

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.29989 of 2013
and M.P.No.1 of 2013

Monita Sutherson

... Petitioner

Versus

- 1.The Registrar,
Bharathiar University,
Coimbatore 641 046.
- 2.Secretary SET 2012 and
Controller of Examinations,
Bharathiar University,
Coimbatore.
- 3.The University Grants Commission,
Rep.by its Secretary,
Bahadur Shah Zafar Marg,
New Delhi-110 002.
- 4.The Vice Chancellor,
Mother Teresa Women University,
Kodaikanal,
Dindigul District.

(R4-Suo moto impleaded as per order
of this Court dated 14.03.2018)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings dated 29.08.2013 in Ref.No.BU-COE/SET/2013 issued by the 1st respondent quash the same and direct the respondents 1 and 2 to declare the petitioner's result under BC category for the SET Examination conducted on 07.10.2012 by the 1st respondent in Management subject (Reg No.06160125).

For Petitioner : Mr. B.Ravi
For R1, R2 & R3 : Mr.P.R.Gopinathan
For R4 : No appearance

O R D E R

This writ petition is filed for issuing a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent dated 29.08.2013 and to direct the respondents 1 and 2 to declare the petitioner's result under BC category for the SET examination conducted on 07.09.2012 by the first respondent.

2 The petitioner is a post graduate in Management and obtained MBA degree from Anna University, Tirunelveli in May 2009. The petitioner has got 71.46% of marks in MBA. The petitioner belongs to Christian Nadar community, which is recognized as BC in Tamil Nadu.

3 The first respondent issued a notification for conducting State Eligibility Test known as SET on 07.09.2012 for determining the eligibility for recruitment of Lecturers in Universities and Colleges in Tamil Nadu and Union Territory of Puducherry in the subjects mentioned therein. For appearing the State Eligibility Test, the candidates must have secured 55 marks in Master Degree or equivalent examination. The OBC candidates are eligible for a relaxation in qualifying marks in SET examination.

4 The petitioner submitted her application through online for appearing SET examination conducted by the first respondent. Though the petitioner belongs to BC community, it is stated that she applied under general category by mistake. It is further stated that there was no column in BC category and therefore, the petitioner while applying for the examination, found herself fit under general category. It is stated that the petitioner made a representation to the first respondent on 12.02.2013, stating that she applied under general category because of the defect in the 2012 notification as the online application form had reference to all communities like PC, VC, SC, ST and OBC and general category but not BC.

5 It is stated that the petitioner obtained 62% in paper-I, 64% in paper-II and 78% out of 150 in paper-III. The total marks of the petitioner is 204/350. As per the eligibility criteria, the minimum marks for the general category is 210/350. However, the minimum marks required for OBC category for pass is only 196/350. If the petitioner is considered as a candidate under BC category, she is qualified as she has secured 204 out

of 350 marks. Since, the petitioner had applied under general category quota, the petitioner's application for SET examination was not considered under BC category.

6 It is stated that the third respondent furnished a copy of the letter from the second respondent addressed to the third respondent on 24.06.2013. In the said communication, it is stated that the petitioner is not qualified in SET. The petitioner has stated that many candidates have applied BC/MBC category were permitted to write examination on submission of BC/MBC certificate instead of OBC certificate. Hence, this results were declared under OBC category. Since, the petitioner applied under general category, it is stated that the result was announced only under general category.

7 The learned counsel for the petitioner raised the following grounds:

(a) The petitioner is entitled to be considered under OBC category as she belongs to BC community in Tamil Nadu. Her application though was submitted under general category, it was by mistake and it was clarified by the petitioner by way of subsequent representation before the results. There is no estoppel against the statement as to one's status. The petitioner is entitled to give relaxation for the SET examination as it is extended to all OBC candidates as per the notification.

8 It is further stated that SET is only a qualifying or Eligibility Test, which is required for the person to compete for certain posts. As the petitioner belonging to BC category, she is entitled to the concession as per the notification. The learned counsel for the petitioner relied upon the judgment of this Court in W.P.No.3606 of 2013 dated 26.02.2013 in a similar case, wherein it was held as follows:

"5. However, in a case of competitive examination, when several thousand candidates compete for a few posts available, then the question of strictly construing the prospectus may arise. In the present case, merely passing the State Eligibility Test will not get any employment as it is only a minimum requirement for being considered for the post of Lecturer. It is admitted that this year in the SET conducted by the Bharathiyar University, the total percentage of pass worked out to less than 4% and there is no ceiling on the percentage of pass by any candidate. Therefore, the petitioner, if she is otherwise belongs to BC community is being considered

on the basis of the concessional marks shown to that candidates, no prejudice will be caused to other persons including the University. Hence, the decisions relied on by the learned standing counsel for the University in Bamila's case(cited supra) has no direct application to the case on hand. The petitioner's inadvertence should not deprive her chance of getting SET pass, which may be a passport for being considered for the Lecturer post.

6. Under the said circumstances, the writ petition stands disposed of, with a direction to the first respondent to consider the petitioner as OBC/BC candidate and thereafter issue the corrected result, in so far as the petitioner is concerned. This exercised shall be undertaken within a period of two weeks from the date of receipt of a copy of this order. No costs. Connected Miscellaneous petition is closed."

9 Though notice has been served, none has entered appearance for the respondents. It is not in dispute that the petitioner belongs to OBC category. The petitioner could not be selected under BC category only because of certain defects in the online application in the 2012 notification, which according to the petitioner was by mistake.

10 Be that as it may, this Court is concerned only with the status of the petitioner. Though, the petitioner has passed the eligibility test (SET) with a minimum required marks, she has not been given the concession in marks because of the wrong mentioning of community in the online application. Now, the petitioner's eligibility to write the examination under BC/MBC category as per the notification is established and hence the petitioner is entitled to get the results of the SET examination under OBC category. By inadvertently mentioning the category wrongly in the application, the petitioner cannot be denied the benefit or privilege namely relaxation of marks. No motive can be attributed against the petitioner, who has not taken any advantage because of the wrong entry as to her communal status. Merely by passing the State Eligibility Test, the petitioner is not supposed to get any employment. Passing eligibility test is only a basic requirement for being considered for the post. No prejudice is likely to be caused to anyone by making eligible to compete for the post.

11 Accordingly, this writ petition is allowed. The first respondent is directed to consider the petitioner as OBC/BC candidate. The second respondent is directed to declare the petitioner's results by treating the petitioner as a

candidate belongs to OBC category for the purpose of SET examination conducted on 07.09.2012, and issue the certificate accordingly within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rpl

To

1.The Registrar,
Bharathiar University,
Coimbatore 641 046.

2.Secretary SET 2012 and
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3.The Secretary,
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4.The Vice Chancellor,
Mother Teresa Women University,
Kodaikanal,
Dindigul District.

+1cc to Mr.R.Subramanian, Advocate SR.No.63652

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GMV (04/10/2018)