

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.1199 of 2013

S.Shanavas Parvin

.. Petitioner

Vs.

1. State of Tamil Nadu,
Represented by Additional
Principal Secretary to Government,
Higher Education Department,
Secretariat, Chennai-600 006.

2. The Chairman,
Teachers Recruitment Board,
College Road, Chennai-600 006.

3. L.Natrinai

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned revocation of order dated 28.11.2012 in R.C.No.5312 & 2011/A6/2011 passed by the 2nd respondent and quash the same and consequentially direct the respondent to prepare the selection list in accordance with the prescribed roster points thereby affirming petitioner order of Selection/appointment dated 18.10.2012 in R.C.No.5313/A6/2009 issued to petitioner for the post of Lecturer Mathematics in Government Polytechnics.

For Petitioner : Mr.N.Ramesh

For Respondents: Mr.K.Venkatramani (for R1 and R2)
Additional Advocate General
Assisted by
Mr.M.Dig Vijayapandian
Additional Government Pleader

Mr.P.Ganesan (for R3)
for M/s.C.S.Associates

O R D E R

The petitioner has filed this petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned revocation of order dated 28.11.2012 in R.C.No.5312 and 2011/A6/2011 passed by the 2nd respondent and quash the same and consequentially direct the respondent to prepare the selection list in accordance with the prescribed roster points thereby affirming petitioner order of Selection/appointment dated 18.10.2012 in R.C.No.5313/A6/2009 issued to petitioner for the post of Lecturer Mathematics in Government Polytechnics.

2.The petitioner aggrieved over the removal of his name from the provisional selection cum the rank list made by the 1st respondent published with regard to the post of lecturers (Engineering and Non-Engineering) in Government Polytechnic College vide the impugned order is before this court challenging the same through this writ petition.

3.It is the case of the petitioner that the petitioner having possessed all required qualifications to be appointed for the post of lecturer (Engineering and Non-Engineering) applied for the said post in pursuance of the notification No.2/12 dated 27.02.2012 of the 2nd respondent board. The petitioner also succeeded in the written exam and after verification of certificates he was selected and was served with a provisional selection order dated 18.08.2012 by the 2nd respondent. He was ranked at No.15 and his rank was arrayed as per the Reservation roster as being a B.C Muslim candidate.

4.In the meantime the 3rd respondent who is also a candidate appeared for the above examination filed a Writ Petition before this court by claiming herself as a successful candidate and claimed her to be accommodated in the provisional list. Whereas this court in the above Writ Petition directed the 3rd respondent herein to consider the claim of the 3rd respondent and thereby directed to issue appointment order to the 3rd respondent within a period of 6 weeks.

5.In consequence of the above order made in the Writ Petition, the 3rd respondent herein was accommodated and thereby the petitioner herein whose name found placed at rank No.15 was subsequently removed vide the impugned order herein. Aggrieved of the same the Writ Petition is filed.

6.I heard Mr.N.Ramesh, learned counsel for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General Assisted by Mr.M.Dig Vijayapandian, learned Additional Government Pleader for the respondents 1 and 2, Mr.P.Ganesan for M/s.C.S. Associates, learned counsel for the 3rd respondent and perused the entire records.

7.The Learned Counsel for the petitioner submitted that the removal of the petitioner's name from the provisional list is erroneous and as against the reservation roster adopted for the category of B.C. Muslim. It is further case of the petitioner that the petitioner herein has got with 124 marks.

8.It is further case of the petitioner that no notice was served or no opportunity was afforded to the petitioner before passing the impugned order of removal of petitioner's name from the selection list. The respondents ought to have offered due opportunity to the petitioner before removing the petitioner's name. Further it is contended that if at all the petitioner was treated as BC Muslim Women, the petitioner should have been selected in the said communal turn. Whereas the name of the 3rd respondent was included as per the orders of Hon'ble High Court in W.P.No.29350 of 2012, the respondents 1 and 2 without following the roster. In fact the name of 3rd respondent would have been placed in GTW (General Turn Woman) in the 1st place and the petitioner's position would have remained unaltered. Therefore in any angle the impugned order is liable to be set aside and the petitioner is liable to be offered with an appointment to the post of lecturer (Engineering and Non-Engineering).

9.Per Contra the Learned Counsel for the 3rd respondent submitted that originally she was the topper amongst the 48 candidates appeared in the above selection process with 1st rank. However it was found that the 3rd respondent was not selected on the ground that she did not possess the requisite qualification. It was informed by the 1st and 2nd respondents that since the 3rd respondent possessed M.Sc., (Mathematics with Computer Application), which is not equivalent to the M.Sc., (Mathematics), she was held as ineligible and it was reported that the recruitment was M.Sc., (Mathematics) in First Class as per the notification.

