



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Judgment 05.12.2017	Date of Pronouncing Judgment 12.02.2018
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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANW.P(MD).No.905 of 2014andM.P(MD).Nos.1 to 3 of 2014

T.Nathiya

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
School Education Department,
St.George Fort, Chennai - 9.
2. The Teachers Recruitment Board
Rep. by its Chairman,
E.V.K. Sampath Maligai,
College Road, Chennai - 6.
3. A.Geetha
C/o The Teachers Recruitment Board
Rep. by its Chairman
E.V.K. Sampath Maligai,
College Road, Chennai - 6.
4. K.Chitra
C/o The Teachers Recruitment Board
Rep. by its Chairman
E.V.K. Sampath Maligai,
College Road, Chennai - 6.
5. S.Gayathri
C/o The Teachers Recruitment Board
Rep. by its Chairman
E.V.K. Sampath Maligai,
College Road, Chennai - 6.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the provisional list for certificate verification of direct recruitment for Post Graduate Assistants in Government Higher Secondary School 2012-13 issued by the 2nd respondent in his proceedings Nil dated Nil and quash the same as illegal in so far as it relates to respondent 3 to 5 is concerned and consequentially to direct the 2nd respondent to select the petitioner for appointment to the post of P.G.Assistant (Micro - Biology) under SC Arundhadhiyar quota within the period that may be stipulated by this Court.



For Petitioner : Mr.H.Mohammed Imran
For M/s.Ajmal Associates
For Respondents : Mr.S.Kumar
Additional Government Pleader
For R1 & R2

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ORDER

This Writ petition has been filed to call for the records relating to the provisional list for certificate verification of direct recruitment for Post Graduate Assistants in Government Higher Secondary School 2012-13 issued by the 2nd respondent in his proceedings Nil dated Nil and quash the same as illegal in so far as it relates to respondents 3 to 5 is concerned and consequentially to direct the 2nd respondent to select the petitioner for appointment to the post of P.G.Assistant (Micro - Biology) under SC Arundhadhiyar quota.

2. The brief facts of the case is that Notification No.02/2013, dated 09.05.2013 was published by the second respondent herein inviting application for direct recruitment to the post of Post Graduate Assistant/Physical Education Directors Grade - 1 and for other vacancies which includes almost all the subjects. The last date for submission of the application was on 14.06.2013 and the date of written examination to be held was on 21.07.2013. The vacancies were to be filled up as per the communal turn among all the categories including SC Arunthathiyar quota (Schedule Caste). As per the notification, the communal reservation apart from Tamil medium students and other special categories, the General Turn was 31%, Backward Class (other than Muslims) - 26.5%, Backward Class Muslims - 3.5%, Most Backward Class/Denotified Communities - 20%, Schedule Caste - 18% (Which includes 3% special reservation for Schedule Caste Arunthathiars on preferential basis) Schedule Tribe - 1 % and the reservation of vacancies for women was 30%.

3. The petitioner has averred in her affidavit filed in support of this petition that she belongs to SC (chakkiliar) Community and has passed B.Sc., (Micro Biology), M.A. (Micro Biology) and B.Ed and thus, she claims that she was eligible to be considered for appointment to the post of Post Graduate Assistant (Micro Biology). Further, She submitted that she had registered her name in the employment exchange, and as per the Government of Tamil Nadu Act No.4 of 2009 which was enacted to provide for reservation of seats in educational institutions including private educational institutions in the State and appointment or posts in the services under the State to Arunthathiars in the State of Tamil Nadu within 18% reservation for schedule castes, which includes chakkiliyars. Hence, she claims that she is entitled to be considered under SC Arunthathiyar reservation quota.

<https://hcservices.courts.gov.in/hcservices>
4. The petitioner would further submit that the second respondent vide Advertisement No.02/2013, dated 09.05.2013 invited



application for appointment to the post of Post Graduate Assistant/Physical Education Directors Grade - 1, and she applied for the post of P.G.Assistant under the subject of Micro Biology. Along with her application, she had enclosed her community certificate also. The said examination consists of written examination and certificate verification, and in the written examination, she has scored 50 marks and hence, she claims that she is entitled to be considered under Schedule caste Arunthathiyar reservation quota, and she was under the impression that she would be considered for the post under the said reservation quota. But, to her shock and surprise, in the impugned provisional list published by the second respondent, wherein, the petitioner's name did not find place, in contrary, the third respondent who belongs to Schedule Caste, was included under Schedule caste Arunthathiyar quota. It was further indicated in the bottom of the impugned provisional list that the Schedule Caste women being selected against Schedule Caste Arunthathiyar Women vacancy due to non-availability of eligible Schedule Caste Arunthathiyar candidates. The petitioner assails that despite being the Schedule Caste Arunthathiyar women, she was not considered for public employment is in violation of Article 16 of the Constitution of India.

