

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2017

Delivered on : 13.10.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.15381 & 21012 of 2013

&

M.P.Nos.1 & 1 of 2013

W.P.No.15381 of 2013:

T.Kalaiselvi

... Petitioner

Versus

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Labour and Employment Department,
Fort St.George,
Chennai-09.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-2.
- 3.The Principal,
Dr.Ambedkar Government Law College,
Chennai-104.

4.Muthu Jeyakumari

... Respondents

(R3 impleaded as per order dated 28.06.2013 in
M.P.2 of 2013 in W.P.No.15381 of 2013

R4 impleaded as per order dated 07.02.2017 in
M.P.3 of 2014 in W.P.No.15381 of 2013)

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the 2nd respondent to declare the final result of the provisions selection of the petitioner (Regn.No.00102110) to the post of Labour Officer in Tamil Nadu Labour Service, 2011-2012 for which oral test was held on 13.3.2013 having complied with all requirements and also consequently based on such final selection, direct the first respondent to appoint the petitioner to the post of Labour Officer.

For Petitioner : Mr.P.Chandrasekaran for
V.Ranganathan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

Ms.C.N.G.Niraimathi for R2 & R3
Mr.R.Gopinath - R4

W.P.No.21012 of 2013:

T.Kalaiselvi

... Petitioner

Versus

1.State of Tamil Nadu,
rep. By its Secretary - Labour & Employment,
Fort St.George, Chennai-600 009.

2.State of Tamil Nadu,
rep. by its Secretary - Law Department,
Fort St.George, Chennai-600 009.

3.Tamil Nadu Public Service Commission,
rep.by its Chairman,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

4.University of Madras,
rep. by Registrar,
Centenary Building, Chepauk,
Chennai-600 005.

5.Tamil Nadu Dr.Ambedkar Law University,
rep.by Registrar,
Poombozhil, R.A.Puram,
Chennai-600 028.

6.Director of Legal Studies,
Pursaiwakkam High Road,
Kilpauk, Chennai-10.

7.Principal,
Dr.Ambedkar Govt.Law College,
Chennai-600 104.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to show cause notice Ref.No.1769/OTD-C2/2012, dated 17.7.2013 issued by the 3rd respondent and quash the same and consequently direct the 3rd Respondent to issue selection order in order to

appoint the petitioner as Labour Officer under the 2nd respondent with all benefits on par with others selected through the notification 2011-12 No.35/2012, dated 7.9.2012.

For Petitioner : Mr.N.G.R.Prasad for
M/s.Row & Reddy

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader
for R1, R2, R5 to R7
Ms.C.N.G.Niraimathi,
Senior Counsel for R3
Mr.R.Gopinath - R4

COMMON ORDER

The present writ petitions have been filed, seeking for the following reliefs:

W.P.No.15381 of 2013

"To issue Writ of Mandamus, to direct the 2nd respondent to declare the final result of the provisions selection of the petitioner (Ren.No.00102110) to the post of Labour Officer in Tamil Nadu Labour Service, 2011-2012 for which oral test was held on 13.3.2013 having complied with all requirements and also consequently based on such final selection, direct the first respondent to appoint the petitioner to the post of Labour Officer.

W.P.No.21012 of 2013:

" To issue Writ of Certiorarified Mandamus, to call for the records relating to show cause notice Ref.No.1769/OTD-C2/2012, dated 17.7.2013 issued by the 3rd respondent to issue selection order in order to appoint the petitioner as Labour Officer under the 2nd respondent with all benefits on par with others selected through the notification 2011-12 No.35/2012, dated 7.9.2012.

2. Since both the Writ Petitions have been filed by the same petitioner, raising common grounds of the issues, the same are taken up together for final disposal. For the sake of convenience, the parties as mentioned in W.P.No.21022 of 2013, will be referred to hereinafter.

3. The brief facts which led to the filing of the Writ Petitions are as follows:

3.1. The petitioner is a Law graduate having graduated from Madras Law College as it was known earlier and subsequently, renamed as Dr.Ambedkar Government Law College, 7th respondent herein. She had graduated from 7th respondent College after

successful completion of 5 year Law degree between 1993-98. According to the petitioner, she had studied up to Plus 2 in Tamil medium, which fact has not been disputed. According to her, she had pursued her legal education and written B.L.Degree examination only in Tamil medium.

3.2. The Tamil Nadu Public Service Commission (in short, 'TNPSC'), the third respondent herein had issued a Notification 35/2012 on 7.9.2012 for recruitment to the post of Labour Officer. Since the petitioner fulfilled the qualification prescribed as per the Notification, she had responded to the recruitment Notification through OnLine. She had also applied for consideration of her candidature against quota reserved for 'Persons Studied in Tamil Medium' (PSTM) as the Government of Tamil Nadu had earmarked 20% quota for offering public employment in the State of Tamil Nadu to the students who studied in Tamil medium.

