

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI
Writ Petition No. 31001 of 2015
and M.P.Nos.1 and 2 of 2015

R.Arumugam

.. Petitioner

Vs.

1. Principal Secretary to Government
Department of Higher Education,
Secretariat, Chennai-600009.
2. The Secretary to Government,
Department of Adi Dravidar Welfare,
Secretariat, Chennai - 600009.
3. The Registrar,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai-600015.
4. T.C.Karthikeyan,
Assistant Professor,
School of Political Science and Public Administration,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai-600015.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent order in so far as the selection of the fourth respondent enclosed with the order of the State Information Commissioner, The Right to Information Act Commission dated 26.06.2015 by which the petitioner was informed about the selection of the fourth respondent as Assistant Professor in the political science and quash the fourth respondent appointment and consequently directing the third respondent to consider and appoint the petitioner as Assistant Professor in political science in the Schedule Caste (Arunthathiar) category.

For Petitioner : Mr.N.G.R.Prasad
for Mr.Row and Reddy

For Respondents : Mrs.P.Kavitha (R1 to R2)
Government Advocate
Mr.P.Sanjay Gandhi (R3)
Standing counsel

Mr.R.Venkatramani (R4)
senior counsel
for M/S.M.Muthappan (R4)

O R D E R

This Writ Petition has been filed by the writ petitioner seeking a writ of certiorarified mandamus to quash the selection of the fourth respondent as Assistant Professor in Political Science in Tamil Nadu Open University against the post reserved for the turn of SC (Arunthathiar) and direct the respondent to appoint the petitioner against the said post.

2. The case of the writ petitioner is that Tamil Nadu Open University came out with a notification inviting application for the post of Assistant Professors in different discipline vide advertisement No. 10 dated 01.08.2014 in the school of Politics and Public Administration to fill up two posts of Assistant Professors applications were invited indicating therein that one of such post belonging to General Turn and the other one is for SC (Arunthathiar). Petitioner a qualified candidate belonging to SC (Arunthathiar) applied for the same, so also the respondent No.4 though belong to scheduled caste also applied for the same. However, the Selection Committee selected the respondent No.4 evnethough the post was reserved for SC (Arunthathiar) and ignoring the petitioner the only qualified SC (Arunthathiar) Candidate. Since against the said post no SC candidate has a competing claim when a qualified SC (Arunthathiar) is available the petitioner as such came to challenge such selection of the fourth respondent to be illegal and arbitrary being contrary to the rule of reservation seeking the relief as stated earlier.

3. Counter affidavit has been filed by the third respondent disputing the averment made by the writ petitioner. According to the third respondent the Selection of the respondent was made by a Committee duly constituted in terms of the guidelines of the UGC and strictly in accordance with the norms. Since the said Committee found the fourth respondent to be more meritorious than the petitioner and the petitioner was not found suitable by the Committee appointment of the fourth respondent was made by the respondent University on such recommendation of the Committee. The aforesaid is also in accordance with law inasmuch SC is not prohibited to apply against a post reserved for SC (Arunthathiar) and G.O. (Ms).No.61 Adi Dravidar and Tribal Welfare (TD2) Department

dated 29.05.2009 specifically speaks that if no suitable candidates from the Arunthathiar community are available for selection the appointment in the said turn shall go to the SC category on merit basis. Otherwise also the petitioner knowing well fully the terms and conditions in the advertisement when applied for the post after being unsuccessful in such examination he cannot question the selection process in this writ petition. Furthermore, the post being one for SC allowing an Arunthathiar to be reserved against said post shall amount to 100% reservation is impermissible in view of the law laid down by the Apex Court in this regard. Hence, the writ petition is liable to be dismissed.

4. The fourth respondent also has filed the reply affidavit contesting the claim of the writ petitioner that when an SC (Arunthathiar) is available a Scheduled caste candidate has no competing claim against the post reserved for SC (Arunthathiar). According to the fourth respondent he being more meritorious and found by the duly constituted by the Selection Committee to be more suitable than the petitioner, the petitioner therefore could not have questioned the same in this writ petition. Hence, the writ petition filed is devoid of merit and liable to be dismissed.

5. No relief being sought for against the first and second respondents, no counter is filed on their behalf.

6. I have heard the learned counsel for the petitioner and have gone through the materials on record.

7. It appears from the advertisement made that the post of Assistant Professor in question was reserved for SC (Arunthathiar). When such a post is reserved for SC (Arunthathiar), an SC Candidate can very well apply for the same and participate in the recruitment process is not in dispute. However, the case of the petitioner is that when an SC (Arunthathiar) candidate fully qualified to be appointed is available, an SC candidates cannot have a competent claim on the basis pf comparative merit against the SC (Arunthathiar), is the contention of the learned counsel for the petitioner. In such premises, it is submitted that the petitioner being found to be qualified he could not have been denied with the appointment on a comparative merit of the fourth respondent, an SC candidate. However, the same is disputed by the