10.It is further contended by the Learned counsel for the 3rd respondent that earlier some other persons who are similarly placed like 3rd respondent who have secured Degree made representations to the Tamil Nadu Public Service Commission and also to the 1st & 2nd respondent claiming that as per the special rules, the M.Sc., in Mathematics with Computer Application is equivalent to M.Sc., (Mathematics). In turn the matter was referred to Equivalence Committee and the Equivalence Committee decided that the M.Sc., (Mathematics with Computer Application) is equivalent to the M.Sc., (Mathematics) for the purpose of employment in public service. Accepting the recommendations of the Equivalence Committee, the Government also issued orders in G.O.(1D) No.260, Higher Education Department, dated 15.09.2012.

11.The Learned counsel further submitted that however regardless of the above GO, the 3rd respondent's candidature was erroneously rejected and challenging the same the 3rd respondent approached this Hon'ble Court by way of a writ petition in W.P.No.29350 of 2012 and this Court by an order dated 01.11.2012 directed the 1st and 2nd respondents to consider 3rd respondent's claim in the light of the above Government Order and further held that the 3rd respondent was entitled for the appointment to the post of Lecturer. In view of the said proposition of the Government and as well by the Order of this Court the 3rd respondent's name who is the topper of that batch was rightly included by the 1st and 2nd respondent. Therefore she prays for dismissal of the above writ petition.

12.At this juncture the learned counsel for the 1st and 2nd respondents filed counter and contended that the Respondent Board in strict compliance with the aforesaid direction of this Court has included the name of the 3rd respondent, who is the Topper in the provisional selection list for appointment to the post of lecturer Mathematics in Polytechnics Colleges. As per G.O.(1D) No.260, Higher Education Department, dated 15.09.2012 M.Sc., (Mathematics with Computer Application) is equivalent to the M.Sc., (Mathematics) for the purpose of employment in public service.

13.Therefore, the 3rd respondent having scored 147 marks and being the highest scorer was accommodated as the first candidate in General Turn, though she belongs to Backward Class Community and accordingly she remained included in the GT (W), General Turn Woman on the basis of her rank. It is further submitted

that with the inclusion of the 3rd respondent in the GT (W) turn, one Sahul Hameed with 138 marks who was accommodated in the General Turn as the last candidate was shifted to the BC Muslim General Turn and as a consequence the petitioner herein with only 124 marks who had already been accommodated in the BC Muslim General Turn was replaced by the candidate namely Sahul Hameed with 138 marks. Therefore the petitioner is not liable to be appointed in view of the aforesaid re-fixation of rank and hence prays for dismissal of the writ petition.

14. Hearing upon the rival submissions and on perusal of the available records this Court at the outset makes itself clear that the number of post reserved for BC Muslim remains one in number in the above said recruitment on the basis of the roster applicable.

15. It is seen from the records that petitioner belongs to BC Muslim Category and found her name in 15th rank on application of the above roster and thereby was provisionally selected in line with reservation under BC Muslim category. Whereas subsequent to an order of this Court dated 01.11.2012 made in W.P.No.29350 of 2012 the respondents 1 and 2 having considered the case of the 3rd respondent namely Tmt.Natrini in the light of G.O.(1D) No.260, Higher Education Department, dated 15.09.2012 holding that M.Sc., (Mathematics with Computer Application) is equivalent to the M.Sc., (Mathematics) for the purpose of employment in public service, having found eligible thereby included the 3rd respondent's name under General Turn (General) as she secured highest marks.

16. The record further disclose that previously one namely S.Shaul Hameed who secured 138 marks in the above Exam and belonged to BC Muslim category was then provisionally selected and placed under General Turn (General) category by virtue of his mark.

17. It is further seen that due to the above modification of the provisional list by inclusion of the 3rd respondent's name under General Turn category, the said candidate namely S.Shaul Hameed who belongs to BC Muslim category and having scored 138 marks was accommodated as against the said post reserved for Backward Class Muslim (General). Thereupon the petitioner who was provisionally selected under Backward Class Muslim category could not be accommodated as she had lesser marks (124 marks) than that of Shaul Hameed with 138 marks.

18. Whereupon the petitioner could not find a place in the Backward Class Muslim (General) turn and thereby with marks lesser than that of said Shaul Hameed, her name stood removed by the respondent Officials from the provisional list.