3.3. In the selection pursuant to the said Notification, the petitioner had come out successful and finally she was called for oral test which was held on 13.3.2013. During the interview, the petitioner was directed to produce certain documents and the same was obliged by the petitioner. On 1.4.2013, the 3rd respondent/TNPSC published the results in Internet, announcing the selection of the candidates for appointment to the post of Labour Officer. However, the Registration number which was assigned to the petitioner was shown as 'withheld' in the Internet communication. Initially, the petitioner failed to understand as to why her selection has been withheld although she had submitted all required documents as directed by the 3rd respondent/TNPSC. Later, the petitioner came to know that there was some doubt about the Medium of instruction undergone by the petitioner as far as Law degree obtained by her. In this regard, the petitioner approached 7th respondent/Dr.Ambedkar Govt.Law College to issue a Certificate regarding her Medium of instructions. However, the 7th respondent declined to issue any certificate on the ground that there were no records available in the College in order to verify the claim of the petitioner regarding her Medium of instruction in the College. In the meanwhile, in 1997, the then Madras Law College was affiliated to Tamil Nadu Dr.Ambedkar Law University which was established in 1997 and the college was renamed as Dr.Ambedkar Govt. Law College. Since the 7th respondent college was not in a position to issue any certificate regarding the Medium of instruction undergone by the petitioner, she approached 4th respondent University for issuance of certificate, certifying her as a student of Tamil Medium in respect of her Law degree obtained by her from the 7th respondent College. She has also submitted her self-declaration to that effect on 8.4.2013. On the basis of self-declaration, the 4th respondent University had issued a Certificate stating that Medium of instruction undergone by the petitioner throughout her B.L.Degree course was, 'Tamil'. However, the 4th respondent/University had also made it clear by

a communication addressed to the 3rd respondent/TNPSC dated 15.5.2013 that the said Certificate was issued on the basis of self-declaration affidavit filed by the petitioner in person.

3.4. According to the petitioner, even after the Certificate issued by the 4th respondent/University that the petitioner had undergone the course in Tamil Medium, the 3rd respondent/TNPSC had not declared the final result in regard to the petitioner's selection, although she was provisionally selected pending verification of her claim against the quota reserved for PSTM. In the said circumstances, she approached this Court in W.P.No.15381 of 2013, seeking to issue a Writ of Mandamus to 3rd respondent/TNPSC to declare the final results of the selection. After the notice was ordered in the said Writ Petition, 3rd respondent/TNPSC issued a show cause notice dated 17.7.2013, calling for explanation from the petitioner as to why her provisional selection for appointment to the post of Labour Officer in the Tamil Nadu Labour Service 2011-12, should not be cancelled. Since the show cause notice issued during the pendency of the above said Writ Petition, the petitioner was constrained to challenge the said notice by way of another writ petition in W.P.No.21012 of 2013.

3.5. According to the petitioner, the basis for the show cause notice which was impugned in the above said Writ Petition, was that 6th and 7th respondents have stated that there was no Tamil Medium of instruction in 5 year Law Degree course during the time when the petitioner undertook her studies (i.e.) 1993-98. In these circumstances, the petitioner is before this Court, challenging the statement of the 6th and 7th respondents and the action initiated by the 3rd respondent/TNPSC on the basis of their statement.

4. Shri N.G.R.Prasad, learned counsel appearing for the petitioner (W.P.No.21012 of 2013) would vehemently contend that factually and actually, the petitioner had undergone 5 year B.L.Degree course in Tamil Medium and the fact of the matter was that she did write all the examinations in Tamil which fact cannot be disputed at all. According to the learned counsel, the petitioner herself had given declaration to the 4th respondent/University about her Medium of instruction and the University, being the competent authority, had rightly issued a certificate stating that the Medium of instruction undergone by the petitioner was 'Tamil'. Such being the case, mere assertion by respondents 6 and 7 on the basis of averments made in the affidavit filed on that behalf, the claim of the petitioner cannot be refuted since the petitioner had sworn to affidavit that she had undertaken the B.L.Degree in Tamil Medium.

5. According to the Director of Legal Studies/6th respondent herein, there was no Tamil Medium in 5 year B.L.Degree course in Dr.Ambedkar Govt.Law College during 1993-98 and only from the academic year 1997, there were separate classes for Tamil Medium

students in 5 year Law degree course. Therefore, the claim of the petitioner was not factually correct and according to him, no records were available for establishing of the fact whether the petitioner had undergone her course in Tamil Medium.

