

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

AND

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.No.25364 of 2018
and
W.M.P.No.29508 of 2018

M.Vijaya

.. Petitioner

Vs.

Tamil Nadu Public Service Commission,
rep. by its Secretary,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai – 3.

..Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to consider the claim of the petitioner under and insofar as Differently Abled Person with Locomotor Disability (DAP/LD) category above for selection and appointment to the post of Civil Judge as per Notification No.8/2018 dated 19.04.2018 in any one of the above said earmarked vacancy/category of reservation without reference to any minimum prescribed cut off in the main examination is concerned.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.B.Vijayaragupathy for
M/s G.Niraimathy

ORDER

[Order of the Court was delivered by **V.PARTHIBAN.,J**]

The case of the petitioner is as follows:-

Pursuant to the Tamil Nadu Public Service Commission (TNPSC) Notification No.8/2018 dated 09.04.2018 calling for application for appointment to the post of Civil Judge in the Tamil Nadu State Judicial Service, the petitioner applied for consideration of her candidature. According to the notification by the Commission, 320 vacancies were to be filled up and the vacancies were divided category-wise as well as that of roaster as applicable to such recruitment. The petitioner belongs to Backward Community (General) and also she suffered from Locomotor Disability with 55% of disability. In these circumstances, the petitioner had applied against the quota meant for women for differently abled person suffering from locomotor disability. The petitioner participated in the preliminary examination and was successful and therefore, she was called to write the main examination. The main examination was held on 11th and 12th August 2018 and according to the petitioner, she had performed well in the main examination. But however, it appears that from the results declared for the main examination, the petitioner's name did not figure as being one of the eligible persons clearing the main examination. The next stage of selection is interview which was to take place between 27.09.2018 and 05.10.2018. Since the petitioner

did not qualify in the main written examination, she was not called for the interview and being aggrieved by the same, the petitioner is before this Court seeking issue of Writ of Mandamus.

2.Mr.L.Chandrakumar, learned counsel for the petitioner would strongly contend that the petitioner being differently abled person suffering from locomotor disability and one post is reserved for the said category, she ought to have been declared as successful in the main examination by relaxing the standard of minimum eligibility which is provided in the notification of the Tamil Nadu Public Service Commission, dated 09.04.2018. According to the learned counsel, out of 320 vacancies notified, only 234 persons had been provisionally admitted to oral test. Such being the position, the respondent commission ought to have relaxed the standard in order to accommodate person like the petitioner who claim consideration for appointment against special category in order to fulfil the avowed objectives of the Persons of Disability Act, 2016. According to the learned counsel, the minimum eligibility ought to have been placed on par with the concession shown to SC/ST category, since the petitioner suffered from physical disability and the quota has also been prescribed for such category like as that of persons belonging to the SC/ST community. According to the learned counsel, the petitioner being the sole candidate under BC differently abled person and therefore, her eligibility have to be judged on the basis of relaxed

standard and not sticking to minimum eligibility as prescribed in the notification of the respondent commission, dated 09.04.2018.

3.This Court has considered the submission made by the counsel appearing on behalf of the petitioner and unable to appreciate as to how the claim of the petitioner can be considered favourably. The notification issued by the respondent commission dated 09.04.2018 clearly providing for minimum percentage of mark to be obtained for each category namely, 30% for SC/ST 35% for MBC/DC, BC and BCM and 40% for others. This is provided under clause 11 of the scheme of examination vide the said notification dated 09.04.2018. Such being the case, this Court is unable to appreciate how the petitioner could seek for issue of Writ of Mandamus, when she failed to secure minimum percentage of mark as mentioned above.

4.Moreover, the said clause 11 of the notification, which provides for minimum eligibility in the main written examination, has not been challenged by the petitioner. Without challenging the eligibility criteria, in respect of the main examination, it is not open to the petitioner to maintain the present writ petition seeking only for issue of Writ of Mandamus. Further, it has to be seen that the petitioner having participated in the selection process and having been unsuccessful, cannot turn around and challenge the eligibility

criteria prescribed in the notification. The prayer as sought in the writ petition, according to the opinion of this Court, is misconceived and cannot be maintained.

