

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28-08-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2464 and 4991 of 2017

And

W.M.P.Nos.2461 and 5246 of 2017

P.Sundaravadivel

Petitioner in both WPs

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

2.Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

... Respondents in both WPs

WP 2464 of 2017 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent in No.Nil dated 4.1.2017 and to quash the same in so far as not considering the petitioner (Register No.010018171) for further selection to the post of District Educational Officer and consequently directing the respondents to permit the petitioner to participate in the Oral Test in the shape of interview and further process of selection for direct recruitment to the post of District Educational Officer under Open Market in Scheduled Caste (SC) reserved category as per Notification No.04/2014 dated 14.2.2014 and to select and appoint the petitioner to the post of District Educational Officer based on merits in the selection.

WP 4991 of 2017 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the first respondent in M.O.No.5150/OTD-E2/2013 dated 31.1.2017 and to quash the same

and consequently, direct the respondents to permit the petitioner to participate in the Oral Test in the shape of interview and further process of selection for direct recruitment to the post of District Educational Officer under Open Market in Scheduled Caste (SC) reserved category as per Notification No.04/2014 dated 14.2.2014 and to select and appoint the petitioner to the post of District Educational Officer based on merits in the selection.

For Petitioner in both WPs :Mr.G.Sankaran

For Respondents in both WPs:Ms.C.N.G.Niraimathi,
Standing Counsel for TNPSC.

C O M M O N O R D E R

The orders of the first respondent dated 31.1.2017 and the second respondent dated 4.1.2017, rejecting the claim of the writ petitioner to permit him to participate in the interview for recruitment to the post of District Educational Officer on the ground that the writ petitioner has not secured the required cut off marks, are under challenge in these writ petitions.

2. The writ petitioner, in both the writ petitions, are one and the same. The writ petitioner is a qualified candidate for appointment to the post of District Educational Officer. The writ petitioner completed M.Sc. (Physics) in the year 1991, M.Ed., in the year 1999 and further acquired M.Phil, in the year 2009. In view of the fact that the writ petitioner is fully qualified for appointment to the post of District Educational Officer, he claims that the procedures and the methods adopted by the respondents for selection is improper and not in accordance with law.

3. The writ petitioner was selected and appointed to the post of P.G. Assistant (Physics) in the School Education Department through Teachers Recruitment Board on 21.1.1999. Presently, the writ petitioner is working as P.G. Assistant in Physics in Government Higher Secondary School, Kanai, Villupuram District. The writ petitioner, as an in-service candidate, submitted an application pursuant to the notification dated 14.2.2014 for recruitment to the post of District Educational Officer. The application was submitted through online on 5.3.2014 by the writ petitioner. The writ petitioner had enclosed all necessary documents and the demanded fee as per the terms and conditions of the notification. The writ petitioner participated in the written examination and was successful. However, the writ petitioner was not called for an interview conducted by the respondent-Tamil Nadu Public Service Commission, which prompted him to move the above writ petitions,

challenging the very method adopted by the Tamil Nadu Public Service Commission for recruitment to the post of District Educational Officer.

4. The learned counsel for the writ petitioner states that the very procedure adopted by the respondents for selection of District Educational Officer is contradictory. The Rule of Reservation has been erroneously followed and the same has not been followed in accordance with the established procedures and the laws prevailing under the Rules.

5. The subject-wise allotments given in the notification itself has not been properly implemented. As per the notification, the number of vacancies notified are 11. Out of 11 vacancies, 9 vacancies are allotted for open category and two vacancies are allotted for the Teachers employed in recognised Aided Schools or higher Secondary Schools and those vacancies are allotted on subject-wise basis. Initially, the writ petitioner has wrongly stated in his application that he is working in an Aided Secondary School. Subsequently, an order of rejection was passed by the Tamil Nadu Public Service Commission on the ground that the writ petitioner was not within the zone of consideration and therefore, he was not invited for the purpose of participating in the interview.

6. The learned counsel for the writ petitioner has stated that various grounds are set out in the writ petitions for the purpose of quashing the very rejection order and the procedure adopted by the respondents to recruit the candidates for appointment to the post of District Educational Officer. The learned counsel for the writ petitioner further states that as per the notification issued by the Tamil Nadu Public Service Commission dated 14.2.2014, vacancies have been notified from Open Market in which one vacancy was earmarked for the subject of Physics. Accordingly, there is only one post of District Educational Officer for the subject Physics in Open Market and that itself is improper.

7. In the notification, there is no reference to any applicability of Rule of Reservation/Roster points for each post since each post remains to be a single category post for which Rule of Reservation cannot be applied as per ratio laid down by the Hon'ble Supreme Court of India and any such reservation will be resulting in 100% reservation, which is unconstitutional. In every notification by the Tamil Nadu Public Service Commission or any other Recruitment Agency, there will be an indication of applicability of Rule of Reservation by giving the tabulation as to how many post are coming under particular reserved category. But no such indication is there in the notification obviously for the reason that each post remains to be a single cadre post

and cannot be subjected to reservation and it will be unconstitutional.