6. Since there appears to be disputed question of fact as to whether the Medium of instruction in Tamil was in vogue during the relevant time and if so, whether the petitioner had undergone 5 year B.L.Degree course in Tamil Medium, this Court directed appearance of 6th and 7th respondents in order to apprise this Court as to the factual position.

7. In response to the direction, 6th and 7th respondents have appeared and submitted that there was no Tamil Medium in 5 year Law degree course during 1993-97 and therefore, the claim of the petitioner was contrary to the fact. The 6th respondent had also filed an affidavit to that effect. However, this was strongly objected by the petitioner, more so by the learned counsel appearing for the petitioner, stating that 6th respondent wrote a letter dated 26.3.2013, which would show that there were separate Tamil Medium classes, which had been in vogue as early from the academic year 1973-74. The 6th respondent by said communication addressed to the Secretary, Department of Law, Government of Tamil Nadu, had stated that the Tamil Medium course was available till 2001-02 and thereafter, it was briefly stopped for some and again resumed thereafter.

8. Shri N.G.R.Prasad, learned counsel appearing for the petitioner, with all his tenacity would urge in the light of the letter written by the 6th respondent himself, that mere assertion on the basis of averments in the affidavit, cannot be a reliable factor for the purpose of forming any opinion against the petitioner's claim. The learned counsel would place heavy reliance on the Government Order dated 14.11.2006, i.e. G.O.Ms.No.280 Law (LS) Department, in which, there was a reference to 6th respondent's letter dated 31.8.2006 wherein, it was clearly mentioned that till academic 2001-02, there was a separate medium and separate classes for both 3 year and 5 year Law degree courses and number of students have studied in Tamil Medium courses. Therefore, he would submit that in the face of these communications, the present stand of the 6th respondent cannot be countenanced both in law and on facts.

9. The learned counsel for the petitioner would equal fervor place reliance on the observations and the findings of the learned Division Bench of this Court made in its judgment dated 18.4.2013 in W.P.No.25835 of 2012 which was filed as one of the documents in the typed set of papers. He would draw the attention of this Court to paragraphs 16 and 17 of the judgment, which are extracted below:

" 16. 16. The fourth respondent, namely, the Tamil Nadu Dr.Ambedkar Law University categorically stated in Para 5 of its counter as hereunder:

"5.The contents in G.O.Ms.No.280, Law (LS) Department, dated 14.11.2006 reveal instructions of Law through Tamil Medium up to 2001-2002 and revival of the same from the year 2006-2007 at Dr.Ambedkar Government Law College, Chennai. The Government of Tamil Nadu vide Government Order Ms.No.1492, Education Department, dated 30.08.1978 (submitted in annexure) extended the scheme to facilitate the students get instruction in Tamil Medium at Government Law College, Madurai also. The G.O.Ms.No.280, Law (LS) Department, dated 14.11.2006 (submitted in annexure) has been providing incentive to the students joining the course. The Scheme devised by the Government has been implemented through the Director of Legal Studies. The University is not in receipt of any records pertaining to us."

In the counter affidavit, it is also stated by the fourth respondent that the University does not issue any certificate indicating the medium of instruction to any candidate and the said submission substantiates the contention of the third respondent to the effect that she is not possessing any certificate to show that she had underwent B.L. Degree course in Tamil Language in Madurai Law College.

17. The learned counsel for the petitioner placed reliance on the information furnished to the queries made by the petitioner under the Right to Information Act and as per the reply given by the Public Information Officer and the Director of Legal Studies dated 25.03.2013, there is no Tamil medium in 5 years B.L. Degree course in Madurai Law College. As we have already pointed out that there is a Government Order even as early as in the year 1978 and thereafter in the year 2006 showing that there was Tamil Medium class in 5 years B.L. Degree course in Madurai Law College. The Public Information Officer and the Director of Legal Studies may not aware about the said Government Orders and the said Government Orders are very much in operation till date. It is also relevant to note that the perusal of the information furnished by the Public Information Officer and the Director of Legal studies dated 25.03.2013 reveals that as per question/information No.2, it is stated that in 5 years B.L. Degree course from 1986-87 to 1994-95, separate classes were conducted for Tamil medium and for question/information No.4, it is stated

that in the University examinations, the students can write either in Tamil or English Language. Therefore, we have no hesitation to hold that the information furnished by The Public Information Officer and Director of Legal Studies cannot be stated to be a correct information and as such, it is futile to contend that there is no Tamil medium in 5 years B.L. Degree Course in Madurai Law College."