19. Admittedly there is only one post reserved for BC Muslim and the said reservation is satisfied with inclusion of Sahul Hameed with 138 marks in the BC Muslim Category and hence the petitioner herein with only 124 was removed from the BC Muslim category.

20. In the above said circumstance, it is needless for this Court to say that the respondents 2 and 3 have rightly accommodated the said Sahul Hameed who is a candidate with 138 marks which is much more than that of the petitioner. It is not the case of the petitioner that the appointment was made by appointing a Non-Muslim candidate to the said post and it is not her case that she had secured more marks than that of said Sahul Hameed.

21. Therefore, the said Sahul Hameed, who was initially placed in the General Turn (General) category in lieu of his Mark, later due to the inclusion of the 3rd respondent in the provisional list had lost his rank by one step and have found his place under BC Muslim Category as being the topper under BC Muslim category with 138 mark in the above recruitment process and thereby was rightly placed under BC Muslim category. Therefore in any angle this Court is unable to accept the contention of the writ petitioner.

22. Furthermore, it would be noteworthy that a provisional selection itself will not confer any right on such person for appointment and the same is subject to final outcome of the recruitment process. In other words merely because one has been provisionally selected he cannot claim absolute right for appointment to the said post.

23. In so far the contention of the petitioner that no prior notice was issued to her before passing the impugned order, this Court is of the opinion that even if such opportunity was given, it would not serve any purpose and it will remain only an empty formality in view of her mark lesser than that said Sahul Hameed, who remain with a rank ahead the petitioner.

24.In the result, this Court finds no infirmity or illegality over the impugned order and hence the writ petition is hereby dismissed as devoid of merits. No costs.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

vs

To

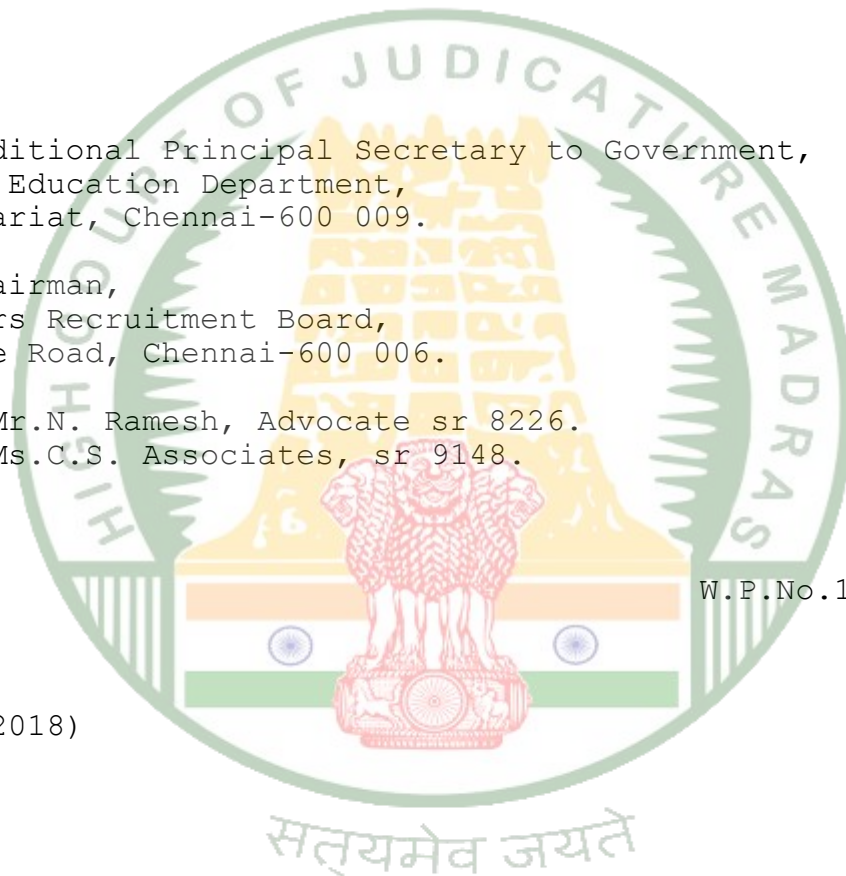
1. The Additional Principal Secretary to Government,
Higher Education Department,
Secretariat, Chennai-600 009.
2. The Chairman,
Teachers Recruitment Board,
College Road, Chennai-600 006.

+1 CC to Mr.N. Ramesh, Advocate sr 8226.

+1 CC to Ms.C.S. Associates, sr 9148.

W.P.No.1199 of 2013

KGK (CO)
SP (28/02/2018)



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