

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.20735 of 2015
and
M.P.No.1 of 2015

- 1.Union of India rep. by its
The General Manager,
Integral Coach Factory,
Chennai - 38.
 - 2.The Chief Electrical Engineer,
Integral Coach Factory,
Chennai - 38.
 - 3.The Chief Personnel Officer,
Integral Coach Factory,
Chennai - 38.
- ... Petitioners

Vs

- 1.M.Balamurugan
 - 2.G.Saravanakumar
 - 3.S.Mahesh
 - 4.V.Balasubramani
- 5.The Presiding Officer,
Central Administrative Tribunal,
Madras Bench, Chennai.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records on the file of the 5th respondent in O.A.No.155 of 2012 dated 18.02.2015 and quash the same.

For Petitioners.. Mr.M.M.Vijay Anand

For Respondents.. Mr.L.Chandrakumar for R1 & R2
R3 & R4 - No appearance
R5 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenging the order of the fifth respondent dated 18.02.2015 made in O.A.No.155 of 2012, the present writ petition has been filed.

2.Respondents 1 and 2 are some of the few candidates who participated in the selection process for the post of Intermediate Apprenticeship Mechanic/Electrical in stipend pay band. There are ten posts to be filled up pursuant to the proceedings dated 08.07.2011. Of these ten posts, eight are meant to be filled up under the Open Category, as against two, which are earmarked for the persons, who belong to Scheduled Caste community.

3.The proceedings of the Ministry regarding promotion dated 11.07.2002 clarifies how the said orders with specific reference to the Scheduled Caste community are to be filled up in the Unreserved category when they were appointed on merit and thus no need for reservation or relaxation of qualification. It would be appropriate to place on record the aforesaid proceedings, which reads as under:

The Ministry of Personnel, public grievances and pensions, department of personnel and training vide their O.M.No.36028/17/2001-Estt.(Res.) dated 11.07.2002 have considered the references from various Ministries regarding adjustment of SC/ST candidates promoted on their own merit in post based reservation rosters and clarified as under:

(i)The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.

4.In the examination conducted, which also involves the written examination, in which totally, 153 candidates have participated and 10 have been selected. For the written examination, 35 marks have been earmarked and for record of service, 30 marks have been earmarked. Almost all the candidates have been given 30 marks, which would include respondents 1 and 2/applicants and respondents 3 and 4, who were selected in the Unreserved category of eight posts, though they belong to Scheduled Caste community. Resultantly, two posts earmarked for the Scheduled Caste category have been filled up among the Scheduled Caste candidates.

5. Respondents 1 and 2 challenged the aforesaid selection before the Tribunal primarily on two grounds. The first ground is that respondents 3 and 4, though scored higher marks than respondents 1 and 2, ought to have been placed under the Scheduled Caste category alone. Therefore, they must have been accommodated in the two posts earmarked for the Scheduled Caste category. The second submission is with respect to awarding of 30 marks for record of service in favour of respondents 3 and 4, which is also applicable to respondents 1 and 2.

6. The Tribunal allowed the application holding that respondents 3 and 4 ought to have been fitted in the vacancies reserved for Scheduled Caste category alone and not in the Unreserved category. The Tribunal also deprecated the awarding of 30 marks to the candidates. Accordingly, the Original Application was allowed with a direction to the petitioners to re-caste the selection panel while setting aside the empanelment of respondents 4 and 5 in the Unreserved vacancies. Challenging the same, the present writ petition has been filed.

7. Learned counsel appearing for the petitioners submits that the Tribunal has committed an error in coming to the conclusion that respondents 3 and 4 ought to have been fitted in the vacancies earmarked for Scheduled Caste. Admittedly, they have scored higher marks than respondents 1 and 2. Awarding of 30 marks cannot be faulted with as it is the discretion of the petitioners to do so based upon the records and in any case, respondents 1 and 2 cannot have grievance since even they were granted the same marks. There is nothing on record to state that awarding of marks was not correct or proper.

8. Learned counsel appearing for respondents 1 and 2 would submit that there cannot be any more further reservation in the promoted post than one earmarked. Thus, the Scheduled Caste candidates will have to be necessarily fitted in the posts which have been earmarked for them notwithstanding the fact that they have scored marks sufficient enough to be considered under the Unreserved category. The Tribunal was right in finding fault with the petitioners in awarding uniform marks. Therefore, no interference is required.

9. On the first issue, we find that the Tribunal has committed an error. The reservation per se has not been questioned. Therefore, any reliance made on the judgment of the Apex Court in Nagaraj's case has got no application to the case on hand. We are dealing with the case which involves a process of selection by which all the participants were made to undergo both written examination and valuation of record of service apart from viva voce and seniority. Merely because two posts are

earmarked to be filled up by the Scheduled Caste candidates, it can never be stated that those who have got higher marks and entitled to be considered in the open category cannot be permitted to do so for the sole reason that they belong to the Scheduled Caste community. Any such interpretation will lead to reservation in the open category which is also impermissible in law. Further more, the order of the Tribunal actually affects those two persons who have been selected under the Scheduled Caste category. Now, respondents 3 and 4, even by the order of the Tribunal will not be affected because they will be inducted in the Scheduled Caste category, which resultantly will make the exit for those selected under the Scheduled Caste category. Therefore, the Tribunal has committed an error in setting aside the selection of the persons who are not even parties before us. It is the fundamental error committed by the Tribunal. Factually, there is no dispute that respondents 3 and 4 have scored higher marks than respondents 1 and 2, there is nothing on record to show that awarding of marks was not correct. In fact, the petitioners were proper in awarding similar marks for record of service both to respondents 1 and 2 and as well as respondents 3 and 4.

10. In such view of the matter, we are not in a position to uphold the order of the Tribunal. For the reasons stated above, the order of the Tribunal stands set aside and the Original Application is dismissed. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

The Presiding Officer,
Central Administrative Tribunal,
Madras Bench, Chennai - 104.

+1cc to Mr.Vijay Anand, Advocate Sr.85584
+1cc to Mr.L.Chandrakumar, Advocate Sr.85624

W.P.No.20735 of 2015

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srg 24/01/2019