8. It is further stated in the impugned order issued by the respondent-Tamil Nadu Public Service Commission on 31.1.2017 that the writ petitioner is considered under Open Market category. But, however, the writ petitioner has not reached the zone of consideration to qualify to attend the interview. Any such order is contrary to the earlier communication/publication of results made by the respondent-Commission dated 4.1.2017 by which it is stated that the writ petitioner is not considered as he has not satisfied the eligibility conditions as per the norms stipulated in the notification during Certificate verification Phase I. Thus, when the writ petitioner was not considered to attend the interview on a particular ground as if he has not satisfied the eligibility condition as per the notification, suddenly after filing the writ petition in WP No.2464 of 2017, the respondent-Commission has taken a different stand as if the writ petitioner has not secured marks to reach the zone of consideration to be selected.

9. The learned counsel for the writ petitioner further contended that after the main written examination, it is found that a ratio of 1:3 has been followed to finalise the list of candidates for attending the interview. While-so, when the writ petitioner is the second highest scorer in the main written examination, the writ petitioner ought to have been called to attend the interview, which is not done and therefore, the writ petitions deserve to be considered.

10. This apart, the learned counsel for the writ petitioner is of an opinion that candidates, who secured lesser marks than that of the writ petitioner, were selected and appointed. Therefore, the very procedure adopted in this regard by the respondents is not only in violation of law, but against the established principles settled by the Courts.

11. The learned counsel, appearing on behalf of the respondents, opposed the said contentions raised on behalf of the writ petitioner in entirety. In order to substantiate the grounds set out in the impugned order that the writ petitioner is not coming within the zone of consideration, in the affidavit filed on behalf of the respondents, it is stated that the writ petitioner has secured 331.50 marks in the written examination. However, in respect of the subject of Physics, no candidate, who secured lesser than that of the writ petitioner, was selected and appointed. In fact, the writ petitioner belongs to Scheduled Caste category and three candidates were selected in the Scheduled Caste category, out of which the first candidate secured 489 marks in Tamil, the second candidate secured 474

marks in Tamil and the third candidate secured 422 marks in Zoology. The marks mentioned above are the marks obtained in the written examination by the respective candidates. Therefore, it is stated by the learned counsel for the respondent-Commission that no candidate, who secured lesser than that of the writ petitioner, was invited to participate in the interview conducted by the respondent-Commission.

12. Mr.K.Nanthakumar, I.A.S., Secretary, Tamil Nadu Public Service Commission, filed an affidavit on behalf of the respondents, setting out the procedures followed in respect of the recruitment to the post of District Educational Officer. The said counter states that the writ petitioner has made wrong claim regarding his teaching experience and the application of the writ petitioner was not considered under the Teacher Category. However, since the 13 candidates, including the writ petitioner, submitted representations to consider them as candidates under Open Category, the respondent-Commission took a decision to consider all the candidates against Open Market Category. But since the writ petitioner did not reach the zone of consideration under the Open Category, the impugned rejection order has been passed.

13. Thus, having claimed to be treated as an Open Market Candidate, as a result of lack of eligibility to be treated as a Service Candidate, the writ petitioner is estopped from turning round and challenging the selection process only because the result of the selection even when treated as an Open Market Category, was not palatable to him. In other words, it is contended that the case of the writ petitioner was rejected at the first instance on the ground that he did not belong to the teaching category and he has wrongly mentioned in his application that he is possessing teaching experience in the Aided School. However, it is contended that the writ petitioner was working in the Government School and the fact remains that the Tamil Nadu Public Service Commission considered the representations of all the 13 candidates and allowed those candidates to participate under the Open Category for selection to the post of District Educational Officer.

14. Though the writ petitioner claims that the candidates, who secured lesser marks than that of the writ petitioner were selected, no such candidate has been impleaded as party respondent in the writ proceedings. In spite of the fact that the selection is for small number of posts and if that be the case, then the writ petitioner ought to have impleaded those candidates, who were selected and secured lesser marks than that of the writ petitioner. The post of District Educational Officer falls under Tamil Nadu School Education Service. As per Rule 3 of the Special Rules for Tamil Nadu School Educational Service,

the Rule of Reservation of appointments, General Rule 22 shall apply to appointments by direct recruitment to all the categories in the service, the appointments to each category being treated as one Unit. Thus, taking note of the Roster Point at which the previous recruitment ended, the respondents announced the distribution of vacancies and the procedures followed based on the Rule of Reservation as per General Rule 22 has been narrated by the respondent-Commission as under:-

"GT(G).2, BG(G).2, BC(W).1, BC(M) (G).1, MBC/DC(G).2, MBC/ DC(W)-1, SC(G)-1 and SC(W)1.

