has secured 110 marks in the written examination and 3 marks as weightage, totalling 113 marks. Therefore, while the selection list was drawn, the cut off mark for the candidate in the Scheduled Caste Arunthathiyar Women Category was fixed as 113 marks based on communal turn whereas, the petitioner has secured only 108 marks which is lesser than the cut off marks. Therefore, the petitioner did not come within the purview of selection and she could not be selected for the post. As far as the third respondent is concerned, even though she submitted her application under the Scheduled Caste Women Category, during the course of certificate verification, it was found that she belongs to "Hindu Madiga" which is a Scheduled Caste Arunthathiyar Community. Therefore, the name of the third respondent was included in the Scheduled Caste Arunthathiyar Women Category in the general merit list. Further, as the third respondent secured the highest mark of 113, she was provisionally selected. It is further stated that as per Part-I and II (3A) of the Tamil Nadu State and Subordinate Service Rules, "Arunthathiyar" means and includes "Arunthathiya, Chakkiliyan, Madari, Madiga, Pagadai, Thotti and Adi Andhra. Therefore, as the third respondent comes within the Arunthathiyar community and also secured the highest marks, she was selected and appointed to the post of PG Assistant (Botany). The learned Additional Government Pleader would further contend that the respondents 1 and 2 have followed the communal rotation properly and the third respondent was selected not only on the basis of her communal status but also as per the marks secured by her in the written examination as well as in getting weightage marks in her favour. Merely because the petitioner indicated her communal status as Scheduled Caste community, instead of mentioning as SC Arunthathiyar Community, it will

not disentitle her to get appointed to the post under SC Arunthathaiyar Community. In such circumstance, the learned Additional Government Pleader prayed for dismissal of the writ petition.

7. When the writ petition was taken up for hearing on 04.03.2015, this Court granted an interim injunction restraining the respondents 1 and 2 from appointing the third respondent to the post of P.G. Assistant (Botany) under the Scheduled Caste Arunthathiyar Women category. Seeking to vacate the interim order, the third respondent, who was selected to the post of P.G. Assistant (Botany), has filed M.P. No.3 of 2015. By placing reliance on the averments in the affidavit filed in support of the vacate stay petition, the learned counsel for the third respondent would contend that the third respondent was called upon for certificate verification after she secured 110 marks in the written examination. When the third respondent appeared for certificate verification, it was found that she belonged to Scheduled Caste Arunthathiyar Community inasmuch as she belongs to Hindu Madiga, a community which is classified as a Scheduled Caste (Arunthathiyar) community. Therefore, the first respondent included the name of the third respondent in the Scheduled Caste (Arunthathiyar) community and selected her inasmuch as she has secured the highest marks. Even otherwise, if the third respondent is considered as Scheduled Caste women category, still she has got the highest marks and therefore, it cannot be said that only to deprive the opportunity to the petitioner, the third respondent was erroneously selected to the post under the Scheduled Caste (Arunthathiyar) community. There was no switch over from one category to another after the selection process, as alleged by the petitioner. During selection process, since it was noticed that the third respondent belonged to Scheduled Caste (Arunthathiyar) community, she was selected under that category even though it was mentioned in her application that she belonged to Scheduled Caste community. Therefore, the learned counsel for the third respondent prayed for dismissal of the writ petition.

8. I heard the learned counsel on either side and perused the materials placed on record. In response to the notification issued by the first respondent on 07.11.2014, the petitioner as well as the third respondent submitted their applications for selection and appointment to the post of P.G. Assistant (Botany). While the petitioner submitted her application indicating her communal status as Scheduled Caste (Arunthathiyar) Women community, the third respondent submitted her application indicating her communal status as Scheduled Caste Women community. Even as admitted by the petitioner, the selection process consists of written examination and weightage marks will also be awarded depending upon the period of wait after registration of the names in the employment exchange. It is also an admitted fact that the petitioner herein has secured 103 marks in the written examination and she was given 5 marks as weightage, totalling 108 marks. As far as the third

respondent is concerned, she has secured 110 marks in the written marks and by adding 3 marks awarded towards weightage, she secured 113 marks.

9. The grievance of the petitioner is that the third respondent, who submitted her application under the Scheduled Caste Women category cannot be subsequently appointed under the Scheduled Caste (Arunthathiyar) Women community, under which category she never submitted her application. It is the further grievance of the petitioner that even in the call letter sent to the third respondent, it was clearly indicated that she belonged to Scheduled Caste community and therefore, she cannot be subsequently included in the category earmarked for Scheduled Caste (Arunthathiyar) Women community and this had deprived her right to get appointed to the post. It is the further grievance of the petitioner that she is the top scorer in the Scheduled Caste (Arunthathiyar) Women community category and therefore, appointing the third respondent in the said category will adversely affect her prospects of getting appointed to the post.

