

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.19951 of 2012 and 11227 of 2014

and M.P.Nos.1 of 2012 and 2 of 2014

W.P.No.19951 of 2012

K.Prasad

.. Petitioner

vs.

1.Teachers Recruitment Board,
Represented by the Chairman,
College Road, Chennai 600 006.

2.The Assistant Director,
District Employment Office,
Thiruvallur.

3.J.Saradhadevi

.. Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the Tentative List of Candidates Selected for Appointment (Backlog) and Minority through Employment Registration State Seniority 2010-11 and quash the same, insofar as it relates to the selection of the third respondent viz., J.Saradhadevi, belonging to the open category, selected against the only vacancy reserved for the most backward class category (general) and consequently direct the first respondent to select the petitioner, who is the senior among the most backward class category candidates, who appeared for certificate verification before the first respondent.

For Petitioner: Mr. R.Rajendran

For R1 and R2: Mr.P.Raja Government Advocate.

For R3 : Mr.R.Mubarak Basha

W.P.No.11227 of 2014

J.Saradha Devi

.. Petitioner

. vs. .

1. Teachers Recruitment Board,
Represented by the Chairman,
College Road, Chennai 600 006.

2. The Joint Director of School Education (Employment)
College Road, Chennai 600 006.

3. The Chief Educational Officer,
Krishnagiri.

.. Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceedings of the 2nd respondent passed in Na.ka.No.26841/C3/E2/13 dated 22.03.2013 and consequential proceedings of the 3rd respondent passed in Rc.No.01462/A4/2013, dated 28.03.2013 and quash the same and direct the 2nd respondent to reinstate the petitioner in service as Graduate Assistant Mathematics (Telugu) with all consequential monetary benefits and other attendant benefits.

For Petitioner : Mr.R.Mubarak Basha

For R1 to R3 : Mr.P.Raja Government Advocate.

COMMON ORDER

As it appears, the writ petitioner in W.P. No.19951 of 2012 has made a prayer to quash the tentative selection list dated 19.07.2012 of the respondent no.1, selecting respondent no.3 in the said writ petition (who is the petitioner in W.P. No.11227 of 2014) to the post of B.T. Assistant, Mathematics (Telugu) and direct his appointment against the said post. The respondent No.3 has filed a writ petition No.11227 of 2014 challenging the order of the second respondent cancelling her selection and appointment vide the order passed in Na.Ka. No.26841/C3/E2/13 dated 22.03.2013 and the consequential order of the third respondent passed cancelling his appointment vide Rc. No.01462/A4/2013, dated 28.03.2013 pending disposal of the W.P.No.19951 of 2012 with a prayer to quash the same and direct her reinstatement in the service in the post against which she was appointed with all monetary and attendant benefits. Since both the writ petitions have arisen out of the dispute of the recruitment to the same post made pursuant to the same advertisement, both are heard together and are disposed of by this common order.

2. For convenience, the parties are described according to their position in W.P. No.19951 of 2012.

3. Undisputedly, it appears that the District Employment Exchange Office sponsored the names of the candidates in the ratio of 1:5 to the 1st respondent/Teachers Recruitment Board for appointment to the post of B.T.