The details of the subject vacancies furnished to this respondent were also announced as follows:-

(i) From open market - 9 (one vacancy each in the subjects Tamil, English, Mathematics, Physics, Chemistry, Zoology, Botany, History and Geography);

(ii) From among Teacher employed in recognised Aided Secondary Schools or Higher Secondary Schools - 2 (one vacancy each in the subjects Physics and Chemistry);

The details (both category wise and subject wise) cannot be read in a manner as understood by the petitioner to be that if a SC candidate like the writ petitioner is competing for the vacancy in Physics, he should be fitted only against candidates with Physics subject irrespective of the category to which they belong and the higher in the order of rank should be selected up to the number required to be considered either for Certificate verification or oral test as the case may be. On the other hand, the selection has to be made to fill up vacancies in nine reserved category and two (either for reserved or unreserved) depending upon the category of the candidates who get picked against the two open competition vacancies as otherwise the selection procedure will not be in consonance with the constitutional mandate of rule of reservation of appointments which is applicable to the service in question.

Therefore, in the instant recruitment, for one vacancy in SC (G) category to which the writ petitioner belongs three candidates had to be shortlisted for oral test (as per Instruction No.22 of the Instructions etc., to candidates) irrespective of the subject qualification that they possessed. Likewise, for one vacancy in subject Physics three candidates with Physics subject had to be shortlisted for oral test irrespective of the category to which they belonged.

To elaborate the following candidates were shortlisted for oral test irrespective of their

subject qualification to fill up the vacancy against SC(G). The petitioner secured lesser marks (331.50) than that of the following three shortlisted candidates under SC(G). Hence, the petitioner was not summoned for Oral Test.

1	010016148	SC	489.00	Tamil
2	250014027	SC(A)	474.00	Tamil
3	010016063	SC	422.00	Zoology

The petitioner has stated that one female candidate with lesser marks than that of petitioner was called for Oral Test. Since, that candidate with (Reg. No.01006050) is a women candidate and since the reservation for Women is applicable to this recruitment as notified. There is no illegality in short listing that candidate. The petitioner cannot compare himself with a women candidate. However, the candidate with (Reg. No.010009160) who had secured higher marks was selected for the vacancy under Physics Subject.

Similarly, the following three candidates were shortlisted for Oral Test irrespective of their Communal Category to fill up one vacancy in the subject of Physics:

1	010009160	MBC(F)	353.00	Physics
2	010008188	MBC(F)	327.00	Physics
3	010006050	SC(F)	306.00	Physics

Therefore, the petitioner has been rightly denied admission to the oral test based on the rule of reservation of appointment."

15. In respect of the contentions, the learned counsel for the respondent-Commission relied on a judgment of the Hon'ble Division Bench of this Court, rendered in the case of Tamil Nadu Public Service Commission vs. C.Munusamy and others in WP No.38986 of 2002 decided on 17.11.2005, reported in CDJ 2006 MHC 035. The said judgment relates to the recruitment to the post of District Educational Officer and therefore, it would be apt to quote the principles set out in paragraphs 12 and 13 of the judgment, which reads as under:-

"12. It is further seen that the first respondent herein, namely, C. Munusamy was one among the candidates who had applied to the Commission for this recruitment and selected for admission to the Oral Test. He belongs to Backward Class community and possesses

M.Sc., degree in Maths and M.Ed., degree. He opted the subject Psychology as optional subject for answering the Main Written Examination. He secured 212 marks both in the Main Written Examination and in the Oral Test taken together. It is also demonstrated that based on the ranking obtained by him and having regard to the rule of reservation of appointments and also with reference to the vacancy position in the subject-Maths, the subject in which he has obtained the Masters degree, he did not reach his turn for selection for appointment to the post of District Educational Officer in the Tamil Nadu Educational Service. The counsel for the Commission has explained and demonstrated that while making selection, after selecting a candidate for the MBC/DC backlog vacancy, who was a Maths candidate and the higher mark holder among the MBC/DC Category, another MBC/DC candidate who stood second among the MBC/DC candidates in the ranking list who was also a Maths candidate was selected against one of the remaining 13 vacancies. It is also explained that since he too was qualified in the subject Maths, one of the remaining 3 vacancies in the subject Maths was filled up by selecting him. Thereafter, according to the Commission, against the Open Competition turn, a BC candidate who qualified in the subject-Chemistry was selected on the basis of merit. In the next turn reserved for BC (W), a BC (W) candidate who was also qualified in the subject Maths was selected. In the next vacancy reserved for Open Competition, a BC candidate who was qualified in the subject Physics was selected. It is highlighted that though in the next turn which relates to BC (General) category could have been filled up by selecting the first respondent, who was qualified in the subject Maths, in view of the fact that a turn reserved for SC (W) was available in the roster and the same had to be filled up by SC (W) candidate and two SC (W) candidates with the qualification in Maths alone were

