



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON 23.11.2016
DATED : 27.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition (MD) No.633 of 2013 and
M.P.(MD)No.2 of 2013

M.Muthu Kumar

.. Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary to the Government,
Labour and Employment Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
VOC Nagar, Chennai.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records on the file of the second respondent pertaining to counseling process and consequent selection process to the posts included in Combined Subordinate Service Examination - I (2009-2011) for non-interview post pursuant to the call letter issued to the petitioner for counseling in the internet, to quash the same as illegal and further direct the second respondent to conduct fresh counseling based on the seniority as per the marks obtained by the petitioner and other candidates in the written examination.

For Petitioner : Mr.M.Jerin Mathew
for MR.P.Pethu Rajesh
For Respondents : Mr.K.Guru (for R1)
Addl. Government Pleader

Mr.K.K.Senthil (for R2)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records on the file of the second respondent pertaining to counseling process and consequent selection process to the posts included in Combined Subordinate Service Examination-I (2009-2011) for non-interview post pursuant to the call letter issued to the petitioner for counseling in the internet, to quash the same as illegal and to further direct the second respondent to conduct fresh counseling based on the



seniority as per the marks obtained by the petitioner and other candidates in the written examination.

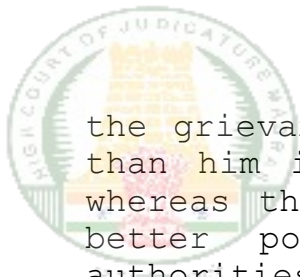
2. The brief facts of the case, insofar as they are relevant for the disposal of this writ petition, are as follows: Pursuant to advertisement issued by the second respondent inviting applications for filling up the posts included in Combined Subordinate Service Examination-I (Examination Service Code No.004), being Advertisement No.258, the second respondent issued another advertisement increasing the number of vacancies.

3. It is stated that the vacancies were classified into two categories, viz., interview post and non-interview post. It is the case of the petitioner that as per the notification, the mode of selection for the post of interview post is through written examination followed by interview and a candidate successful at both stages only will be selected for the said post. Qua the non-interview post, the marks scored in the written examination are sufficient for considering the candidature of an aspirant. It is further stated that the persons who competed for the interview post, but failed in the interview, are also eligible to compete for the non-interview post, based on the strength of the marks obtained by such candidates in the written examination.

4. It is averred that the petitioner successfully completed the written examination held on 30.7.2012 and pursuant to the same, he was also called for interview, but did not obtain the requisite marks for being selected to the interview post. However, based on the marks obtained by the petitioner in the written examination, he was declared a qualified person to participate in the counseling for non-interview post.

5. It is alleged that even though the petitioner is eligible to compete for the posts which come under General Turn (General), General Turn General - PSTM (Person studied in Tamil Medium), Backward Class General, Backward Class General - PSTM (Person studied in Tamil Medium), the second respondent failed to conduct the counseling based on rank wise seniority and arbitrarily directed the petitioner to exercise his option only under the category - Backward Class - PSTM and General Turn General - PSTM. Despite objection by the petitioner to the effect that in case he exercises his option as directed by the second respondent, he would lose an opportunity to get selected for better posts which come under General Turn General Category and Backward Class Category, it is alleged that the second respondent refused to pay heed to the same and directed the petitioner to compulsorily exercise the option under Backward Class - PSTM.

6. It is stated that consequent to exercise of option as aforesaid, the petitioner was selected for the post of Assistant in Rural Development and Panchayat Raj Development available in Tiruvannamalai District under Backward Class - PSTM category. It is



the grievance of the petitioner that persons who scored less marks than him in the written examination were placed in better posts, whereas the petitioner lost his valuable right to be selected for better post, in view of the compulsion by the respondent authorities.

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7. In such backdrop, the present writ petition is filed for the relief stated supra.

8. It is the contention of the learned counsel for the petitioner that the counseling process and the consequent selection process adopted by the second respondent is illegal and arbitrary and violates the constitutional rights guaranteed under Articles 14 and 21 of the Constitution of India.

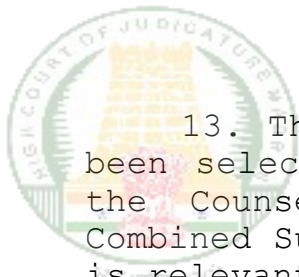
9. It is further contended that the second respondent ought to have followed the seniority as per the marks obtained by the candidates in the written examination for calling them for counseling and by exercising wrong counseling process, the petitioner was forced to exercise the option of Backward Class - PSTM alone and by virtue of the same, the persons who scored low marks than the petitioner were appointed to better posts than the petitioner.