Assistant Mathematics (Telugu), inter alia some other post, to fill up certain vacancies including backlog through Employment Registration Seniority for the year 2010-11. As it appears from the Notification of vacancies, one (backlog) vacancy for Most Backward Class (General), priority category was earmarked in the notification for B.T. Assistant Mathematics (Telugu) and cut off date for the same was 18.09.2009. Accordingly, five persons were sponsored including the petitioner in W.P. No.19951 of 2012 who was the next senior most in that category. The respondent no.3 (petitioner in W.P. No.11227 of 2014) though sponsored but against Open Category (General) as she was not registered in MBC category in the employment exchange record. In the process of selection, however, the Teachers Recruitment Board selected the respondent No.3 in MBC (General) priority category for the aforesaid post, though her name was not sponsored for the same, as she produced the requisite community certificate of the earmarked priority category on the date of verification of the certificate. Such selection of her was justified on the ground that she had already obtained an MBC certificate from the State of Tamil Nadu by the time of selection though the cut-off date for the aforesaid post in MBC (General) category was 18.09.2009. As respondent no.3 was not having an MBC category certificate on the aforesaid cut-off date from the State of Tamil Nadu, her such selection has been challenged before this Court by the petitioner in W.P. No.19951 of 2012. According to the petitioner, such selection of respondent no.3 being contrary to law, is illegal and arbitrary, hence liable to be quashed and he being second senior most candidate in the said MBC category sponsored, is entitled to get appointment as the senior most candidate sponsored in that priority category has been appointed against open category vacancy earlier. Hence, made the prayer as aforesaid. In the said case an interim order having been passed by this Court staying appointment of respondent no.3, her appointment was cancelled by the respondent No.2 and 3 pending disposal of the W.P.No.19951 of 2012, hence she has filed W.P. No.11227 of 2014 with a prayer to quash such cancellation and direct her appointment. The Respondent No.3 in the counter affidavit filed as well as in the writ petition has justified her appointment on the ground that she being in possession of the community certificate of the relevant priority category on the date of verification of the certificate and also belonging to the said earmarked priority category, her appointment was just and proper and, as such, she has made prayer as aforesaid in the writ petition filed by her challenging the cancellation of her appointment. The Respondent No.1-Teacher Recruitment Board, however, though did not file counter affidavit in W.P.No.19951 of 2012 but filed a counter affidavit in the writ petition of the respondent no.3 indicating that she was not qualified for selection and appointment as on the cut-off date, as she was not in possession of the relevant community certificate even though she produced the community certificate during certificate verification and was also not sponsored against

the said priority category. Hence, the cancellation of her appointment was justified. The aforesaid averment made by the respondent as such, support the case of writ petitioner in W.P.No.19951 of 2012.

4. During the course of hearing of the writ petitions, it is submitted by the learned counsel for the writ petitioner that since the respondent no.3 was not in possession of the community certificate issued by the State of Tamil Nadu, even though she was in possession of the BC category certificate of the State of Andhra Pradesh, her case was not sponsored by the Employment Exchange against the post earmarked for the category. No doubt, she obtained the community certificate of the earmarked category before the date of verification of the certificate, but the same should not have been taken into consideration to select her by the respondent no.1 as she was not qualified on the cut off date being not in possession of the required community certificate. Hence, cancellation of her such illegal appointment made, which has been challenged in the writ petition filed by her is devoid of merit. The petitioner also deserves to be appointed against the said post being the next senior post belonging to the earmark community as the senior most one sponsored has already been appointed against an open category vacancy. So, it is submitted by the learned counsel for the petitioner to allow the writ petition filed by him directing the respondents no.1 and 2 to appoint the writ petitioner against the aforesaid post and the writ petition filed by the respondent no.3 be dismissed.

5. The learned counsel for other Respondents supported the stand taken by the petitioner inasmuch as the respondent no.3 was not in possession of the community certificate on the cut off date and, as such, not sponsored against the priority category still he was selected by respondent No.1, as she produced the certificate in this category on the date of verification of the certificates on a mistaken notion and consequently appointed. The aforesaid being illegal has been cancelled by respondents no.2 and 3 in the W.P.No.11227 of 2014 hence the said writ petition filed by the respondent no.3 challenging the same is devoid of merit. So far as the prayer made by the writ petitioner in W.P.No.19951 of 2012 is concerned in the aforesaid premises and it being not disputed that he being the next senior most candidate in the earmark category when the first has been appointed against another post he is entitled to the appointment if otherwise qualified, is the submission of the learned counsel for the respondent except the respondent no.3 in W.P.No.19951 of 2012.

6. But the counsel for the respondent no.3 in response, submits that such a contention is devoid of merit inasmuch as the respondent no.3 belonging to MBC category is not in dispute. No doubt, she was not in possession of MBC certificate on the cut off date, but when she produced the certificate on the date of verification of certificate, her

selection and consequential appointment as such should not have been interfered with, more particularly in view of the decision rendered by Madurai Bench of this Court in the case of A. Belinda vs. Teachers Recruitment Board, passed in W.P. (MD) No.2329 of 2006 wherein this Court taking note of the fact that the petitioner who belongs to the MBC community though could not produce the certificate issued in his favour before the cut off date as the same was destroyed eaten by ants and produced a copy thereof obtained subsequent to the cut off date, rejection of his candidature for consideration against the vacancy for the MBC community was held to be unjust and improper and, as such, the petitioner therein having obtained highest mark in that MBC category was directed to be appointed against the vacancy earmarked for that priority category. Reliance has also been placed in a decision of the Apex Court in the case of Charles K. Skaria vs. C. Mathew, reported in 1980 (2) SCC 752, wherein it has been held that if it is shown that the qualification has been acquired before the relevant date, the same cannot be invalidated merely because proof was adduced a few days later, but before the selection or in a manner not mentioned in the prospector, but still above board.

