

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.09.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.22604 of 2018 and
W.M.P.No.26456 of 2018

K.Nagaraj

..Petitioner

Vs

1. The Chairman,
Teacher Recruitment Board,
College Road,
Chennai - 600 006

2. The Director of School Education,
College Road,
Chennai - 600 006

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent to appoint the petitioner as Drawing Teacher (Special Teacher) under the defendant of Ex-Service Man in MBC Quota, by taking into account the qualification prescription Special Rule for Tamil Nadu School Educational Subordinate Service Rules for Drawing Teacher and to pass orders thereon on merits and in accordance with law within a time to be stipulated by this Court.

For Petitioner : Mr.P.Ganesan

For Respondents : Mrs.P.Kavitha,

Government Advocate

ORDER

The grievance of the petitioner in this writ petition is that he, being a dependent of Ex-serviceman, made an application for the post of Special Teacher (Drawing) in School Education Department, but in the process of selection, he was not selected in the category of Ex-serviceman though persons similarly situated with him, have been selected in the category of Ex-serviceman having secured less marks than the petitioner even though they are dependents of Ex-servicemen. Therefore, he has made a prayer to issue a writ of mandamus to direct the respondents to appoint him as Drawing Teacher (Special Teacher) under the quota of dependent of Ex-serviceman.

2. The learned counsel for petitioner advancing the submissions as aforesaid, prays for the relief.

3. The learned Government Advocate who accepts notice for the respondents, submits that no doubt he has secured more marks than the cut off marks in Ex-serviceman category, but he was not given a call in view of the fact that he does not come within the definition of Ex-serviceman as provided in Section 3 (j) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which describes Ex-serviceman to be a person, who had served in any rank (whether as combatant or not) in the Armed Forces of the Union has been released therefrom on or before the 30th June 1968 otherwise than by way of dismissal or discharge on account of misconduct or efficiency. Therefore, the dependents of Ex-serviceman having not been included as Ex-servicemen, the petitioner was not given a call and as such the writ petition is liable to be dismissed.

4. However the learned counsel for the petitioner has drawn notice of this Court to the name in Serial No.628, Mr.Devan, who had in an earlier similar test had indicated himself to be a dependent of an Ex-serviceman, has been called though secured less marks.

5. The same is countered by Mrs.P.Kavitha, learned Government Advocate appearing for the recruitment Board indicating therein that as per his declaration to be an Ex-serviceman he has been called but during the certificate verification, if it is found that he is a dependent of an Ex-serviceman and not himself an Ex-serviceman, definitely he will be eliminated from the selection process. Furthermore, it cannot be said that it is the self same person who was earlier selected as dependent, has been given call now, even if a dependent under the category of Ex-serviceman and the petitioner has been ignored, as there is no authenticate material for the same. Even if the same be so, it does not improve the case of the petitioner in any manner since he is seeking selection under the quota of Ex-serviceman, but in fact not coming within the definition of Ex-serviceman though dependent of an Ex-serviceman.

6. It is specifically submitted by the learned counsel for the respondents that the quota is for Ex-servicemen, not for the dependents of Ex-Servicemen. Basing on the information provided in the applications, persons have been included in the provisional list in the said category. But during certificate verification, if it is found that they are not Ex-servicemen though claim so, their candidature definitely shall be cancelled. The petitioner admittedly is not an Ex-serviceman but the dependent of an Ex-serviceman however he

claims inclusion in the list in view of the fact that he has secured the required cut off mark in that category and some of the persons in that category who are also dependents have been included. Inclusion of dependents in the category as stated by the learned counsel for the State is impermissible. Petitioner has also not produced concrete materials in this regard. He is making such submission taking a clue that some persons who had earlier in recruitment examination applied as dependents now find place in the list, he claims that he has been ignored though being a dependent. But there is no material has been produced before this Court to substantiate the same. The State Counsel also assures that if they are dependents, their inclusion is illegal and that will be addressed to during the certificate verification. The Constitution of India also does not guarantee negative equality, in other words inclusion of some ineligible persons in the list does not entitle a similarly situated person to claim inclusion even though he is ineligible for the same on that ground.

7. Therefore, this Court is of the view that the petitioner prima facie has no case inasmuch as he could not produce any materials before this Court that he is coming under the category of Ex-serviceman though the dependent of an Ex-serviceman. Hence the writ petition filed is devoid of merits and liable to be dismissed and accordingly the same stands dismissed. Consequently, connected miscellaneous petition is closed. However, in the circumstances there shall be no order as to costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
Teacher Recruitment Board,
College Road,
Chennai - 600 006

2. The Director of School Education,
College Road,
Chennai - 600 006

+1 CC to Govt. Pleader sr 62137.

W.P.No.22604 of 2018

SP(16/10/2018)