10. The learned Division Bench had dealt with similar assertions made by 6th respondent herein, which discountenanced the same on the basis of the Government Orders issued as early as on 30.08.1979 and 14.11.2006 in G.O.Ms.No.1492 Education Department and G.O.Ms.No.280 Law (LS) Department respectively. He would therefore, urge this Court to follow the observations made by the learned Division Bench and brush aside the so-called assertion made by the 6th respondent. He would further place reliance on the decision of the learned single Judge of this Court rendered in W.P.(MD.)No.14452 of 2014 wherein, the learned single Judge has dealt with the same Government Orders issued on 30.08.1978 and 14.11.2006 and followed the observations of the learned Division Bench made in its judgment in W.P.No.25835 of 2012 in paragraphs 16 and 17 which were extracted above.

11. The learned counsel would therefore submit that in the light of these unimpeachable documents and the letters so communicated, it cannot be gainsaid that there was no Medium of instruction in Tamil at the time when the petitioner had undergone the course, i.e. during the academic years 1993-1998.

12. Per contra, learned counsel appearing for the respondents would submit that the claim of the petitioner was not unequivocally established in view of the dispute whether there was Tamil Medium course in vogue during 1993-1998 for 5 year Law Degree course and whether the petitioner had undergone the course in Tamil Medium. In the face of looming uncertainty, whether the claim of the petitioner for employment under PSTM quota can be considered favourably. However, it is pertinent to note that in spite of sufficient time granted to the respondents, none of the respondents was able to produce any clinching material to disprove the claim of the petitioner except making assertions on the basis of averments in the writ petition. According to the Special Government Pleader, the answer sheets written by the petitioner during the course of study, were also not available and therefore, they were unable to conclusively establish the factum of the petitioner not having undergone Tamil Medium course.

13. It is relevant to point out here that such assertion made earlier by the authorities before the learned Division Bench and the learned single Judge of this Court as quoted

above, had been disapproved and discountenanced in the face of the Government Orders providing for Tamil Medium course in legal education. Since no clinching materials have been produced before this Court to disprove and to rebut the assertion of the petitioner and self-declaration made on oath, this Court is inclined to accept the version of the petitioner with reference to the above said G.Os., and also the observations made by the learned single Judge and learned Division Bench in W.P.(MD.) No.14452 of 2014 and W.P.No.25835 of 2012. In any event, the respondents were not able to disprove atleast the claim of the petitioner that she had written her examination in 5 year Law Degree course in Tamil since the burden of proof is shifted on the respondents once a categoric assertion has been made on behalf of the petitioner. If such burden is not discharged to the satisfaction of the Court, the benefit of doubt will always go to the petitioner for grant of relief.

14. In the instant case, de hors whether there was Tamil Medium course available during the subject period or not, the fact of the matter is that the petitioner admittedly had studied only in Tamil Medium and also claimed to have written examination of 5 year Law degree in Tamil. Such a claim having been not disputed unequivocally, this Court is more inclined to accept the claim of the petitioner.

15. In the light of the above discussion and narrative, this Court allow both the Writ Petitions. The impugned show cause notice in Ref.No.1769/OTD-C2/2012, dated 17.7.2013 is set aside. The 3rd respondent/TNPSC is directed to declare the final result of the provisional selection of the petitioner (Regn.No.00102110) to the post of Labour Officer and on such declaration, if the petitioner is selected, appoint her as Labour Officer in Tamil Nadu Labour Service 2011-2012 against quota reserved for PSTM with attendant benefits on the basis of her selection pursuant to the Notification 35/2012 dated 7.9.2012. This direction shall be complied with by the respondents within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Suk

To

- 1.The Secretary,
State of Tamil Nadu - Labour & Employment,
Fort St.George, Chennai-600 009.
- 2.The Secretary,
State of Tamil Nadu - Law Department,
Fort St.George, Chennai-600 009.
- 3.The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.
- 4.The Registrar,
University of Madras,
Centenary Building, Chepauk,
Chennai-600 005.
- 5.The Secretary,
Tamilnadu Public Service Commission,
Chennai 02.
- 6.The Principal,
Dr.Ambedkar Govt.Law College,
Chennai-600 104.
- 7.The Registrar,
Tamil Nadu Dr.Ambedkar Law University,
Poombozhil, R.A.Puram,
Chennai-600 028.
- 8.The Director of Legal Studies,
Pursaiwakkam High Road,
Kilpauk, Chennai-10.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.73769
+1cc to Mr.P.Chandrasekaran, Advocate, S.R.No.73654
+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.74143

W.P.Nos.15381 & 21012 of 2013

SSI (CO)
CA(09/11/2017)