respondents. But on perusal of the rule of reservation, more particularly the aforesaid G.O.(Ms).No.61 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.05.2009, it clearly emerges that though an SC candidate is not prohibited in applying against a post reserved for SC (Arunthathiar) or in other words in the turn of SC (Arunthathiar), but consideration of such cases of the SC candidate is by default, that is in case of non availability of qualified SC (Arunthathiar) candidate. When an SC (Arunthathiar) candidate having the necessary minimum qualification prescribed for appointment is there, an SC candidate cannot be considered though more meritorious in respect of the said post inasmuch as he has no competing claim against an SC (Arunthathiar) candidate. It is only when an SC (Arunthathiar) is not available then a qualified SC candidate can be accommodated against the said vacancy on a comparative merit of the qualified SC candidates can be made against the said post and the more meritorious SC candidate among them can be appointed. In this case, admittedly no material is there the writ petition is unqualified to be appointed against the said post reserved for SC (Arunthathiar). The Selection Committee appears to have appointed respondent No.4 as he was found to be more meritorious than the writ petitioner. No material is produced that the petitioner is unqualified/ disqualified to be appointed against the said post having no eligibility criteria prescribed. In such premises, this Court is of the view that the claim of the petitioner that when he being a qualified candidate eligible for appointment was there, the selection of the fourth respondent on the basis of competing claim holding fourth respondent to be more meritorious was unjust and improper, appears to have sanction of law. Such selection of the fourth respondent being contrary to rule of reservation cannot be sustained.

8. Now coming to the next question the contention of the respondent that since the petitioner has participated and after being not selected he could not have challenged the selection in this writ petition, the same appears to this Court to be fallacious inasmuch as the petitioner has never questioned any condition of advertisement stipulated therein after being unsuccessful in the examination. It is only in the circumstances when a person takes an examination knowing the condition thereof were challenged the same to be bad after being unsuccessful, the same has been deprecated by the Hon'ble Supreme Court for the reasons that the petitioner thereafter estopped from challenging the same. The aforesaid position of law has been well settled in a number of decisions by the Hon'ble

Apex Court, such as in the case of G.Sarana Vs. University of Lucknow and Others reported in (1976) 3 SCC 585, (ii) Madanlal Vs. State of Jammu and Kashmir & Others reported in (1995) 3 SCC 486 and Manish Kumar Shahi Vs. State of Bihar & Others reported in (2010) 12 SCC 576, and many more decisions, wherein the Apex Court have held that unsuccessful participant cannot turn around and challenge the selection process after participating in it without any challenge. However, in this case the petitioner being not challenging any condition of the advertisement after being unsuccessful rather challenging the selection not to have been made in accordance with the stipulation that is following the rule of reservation questioning the maintainability of the writ petition on the said ground more particularly by the third respondent, therefore is devoid of merit.

9. The other contention that is raised by the counsel for the University indicating that since there was no prurality of post and the post was one, allowing the prayer of the petitioner that the post should be filled up by the SC (Aruthathiar) would amount to 100% reservation and as such impermissible, appears to this Court to be fallacious inasmuch as the University having advertised itself that one post is reserved for SC (Arunthathiar), now cannot turn back and said that the same was contrary to the law laid down by the Apex Court, moreso when it has appointed a reserved category candidate against the said turn and also there were more than one post.

10. Therefore, this Court is of the view that the selection of the fourth respondent as SC candidate, on the ground that he is more meritorious than the writ petitioner, though the post was reserved for SC (Arunthathiar) and the petitioner was a qualified SC (Arunthathiar) on the basis of comparative merit being contrary to the rule of reservation cannot be sustained scrutiny in the eye of law.

11. I would therefore allow this writ petition, consequently quash the impugned selection of the fourth respondent and consequential appointment to the post of Assistant Professor in the School of Politics and Public Administration made pursuant to the advertisement No.10 dated 01.08.2014 and direct the respondent University represented through its Registrar respondent No.3 to appoint the petitioner against the said post within a period of six weeks from the date of receipt of a copy of

this Order. Consequently, connected miscellaneous petitions are closed. However, in the circumstances there shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr

To

1. Principal Secretary to Government
Department of Higher Education,
Secretariat, Chennai-600009.
2. The Secretary to Government,
Department of Adi Dravidar Welfare,
Secretariat, Chennai - 600009.
3. The Registrar,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai-600015.
4. T.C.Karthikeyan,
Assistant Professor,
School of Political Science and Public Administration,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai-600015.

+1cc to Mr.P.Sanjay Gandhi , Advocate SR.No. 74764

+2cc to M/S.Mr.Row and Reddy , Advocate SR.No. 75055

+1cc to M/S.M.Muthappan , Advocate SR.No. 75654

+1 CC TO GOVERNMENT PLEADER SR.NO. 75877

WEB COPY

Writ Petition No. 31001 of 2015

ASK(15/11/2018)