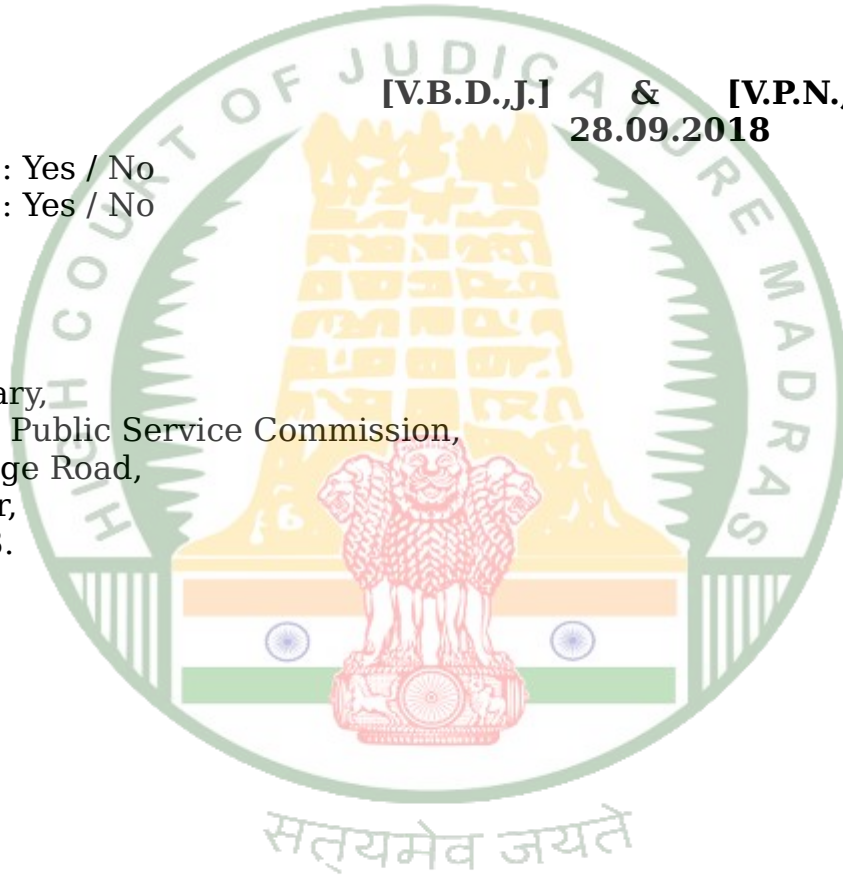
5. The petitioner once taken part in the selection process without demur and having failed to clear the main written examination cannot be heard to complain about the minimum eligibility prescribed by the commission in its notification dated 09.04.2018 which is akin to playing the game and then framing the rules, according to the marks secured by the petitioner. The standard as prescribed in the notification cannot be relaxed on the basis on which individual's performance in the written examination which would mean that there cannot be any sanctity attached to the minimum percentage of mark prescribed for the main written examination. If the claim of the petitioner is to be entertained, then every individual participant in the selection can come forward with the writ petition seeking for relaxation on the basis of his/her performance in the main written examination. The rules cannot be tailor-made to suit the performance of the each individual who participate in the public examination. Moreover, the relaxation of standard to be prescribed for any special category is the policy of the Government and in the absence of any such policy in regard to the claim of the petitioner, this Court cannot issue a Writ of Mandamus as

6.For the above said reasons, this Court finds that the writ petition is devoid of merit and substance and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

[V.B.D.,J.] & [V.P.N.,J.]
28.09.2018

Index : Yes / No
Internet : Yes / No
skn

To
The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai – 3.



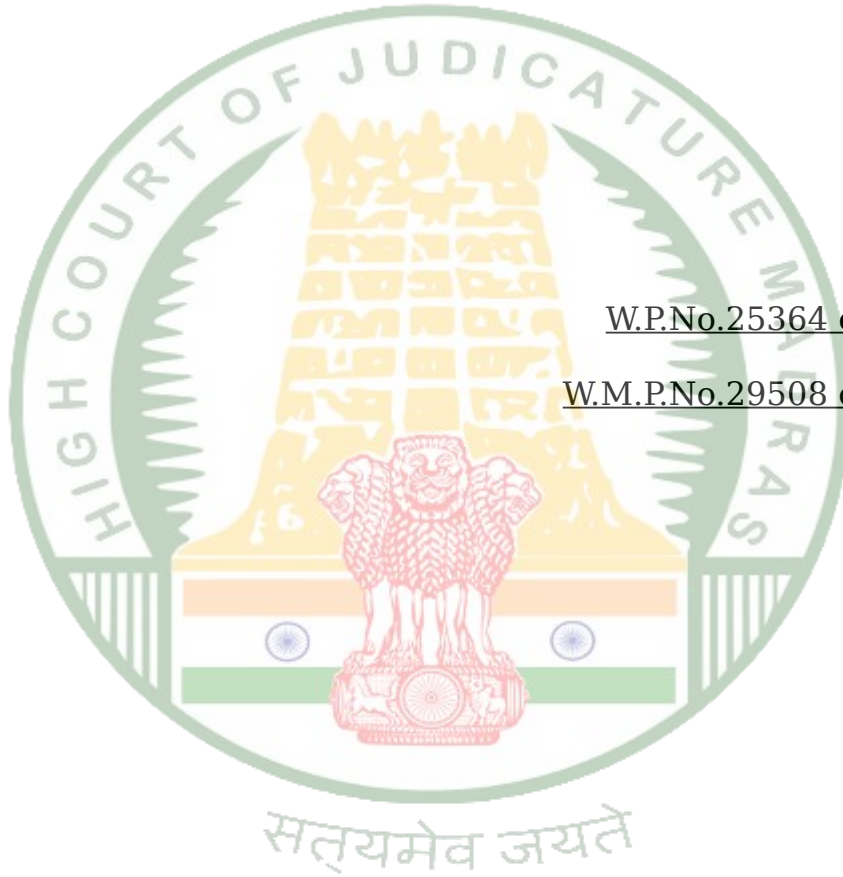
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