



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.5900 of 2018

M.Mohammed Nazeer Khan

... Petitioner

-Vs-

1. State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai.
2. Teachers Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chetpet, Chennai.
3. The State Commissioner for differently abled,
Government of Tamil Nadu,
Kamarajar Salai,
Chennai-600 005.

...Respondents

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to issue appointment order on the basis of the provisional list of candidates called for certificate verification (DSE & Other Department) Phase-2 through Proceedings No.Nil, dated 13.10.2017, published in the website in pursuant to the Notification No.03/2017, dated 09.05.2017 for the Direct recruitment of Post Graduate Assistants/Physical Education Directors Grade-1-2016-2017, issued by the second respondent in the category of BCM (G) or BCM (PWD) with the seniority of already appointed candidate within stipulated period.

For Petitioner : Mr.R.Santhanam

For R1 and R3 : Mrs.S.Srimathy,
Special Government Pleader.

: Mr.V.R.Shanmuganathan
Special Government Pleader

ORDER

Heard Mrs.S.Srimathy, learned Special Government Pleader who takes notice for the respondents 1 and 3 and Mr.V.R.Shanmuganathan, learned standing counsel, who takes notice for the second respondent.

2.By consent of both parties, the main Writ Petition itself is taken up for final disposal at the stage of admission.

3.The petitioner is a candidate who suffers from physical disability. He comes under BCM(General) category. He took part in the selection process conducted by the second respondent/ Board for the post of Post Graduate Assistants for the year 2016-2017. The case of the petitioner is that he scored high marks and also cleared the certificate verification process in the second phase. He therefore seeks issuance of appointment order on the basis of the provisional list of candidates who called for certificate verification phase-II through proceedings dated 13.10.2017.

4.This Writ Petition is opposed by the learned standing counsel for the second respondent by placing reliance on the order dated 15.12.2017 passed by the Division Bench of this Court in W.P.(MD).No.13350 of 2017. The said Writ Petition was filed by the Tamil Nadu Association for the Rights of All types of Differently Abled and Caregivers-TARATDAC. Chennai. The prayer in the said Writ Petition was for quashing the notification dated 09.05.2017 and for directing the Board to issue a fresh notification providing 4% reservation as per Section 34 of the Rights of Persons with Disabilities Act, 2016. Few other directions were also sought. The issues raised in the said Writ Petition were duly addressed by the Government and therefore the Hon'ble Division Bench disposed of the said Writ Petition by directing the Official respondents to issue fresh notification for filling up the reserved category of posts and endeavour to complete the entire process within a period of three months.

5.The learned standing counsel appearing for the second respondent submitted that pursuant to the aforesaid direction, the process has already commenced.

6.At this stage, the learned counsel appearing for the petitioner drew the attention of this Court to the following lines set out in paragraph 9 of the said order.

The learned counsel appearing for the petitioner in the course of arguments, expressed another difficulty, in respect of the candidates, who have participated in the earlier selection and secured higher marks, but not accommodated on



account of stay granted by the Court. If those, candidates are eligible to apply under the fresh notification, it is open to them to do so, and if they are any other individual grievance, then, that can agitated by way of separate proceedings and the present order will not put an embargo on the those candidates/persons, to agitate their rights in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

7.He would also place reliance on the order dated 20.09.2017 passed by this Court in W.P.(MD).No.17649 of 2017. There is no need to make any reference to the order dated 20.09.2017 made in W.P.(MD).No.17649 of 2017. Because, the order passed by the Division Bench is subsequent in point of time.

8.This Court is of the clear view that the petitioner herein cannot seek any leverage out of the last sentence found in the order of the Division Bench. It is true that the said sentence is to the effect that it is open to the aggrieved individuals to agitate their rights and that the order passed by the Division Bench cannot constitute an embargo. But then the order of Division Bench will have to be read as a whole. It is settled law that merely because a person has been provisionally selected in a selection process, it will not confer any right on him as such. When certain deficiencies were pointed out in the previous selection process and the same was questioned before the Division Bench and the issue raised therein were addressed and a direction was given to issue a fresh notification, the persons who were provisionally successful in the previous selection obviously forfeited whatever accrued in their favour. The petitioner has not suffered any legal injury. It is always open to him to take part in the fresh recruitment process announced by the second respondent.

9.The Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai.



2.The State Commissioner for differently abled,
Government of Tamil Nadu,
Kamarajar Salai,
Chennai-600 005.

+ 1 cc TO Mr.R.Santhanam , Advocate in SR No. 56374

+ 1 cc TO The Special Government Pleader in SR No. 56943

tsg

AE/RSK/SAR4/27.04.2018/4P/5C

W.P. (MD) No.5900 of 2018
20.03.2018