7. From the aforesaid averments made as well as the contentions advanced, as it appears, the questions that have arisen for determination in the writ petition are (i) Whether the selection and appointment of the respondent No.1 in the writ petition 11227 of 2014 against the earmarked vacancy of the priority category of MBC (General) for the post of B.T. Assistant, Mathematics (Telugu) was illegal and arbitrary (ii) if so, whether the writ petitioner in W.P.No.19951 of 2012 is entitled to be selected and appointed against the said post earmarked for the priority category in question.

8. In this case, it is not in dispute that the respondent no.3 though belongs to BC category in the State of Andhra Pradesh, and was registered on transfer in the State of Tamil Nadu in the Employment Exchange, she was not sponsored as a MBC General category candidate against the earmarked post but sponsored as an open category candidate inasmuch as possession of a MBC category certificate issued by the competent authority in the State of Tamil Nadu was essential for registration on the said priority category. However, she having obtained the required community certificate before the certificate verification, she was selected against the priority earmarked category of MBC (General) by the respondent no.1 ignoring the writ petitioner who was admittedly sponsored against such priority category and had the necessary requisite community certificate and also the qualification for being selected against the priority category earmarked post i.e. B.T. Assistant Mathematics (Telugu). The same has been justified by the respondent No.3 placing reliance in a decision of this Court rendered in the case of A.Belinda and a decision of the Apex Court rendered in the case of Charles K.

Skaria vs. C. Mathew cited supra. As it appears in the case of A. Belinda, that therein the petitioner was already issued with certificate on the cut-off date, but could not produce the same as the same was destroyed. However, he produced a duplicate certificate thereof indicating the fact that he was issued such certificate before the cut-off date in that context, this Court taking note of the fact that the petitioner was qualified in that category being belonging to that community in view of the original certificate issued which he could not produce, held that the proof furnished thereof which was issued to him after the cut-off date as a duplicate one cannot deprive him for being considered against the said category. The aforesaid is also a view of the Apex Court in the case of Charles K. Skaria vs. C. Mathew, reported in 1980 (2) SCC 752. But here in this case, admittedly, the respondent no.3 was not in possession of the MBC Community Certificate from the State of Tamil Nadu as on the cut-off date and as such her name was not sponsored against the earmarked priority category vacancy. No doubt, she produced the community certificate at the time of verification of certificates, which she obtained latter to the cut-off date. As such, she had no qualification to be considered against earmarked vacancy of MBC General for which the category the post was earmarked, moreso, when she was not sponsored for that reason against that earmarked category vacancy by the Employment Exchange. The Apex court in the case of C.M Singh vs. H.P. Krishi Vishva Vidyalaya (1999) 9 SCC 40, so also State of Haryana vs. Anurag Srivastava (1998) 8 SCC 399, have held that a candidate must possess the requisite qualification on the last date of submission of his application. It is the last date of receipt of the application which would be relevant for deciding as to whether a candidate is qualified or not. Admittedly, here in this case, such last date is the cut-off date. Therefore, the respondent no.3 being not possessing the qualification as required to be considered for the earmarked category as on the cut-off date her selection, against the earmarked vacancy was contrary to law, moreso, when she was not sponsored against the said vacancy. Accordingly, after challenge of such selection in the writ petition W.P.NO.19951 of 2012 and the interim order passed, realising the mistake, the respondent No.2 and 3 have passed the order impugned in W.P.No.11227 of 2014 cancelling such selection and appointment of the respondent No.3 and relieved her from the post, pending disposal of the W.P.No.19951 of 2012. The respondent No.1 also in its counter affidavit has also averred the selection of respondent No.3 was irregular for the reasons that she was not possessing the priority category certificate as on the cut-off date and not sponsored against such priority category but was illegally selected having produced the category community certificate on the date of verification of certificate. In such premises the selection of respondent No.3 vide the impugned selection order and the consequential appointment being contrary to law cannot be sustained. In such premises, the writ petitioner in

W.P.No.19951 of 2012 being the next senior most candidate sponsored against the priority category post is entitled to be appointed inasmuch as the senior most in that priority category by the time of selection was already absorbed in respect of an open category post and as such was not available for consideration against the prioritise category earmarked post in question. In view of the mandate of Rule 22(b) and proviso fourth to Rule 22(d) of the Tamil Nadu State and Subordinate Services Rules. Accordingly, the writ petition of the petitioner in W.P.No.19951 of 2012 deserves to be allowed whereas the writ petition of the respondent no.3 in that case filed vide W.P.No.11227 of 2014 challenging the selection and cancellation of her appointment is liable to be dismissed, as her selection against the post was illegal for not possessing the required community certificate on the cut-off date for consideration against the post earmarked for the priority category of MBC (General).