10. Per contra, the learned counsel appearing on behalf of the second respondent, placing reliance on the counter affidavit filed by the said respondent, submitted that the petitioner had scored 235.50 marks in the written examination, whereas the cut-off marks for General Turn (General) and General Turn - PSTM were 238.50 and 237 respectively and, therefore, his claim cannot be considered under the said categories.

11. I heard Mr.M.Jerin Mathew, learned counsel for the petitioner, Mr.K.Guru, learned Additional Government Pleader for the 1st respondent and Mr.K.K.Senthil, learned counsel for the 2nd respondent and perused the documents available on record.

12. It is beyond any cavil that the petitioner secured 235.50 marks out of 300 marks in the written examination. According to the second respondent the cut-off marks for admission to counseling to the non oral test posts included in Combined Subordinate Services Examination-I are as follows:

Total Marks	Qualificati on	DOB	Category		
238.50	Degree	30.06.1977	GT	General	----
237.00	Degree	04.05.1984	GT	General	TM (PSTM)
232.50	PG Degree	14.03.1984	BC (OBCM)	General	----
231.00	Degree	01.04.1979	BC (OBCM)	General	TM (PSTM)



13. The details of marks secured by the last candidate who has been selected provisionally in the respective communal category at the Counselling held for the Non-Interview Posts included in Combined Subordinate Services Examination-I 2009-2011, insofar as it is relevant, are as under:

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Assistant in the Industries and Commerce Department in the
Tamil Nadu Ministerial Service

Category	Marks	Qualification	DOB
GT General	235.50	Degree	09.04.1984
GT General PSTM	234.00	Degree	05.06.1987
BC (OBCM) General	214.50	Degree	06.05.1985
BC (OBCM) General PSTM	235.50	Degree	13.07.1986

Assistant in the Highways Department in the Tamil Nadu Ministerial
Service

Category	Marks	Qualification	DOB
GT General	237.00	Degree	11.05.1986
GT General PSTM	235.50	PG Degree	10.05.1969
BC (OBCM) General	235.50	Degree	10.05.1981
BC (OBCM) General PSTM	235.50	PG Degree	06.05.1985

14. A bare perusal of the above said particulars reveals that persons with 235.50, viz., the marks obtained by the petitioner, were also appointed to the post of Assistant in the Industries and Commerce Department in the Tamil Nadu Ministerial Service under "GT - General Category". Therefore, the petitioner's case could also have been considered for the same and it is not as if the petitioner should be considered only under Backward Class PSTM Category.

15. It is also evident from the records, more particularly, the communication of the Tamil Nadu Public Service Commission in Letter No.172/LCD-C1/2013, dated 18.11.2016, that the petitioner was eligible for the common degree posts, except other than specific degree posts. Even though the second respondent stated that the petitioner had given a declaration that he opted the post of Assistant in Rural Development and Panchayat Raj Department, Thiruvannamalai, it is the specific case of the petitioner that he was pressurized to exercise such option.



16. Be that as it may, it is not the case of the respondents that the petitioner was not qualified to be considered under General category. A perusal of the cut-off marks shows that the petitioner could have been selected under General Category too. The act of the second respondent in considering him only under reserved category, even though he had sufficient marks to be considered under the General category is contrary to the law laid down by the Hon'ble Supreme Court and this Court.

17. The Hon'ble Supreme Court in *Rajesh Kumar Daria v. Rajasthan Public Service Commission*, (2007) 8 SCC 785, held as under:

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the



vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)"

(emphasis supplied)

18. Following the aforesaid decision, a learned Single Judge of this Court in K.R.Shanthi v. Secretary to Government, Education Department, Chennai and another, (2012) 7 MLJ 241, held as under:

"22. Keeping the above authoritative pronouncements of the Hon'ble Supreme Court, more particularly, the illustration given in Rajesh Kumar Daria case in mind, we can now go into the challenges made in these batch of cases. In brief, the grievance is as follows:

The candidates who were eligible for selection on the basis of pure merit as against the Open Quota have been adjusted against their respective reserved quota because they happen to belong to reserved Classes like Scheduled Castes, Scheduled Tribes, Backward Classes and Most Backward Classes. Thus, the chance of candidates belonging to the reserved category have been usurped by adjusting meritorious candidates as against the Vertical reservation for reserved categories. The special reservations have been treated erroneously as vertical reservation.