available and one among the two candidates who had secured higher marks had to be selected in that turn failing which, the turn reserved for SC (W) candidate could not have been filled up and would have had to be passed over and carried forward to the next recruitment. As rightly pointed out, the same could not be done when the candidates in the particular category were available, and the same was filled up by a SC (W) Maths candidate passing over the first respondent herein. Though Mr. V.R. Rajasekaran, learned counsel for the contesting first respondent, vehemently contended that though he (first respondent)-C. Munusamy-a B.C candidate scored more marks, namely, 212 which is higher than the selected candidate in Sl.No.6, namely, Tmt. Uma, D (BC)-whose mark is 196.50, in view of the above said reasons, namely, that one SC (W) candidate has to be filled up and 2 SC (W) candidates with qualification in Maths alone were available, and one among the two candidates who had secured higher marks had to be selected in that turn, we are of the view that the course adopted by the Commission is in consonance with the notification and also constitutional mandate of rule of reservation. We are satisfied that the selection was made strictly according to the ranking position of the candidates in the ranking list and also having regard to the rule of reservation of appointments. To make it clear that in the course of selection, a SC (W) candidate for whom a vacancy in the respective turn is available for selection, the first respondent herein, had to be left without selection. It is not in dispute that all the four vacancies in the subject Maths were filled up as indicated in the chart, and the first respondent who stood fourth in the ranking list and qualified in the said subject (Maths) happened to be not selected and he was passed over.

13. The scheme as notified by the Commission proceeds that while making

subject-wise selection based on the marks obtained by the candidates in the Written Examination and in the Oral test put together and also duly following the rule of reservation of appointments, if the vacancies in the particular subject are exhausted, subsequent candidates who are qualified in the said subject were passed over though they have secured higher marks and the next candidates in the ranking list who are qualified in the other subjects were selected against the vacancies in the respective subject. As rightly pointed out by the Commission, the said course is unavoidable while making selection for the recruitment of the special nature."

16. On a perusal of the entire judgment of the Hon'ble Division Bench of this Court, cited supra, this Court is of an opinion that the post of District Educational Officer is considered as a limited one and the Rule of Reservation has been followed by adopting the principles set out in the General Rule 22. The Roster System is maintained in accordance with the Rules as per the vacancies notified. The Division Bench also has categorically stated that the said course of adopting the roster system is unavoidable, while making selection to the recruitment of the special nature. The recruitment to the post of District Educational Officer has been notified based on the subjects and it is to be construed as a special nature recruitment. Thus, this Court is of an opinion that the Rules, established procedures and the reasonableness adopted by the respondent-Commission alone are to be tested by the Courts.

17. It may not be required for the Courts to go into the point of reservation. The Rules are not under challenge. The writ petitioner has not challenged the notification, at the first instance, he participated in the process of selection by accepting the terms and conditions stipulated in the notification. Now he cannot raise the grounds in respect of procedures adopted as per the terms and conditions stipulated in the original notification. A failed candidate, whose name has not been considered for calling for an interview on account of the fact that he was not within the zone of consideration, cannot challenge the terms and conditions stipulated in the original notification. The Apex Court of India, emphatically held that a failed candidate cannot be permitted to challenge the terms and conditions stipulated in the original notification in view of the fact that he accepted the terms and conditions and participated.

18. The writ petitioner has not established the fact that the candidates who secured lesser marks were selected to the category which the petitioner belongs. Though the learned counsel for the writ petitioner states that the methodology stipulated in the notification has not been followed, this Court is unable to accept the same on the ground that the petitioner has not established his case, so as to ensure that the respondents have committed an irregularity or illegality in the matter of selection.

19. It is reiterated by the learned counsel for the respondents that the selection has been conducted pursuant to the Special Rules as well as the General Rules. The Rule of Reservation has been followed as per Rule 22 of the General Rules and therefore, the respondent-Commission has followed the roster, considering the backlog vacancies and other aspects stipulated in the Rules.

20. This being the factum of the case, the writ petitioner has not established any acceptable ground for the purpose of interfering with the process of selection already conducted and completed in respect of the recruitment to the post of District Educational Officer. Thus, the writ petitions are devoid of merits and accordingly, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Svn

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

WEB COPY

2.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

+2cc to Mr.G.Sankaran, Advocate Sr.59254

WPs 2464 & 4991 of 2017

nmI[co]
srg 01/10/2018



WEB COPY