



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) No.1024 of 2017

and

CMP(MD)No.7127 of 2017

1.The State of Tamil Nadu

rep.by its Secretary Higher Education Department,
Secretariat, Chennai.

2.The Member (School Education) TRB,
The 4th floor E.V.K.Sampath Maligai,
College Road,
Chennai.

... Appellants/Respondents No.1 & 2
vs.

1.S.Jaseem Fathima

... 1st Respondent/Writ Petitioner

2.S.M.Syed Hussain

... 2nd Respondent/Respondent No.3 in
Writ Petition

Appeal filed under Clause 15 of Letters Patent to set aside the order dated 22.02.2017 passed in W.P(MD)No.13890 of 2012 by this Court.

Prayer in WP(MD). 13890/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records relating to the tentative provisional list of candidates selected for appointment of subject wise Tentative Provisional list of Candidates selected for Appointment to the post of Lecturers in Government Polytechnic College 2010-11 issued by the 2nd Respondent in his proceedings: Nil, dated Nil in so far as selection of the 2nd Respondent is concerned and the consequential rejection order passed by the 2nd Respondent in his proceedings: Nil, dated Nil and quash the same as illegal consequentially to direct the 2nd Respondent to consider him for appointment for the post of Lecturer (English) in the Govt. Polytechnic College, Under Backward Class(Muslim) quote.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

<https://hcservices.ecourts.gov.in/Reservices/>

: Mr.M.Ajmalkhan
for M/s.Ajmal Associates

For R2 : No appearance

**JUDGMENT**

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

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This Appeal is directed against the order of the learned Single Judge, by which, the writ petition filed was allowed by placing reliance upon the Prospectus and Notification issued, which shows that what is available is only 1% for the visually impaired persons, as against the two persons, which was actually adopted.

2.The selection is for the appointment of Lecturer. The Prospectus and Notification in which we are concerned are produced. Clause - 5 of the Prospectus reads as under:

"5.Special Reservation : Reservation for the physically challenged will be followed as per the following G.Os.

a. G.O.Ms.No.99, P & AR (Per.S) Dept. dated 26.02.08

b. G.O.No.87, SW and NMS Dept. dated 17.07.08

c. G.O.Ms.No.53, SW and NMS Dept. dated 11.04.05

d. G.O.Ms.No.619, Edn. (M2) Dept. dated 23.06.93

e. G.O.Ms.No.159, P & AR Dept. dated 27.06.94

Physically challenged (1%) and visually impaired (1%) will be followed as per Government orders in force. Reservation for visually impaired (1%) will be applicable in the case of Non-science Subjects only."

3.Clause 3(d) of the Notification dated 19.06.2009 reads as follows:

"(d) Communal reservation for GT, BC, BC Muslim, MBC/DNC, SC, SCA and ST will be as follows: 26.5% for Backward Class, 3.5% for Backward Class Muslim, 20% for Most Backward Class, 18% for Scheduled Caste (which includes the special reservation for Arunthathiar on preferential basis) and 1% for Scheduled Tribe Candidates.

The General Turn vacancies will be 31%. The reservation of vacancies for Women is 30%. Orthopaedically Physically Challenged (1%) and Blind (1%) will be followed as per Government orders in force. Reservation for Blind (1%) will be applicable in the case of Non-Science Subjects only."

4.If this Prospectus followed by the Notification is accepted, then, the first respondent/writ petitioner would have secured the highest marks in that category. She comes under Backward Class Muslim Category. The private respondent namely the second respondent has secured only 118 marks as against the first respondent who secured 141. He was accommodated under the category of visually impaired, by giving reservation. It appears that she had also resigned subsequently.



5. The learned Special Government Pleader appearing for the appellants would submit that there is mistake crept-in in the prospectus followed by the notification. The Rules provide for horizontal reservation. The 200 points roster divides into six blocks and the end of the each block reservation should be provided. Therefore, though the first respondent is otherwise eligible, but for the reservation under the category of physically challenged, which in this case is visually impaired, in view of the aforesaid position, she is not entitled.

6. The learned Senior Counsel appearing for the first respondent would submit that admittedly no corrigendum has been issued. There is nothing on record to show that there can be reservation, then reservation by following horizontally. In any case, the second respondent has also resigned and the post is vacant, though it is contended by the appellants that it will get added to the ensuing vacancy.

7. We find force in the contention of the first respondent/writ petitioner. It is not a typographical mistake. Both the prospectus and notification clearly speak about the percentage of reservation available. There is no corrigendum issued. Perhaps the first respondent would not have even applied, had it been known to her. The fact that she has secured highest marks and thus, eligible for appointment. But for the reservation adopted is not in dispute and further the fact that the second respondent since resigned and joined in civil service is also not in dispute. Therefore, more than on law, on equity also, the first respondent/writ petitioner is entitled to succeed. After all, nothing get attributed against her and it is also to be seen that in similar cases, corrigendum was issued by the appellants.

8. Considering the above, we are not inclined to interfere with the order of the learned Single Judge. The appellants are directed to give appointment order to the first respondent within a period of six weeks from the date of receipt of a copy of this order.

9. This writ appeal is dismissed accordingly. No costs. Consequently, CMP(MD)No.7127 of 2017 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS-I)



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Higher Education Department,
Secretariat, Chennai.

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+1 CC To MR.AJMAL ASSO, Advocate SR. NO. 84932

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TR/RSK/SAR-I(11.10.2018) 4P 4C