9. For the aforesaid reasons, the writ petition No.19951 of 2012 is allowed. The respondent no.1 is directed to select the writ petitioner in the said post of B.T. Assistant Mathematics (Telugu) earmarked for MBC (General) (backlog) cancelling the impugned selection of the respondent No.3 and also necessary appointment order be issued to the petitioner by the respondent concerned, within a period of one month from the date of production / receipt of the copy of this order. So far as the writ petition No.11227 of 2014 filed by the respondent no.3 challenging the cancellation of her selection and appointment and relieve from the post vide the impugned orders are concerned, the same being devoid of merit stands dismissed. All the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. Teachers Recruitment Board,
Represented by the Chairman,
College Road, Chennai 600 006.

2. The Assistant Director,
District Employment Office,
Thiruvallur.

3. The Joint Director of School Education (Employment),
College Road, Chennai 600 006.

4.The Chief Educational Officer,
Krishnagiri.

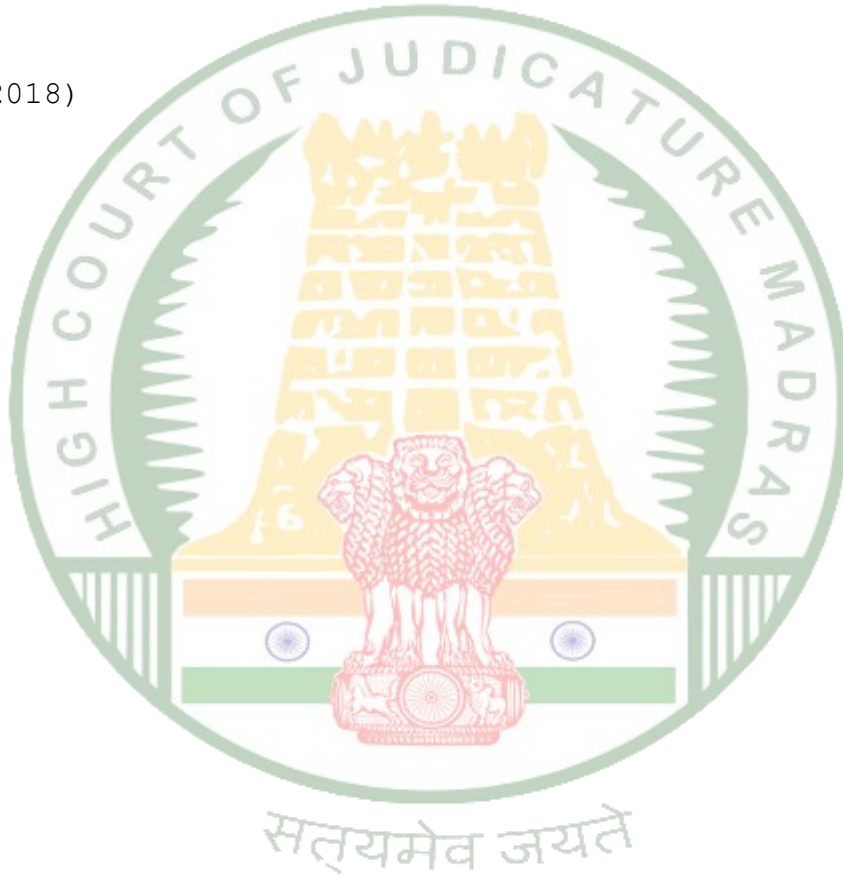
+ 1 cc to Mr. R. Rajendran, Advocate Sr.13858
+ 2 ccs to Mr.R. Mubarak Basha, Advocate Sr.13472 & 13473
+ 1 cc to Mr.Government Pleader Sr.14509

W.P.Nos.19951 of 2012 and

11227 of 2014 and

M.P.Nos.1 of 2012 and 2 of 2014

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