23. For example, the petitioner in W.P.No.21683 of 2012 has applied for the Post Graduate Assistant (Physics). According to the petitioner as per the tentative list of candidates published calling for certificate verification, the top scorer is one Ms.S.Selvi (Roll No.12PG04020229). As she has scored 127 marks, she should have been selected as against open quota. But, as per the list, she has been selected under the backward class (Women) category. Similarly, the second rank holder is one Mr.J.Kumar who has scored 118 marks and he has been selected as against the general turn rightly. The third candidate is one Mr.P.Prabakaran; he has scored 114 marks, but he has been selected against Scheduled Caste (general) instead of being selected as against open quota. Similarly, the entire list goes on.

24. Similarly in W.P.No.21941 of 2012, for the post of Post Graduate Assistant (Zoology), the top scorer is one Mr.G.Jagan, who has scored 130 marks. The second rank holder is one Mr.J.Mohan with 129 marks. One Ms.M.Senthamilselvi has secured 78 marks. Now as per the list, Ms.M.Senthamilselvi who has secured only 78 marks has occupied the number one position in the order. She has been selected as against Most Backward Class (Women) (Tamil Medium). Mr.J.Mohan, who has secured 129 marks has occupied the second place in the order and he has been selected against the Backward Class (General) instead of being selected under the open quota. Strangely and also shockingly, the top scorer Mr.G.Jagan with 130 marks has been selected under the General Turn but kept at Rank No.3. The 4th rank holder is one Mr.G.Veerassamy, who has scored 124 marks. Instead of selecting him as against the open quota, he has been selected against Scheduled Castes (General) quota. The list goes on like this.

25. From the above facts, it is crystal clear that the Teachers Recruitment Board has not understood the method to be followed while making selection as against Open Quota, Vertical reservations for Backward Classes, Most Backward Classes, Scheduled Castes, Scheduled Tribes and the Horizontal reservations as laid down in the judgments cited herein before.

26. When the above anomalies were pointed out, the learned Additional Advocate General submitted that the same would be corrected. Accordingly, Mr.Surijit K. Chaudhary, Chairman of the Teachers Recruitment Board has filed an affidavit before this Court dated 05.08.2012, wherein in paragraphs 2 to 4 it is stated as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

"2. I submit that I am informed that during the



hearing today (04.09.2012) it was submitted by the learned Additional Advocate General on instructions regarding the following issues:-

(a) Reservation Policy to be adopted in the Recruitment Process impugned in the writ proceedings.

(b) With regard to the manner of ascertaining Tamil Medium candidates and consequential inclusion in the selection process.

3. I submit that in so far as the Reservation Policy is concerned, the Board would follow the established norms as laid down by various Government Orders including the Special Reservation.

Communal Reservation:-

Communal Reservations and Reservations for Tamil Medium Students are followed as per G.O.Ms.No.65, P & AR (K) Department dated 27.05.2009, G.O.Ms.No.145 P & AR (S) Department dated 30.09.2010 and Govt.Lr.No.20635 (K2)/2009-3, dated 27.05.2009. Reservation for G.T., B.C., M.B.C., D.N.C., S.C., S.T. & B.C.Muslims will as follows:-

G.T.-31%, B.C.(other than Muslims) - 26.5%, B.C.Muslims - 3.5%, M.B.C./D.N.C. 20%, S.C.-18% (which includes special reservation for S.C.Arundhathiars on preferential basis) S.T.1%. The reservation of vacancies for women - 30%.

Special Reservation:-

Reservation for the Physically Challenged will be followed as per the following G.Os:

(a) G.O.Ms.No.99, P & AR (Per.S) Department, dated 26.02.1988.

(b) G.O.Ms.No.87, SW & NMS Department, dated 01.07.2008.

(c) G.O.Ms.No.53, SW & NMS Department, dated 11.04.2005.

(d) G.O.Ms.No.619, Education (M2) Department, dated 23.06.1993.

(e) G.O.Ms.No.159, P & AR Department, dated 27.06.1994.