10. It is seen from the records that for selection and appointment to the various posts called for by the first respondent, the marks secured by the candidates in the written examination as well as the weightage conferred to the candidate will be the basis and criteria for selection. In the present case, admittedly, the third respondent submitted her application indicating her community as Scheduled Caste community. The third respondent also secured 113 as over all marks. During the course of certificate verification, it came to light that the third respondent belonged to Hindu Madiga, an Arunthathiyar community as per the schedule of list given under the Tamil Nadu State and Subordinate Service Rules. Therefore, on noticing the communal status of the third respondent and on the basis of the over all marks secured by her, she was selected and appointed to the post of P.G. Assistant (Botany) under the Scheduled Caste (Arunthathiyar) Women community. The object and purpose of conducting a certificate verification is to verify and ensure that the qualification, age, communal status and other relevant qualification indicated in the application are in fact possessed by a candidate. For clarity, it could be said that if a candidate did not belong to a particular community, but still erroneously submitted his or her application by indicating that he belongs to such community, such application could be invalidated during the course of certificate verification de hors the marks secured or other qualifications possessed by such candidate. In the present case, it has happened in the reverse. The third respondent indicated her communal status in the application as Scheduled Caste community and only during the course of certificate verification it came to be known that she belonged to Hindu Madiga, a community comes within the classification of Scheduled Caste (Arunthathiyar) Women community. Therefore, the first respondent is justified in selecting and appointing

the petitioner to the post of P.G. Assistant (Botany) under the Scheduled Caste (Arunthathiyar) Women community, In the given facts and circumstances, the contention of the counsel for the petitioner that the first respondent is not justified in switching over the community of the third respondent cannot merit acceptance. In fact, it would not amount to switching over from one community to the other as contented by the petitioner. As it has unfolded during the course of certificate verification that the third respondent belonged to Scheduled Caste (Arunthathiyar) Women community, she was rightly given preference in appointment to the post that too on the basis of the over all marks secured by her.

11. The learned counsel appearing for the petitioner placed reliance on the Division Bench decision in (Dr. M. Vennila vs. Tamil Nadu Public Service Commission) 2006 (3) CTC 449 as well as the decision of the subsequent Division Bench of this Court in (Dr. A. Rajapandian vs. State of Tamil Nadu, represented by its Secretary and others) (2006 (5) CTC 529 in support of his case. In those cases, the petitioners therein failed and omitted to sign the application or left certain mandatory columns from being filled. In this case, the application submitted by the third respondent is proper in all respects. In fact, had the third respondent indicated her communal status as Scheduled Caste (Arunthathiyar) Women community, it would have been more beneficial to her in getting preference for appointment. The fact remains that the third respondent correctly filled up her application and she has not suppressed or omitted to fill up any material particulars. In those circumstances, the ratio laid down by the Division Benches of this Court in those decisions will not lend support to the case of the petitioner.

12. In this backdrop, it could be seen that even if the claim of the third respondent for appointment to the post is considered under the Scheduled Caste community, still, she can be selected and appointed to the post in such category, which is largely on the basis of the over all marks secured by her namely 110 marks in the written examination and 3 marks awarded for employment exchange weightage. On the contrary, the petitioner has secured only 103 marks in the written examination and 5 marks for employment exchange weightage and the over all marks secured by her is only 108 marks. Such marks secured by the petitioner is lesser than the cut off mark of 113 fixed for Scheduled Caste (Arunthathiyar) Women community category. Therefore, the consideration of the third respondent in the Scheduled Caste (Arunthathiyar) Women community category will not be in any way construed as a hindrance for the petitioner to get appointed to the post. Such consideration is largely on the basis of the over all marks secured by the third respondent and therefore, the relief sought for by the petitioner need not be considered.

13. For all the reasons mentioned supra, the writ petition fails and it is dismissed. No costs. Consequently, all the miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

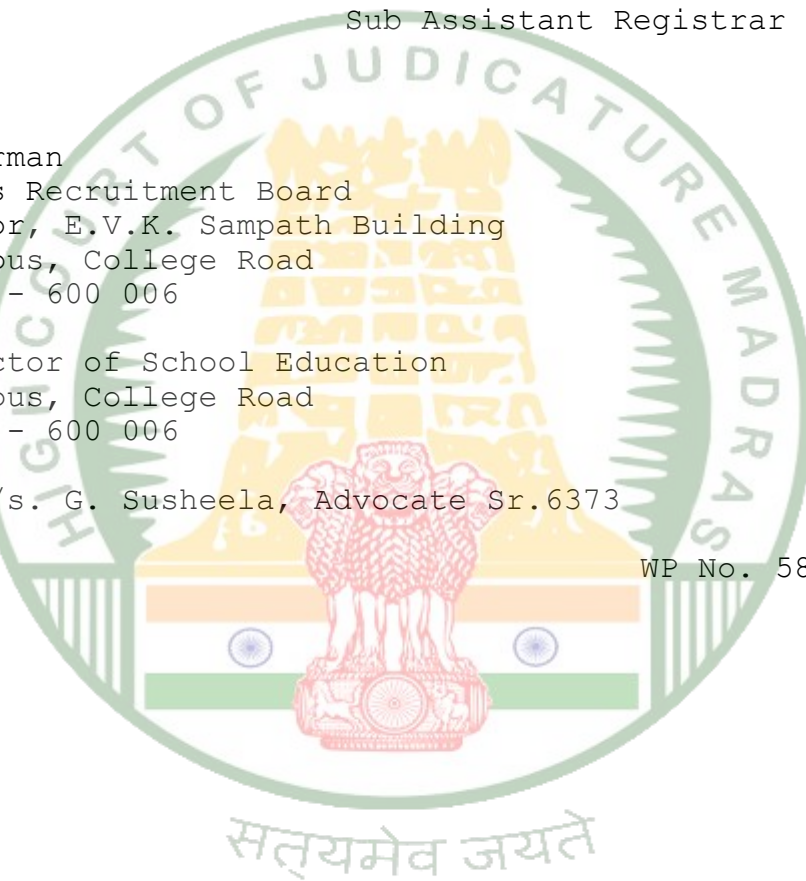
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+ 1 cc to M/s. G. Susheela, Advocate Sr.6373

WP No. 5816 of 2015

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