Physically Challenged (1%) and visually Impaired



(1%) will be followed as per order imposed. Reservation for visually impaired (2%) will be applicable in the case of non science subjects only. For science subjects 3% reservation will be applicable for Physically Challenged only. Hence to clarify, the selection would be in such a manner the meritorious candidate who belongs to any community would be appointed in the open category and only after filling up such a open category, the communal reservation would be applied as per the norms mentioned in the Government Orders.

4. I further submit that in so far as the issue relating to the persons who have studied in Tamil Medium is concerned, the prescribed qualification is necessary i.e., Post Graduate with B.Ed., qualification in the concerned subject in Tamil Medium for the post of Post Graduate Assistant. The undergraduates qualification in Tamil Medium will not be considered or taken into account for this recruitment. Hence all candidates who will be called for certificate verification would clearly be appraised of this facts had also found place in the application itself. It is further submitted that the selection will be made from among the Tamil Medium, candidates only who have qualified both in Post Graduate and B.Ed., Degree in Tamil. Language as medium of instruction. The reservation policy would then be applied in preparing the final merit list and selection list based on the aforesaid Government Orders."

27. Thus, the Teachers Recruitment Board itself has now impliedly conceded before this Court that the method of selection under various categories already done by the Teachers Recruitment Board is not correct and therefore the lists of selected candidates already published are liable to be withdrawn. Therefore, the entire select lists, including the select lists for the posts for which there is no challenge, are liable to be set aside. As per G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department, dated 27.05.2009 and the Government Letters cited supra, there shall be reservation for Backward Class (other than Muslims) = 26.5%, Backward Class (Muslims) = 3.5%, Most Backward Class/Denotified Category = 20% , Scheduled Castes = 18% and Scheduled Tribes = 1%. (In the State of Tamil Nadu, whether total reservation can exceed 50% is under examination of the Hon'ble Supreme Court]. Thus, as of now the reservation is 69% which is subject to the outcome of the case before the Hon'ble Supreme Court. These reservations are vertical reservations. Similarly, there shall be



reservation for women at 30%, physically challenged at 2% and the persons studied in Tamil Medium at 20% (vide G.O.Ms.No.145, Personnel and Administrative Reforms (S) Department, dated 30.09.2010). These three reservations are horizontal reservations. The open quota is 31%. Now it is for the Teachers Recruitment Board, as undertaken before this Court to adhere to the above reservations by following the above method more particularly the method as illustrated by the Hon'ble Supreme Court in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission reported in (2007) 8 SCC 785."

(emphasis supplied)

19. From the above it is clear that as per the constitutional provisions, where there is vertical reservation prescribed, the same has to be filled up first by the persons having highest merit, except for those roster points where there is a special category reserved. In such cases, the particular reserved category candidate shall be appointed, but the moment the list moves down, in the General Category, the same has to be filled purely on merit. The result is that persons belonging to the Reserved Category, if otherwise having more marks, shall be appointed on an unreserved/general category post and such filling up the post will not be considered to be appointment on a Reserved Category post, which shall be filled up as per the roster point by a candidate belonging to such Reserved Category.

20. The ratio laid down in the above said decision applies on all fours to the case on hand. Even in the case on hand, the petitioner was fully qualified to be appointed under the General category, but he was selected under the reserved category, thereby usurping the right of a candidate belonging to the reserved category. Therefore, the selection process at least insofar as it pertains to the petitioner certainly reeks of arbitrariness.

21. In the result:

(a) this writ petition is allowed and the counseling process and consequent selection process adopted insofar as the petitioner are concerned is set aside;

(b) the second respondent is directed to conduct fresh counseling in respect of the petitioner based on the seniority as per the marks obtained by the petitioner and consider posting him to a better post, as per merit;

(c) the said exercise shall be undertaken by the respondents within four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.(MD) No.2 of 2013 is closed.

Sd/-

Assistant Registrar(C.o.)

/True Copy/



To

1.The Secretary to the Government,
State of Tamilnadu,
Labour and Employment Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
VOC Nagar, Chennai.

+1CC to Mr.K.K.Senthil, Advocate, SR.No. 11457

+1CC to Mr.M.E.Ilango, Advocate, SR.No. 11021

Writ Petition (MD) No.633 of 2013

and

M.P. (MD) No.2 of 2013

27.02.2017

Vs

AM/SV MMS/SAR 4/23.02.2018/11P/5C