5. The petitioner would further submit that she has also made an application under Right to Information Act seeking the particulars of the candidates applied under Schedule Caste Arunthathiyar. However, there was no response from the second respondent. Despite making several attempts when she had no answer from the respondent, the petitioner applied before the appellate authority, however, no action was taken thereupon. The petitioner further contended that when the candidate under Schedule Caste Arunthathiyar Women is very much available, there is no question of non consideration of such candidate. Hence, she claims that candidate under Schedule Caste Arunthathiyar Women must be selected irrespective of the marks scored by such candidate.

6. The learned counsel for the petitioner would further submit that as per Tamil Nadu Act No.4 of 2009 which states that one post was reserved for Schedule Caste Arunthathiyar on preferential basis and the petitioner was the only candidate available under that category, instead of accommodating her in the said category, the respondent has accommodated the third respondent who belongs to Schedule Caste Women. Consequently, the petitioner has lost her chance to the post of P.G.Assistant.

7. The learned counsel for the respondent denying all the averments made by the petitioner, would submit that she had obtained only 50 marks in the written examination which is lower than the marks required for Schedule Caste Arunthathiyar women, as the qualifying marks were fixed as 67 by the Board out of 150. Therefore, she was not called for certificate verification.



The board allotted 3 vacancies for Scheduled Caste Arunthathiyar women. Since no one was qualified by getting 67 marks in the written examination, the board filled the vacancies with Schedule caste women instead of Schedule caste Arunthathiyar women on merits.

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8. It is further submitted by the learned counsel for the respondent that as per G.O.M.S.No.107 School Education Department dated 24.07.2003, and the amendment issued by the said Government Order vide Letter No.1230/Q2/2003-2 dated 08.10.2003 the candidates belonging to Schedule Caste categories (other than SC / ST) should obtain minimum of 45% marks in the written examination, and the Writ petitioner has secured only 33% in the written examination which is less than the minimum qualified marks of 45%. Only after revision the petitioner was able to get 50 marks. The Government of Tamil Nadu promulgated Act No.4 of 2009 to provide for reservation of seats in educational institutions including private educational institutions in the State and of appointments or posts in the services under the State to Arunthathiyars in the State of Tamil Nadu within the 18% reservation for Schedule Castes. Paragraph 5, 6 & 7 of the said Tamil Nadu Act No.4 of 2009 reads as follows:

"5. Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where more number of qualified Arunthathiyars are available, even after filling up of the required percentage of reservation for Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to compete with Scheduled Castes other than Arunthathiyars in the inter-se merit among them in the case of appointments or posts in the services under the State or admission into educational institutions including private educational institutions.

6. Notwithstanding anything contained in the provisions of this Act or in the 1994 Act or the 2006 Act or in any other law for the time being in force, or in any Judgment, decree or order of any Court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where seats, appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars with no carry forward of vacancies for Arunthathiyars and the entire reservation of eighteen per cent for Scheduled Castes shall be

in the year of actual vacancy subject to the availability of Scheduled Castes candidates and the preference given to Arunthathiyars shall not, in any



way, affect the existing principle of carry forward of vacancies for Scheduled Castes in general.

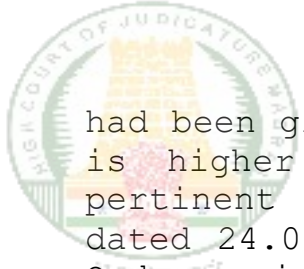
7. A candidate who claims to be a member of the Arunthathiyars as defined under this Act shall support his candidature as such by a certificate of caste identification issued under the Constitution (Scheduled Castes) Order, 1950 notified by the President of India for the State of Tamil Nadu, from time to time."

9. The learned counsel for the petitioner would submit that as per the above provisions, irrespective of the marks scored by the Arunthathiyar candidate, one Arunthathiyar candidate should be given preference for appointment, even if the candidate scored less marks than the marks scored by the Schedule Caste Women or any Schedule Caste candidate. Hence, she claims that she is eligible to be considered for appointment to the post of P.G.Assistant.

10. On comparative analysis with the above said Tamil Nadu Act 4 of 2009 with the present case on hand, it could be seen that the minimum of marks to be obtained by a candidate belonging to Schedule Caste Arunthathiyar, to be considered for appointment is 67 marks. Merely because, the petitioner belongs to Schedule Caste Arunthathiyar Community, her claim that 1 post must be filled with Schedule Caste Arunthathiyar category irrespective of the marks obtained by the said candidate cannot be accepted. The Schedule caste Arunthathiyar community reservation come under the 18% reservation one for Schedule caste, merely because it has been included in the Special reservation of 2% within 18% of Schedule caste reservation. Even for considering such reservation, the candidates belonging to SCAW should score the necessary marks equivalent to or higher marks to those candidates belonging to Schedule Caste to be considered for appointment.

11. The Supreme Court in a case reported in 2007 (8) SCC 785 Rajesh Kumar Daria Vs Rajasthan Public Service Commission and others observed that the Special reservation (for women) is provided within the Social reservation of Schedule caste, the proper procedure is, first to fill up the quota for the Schedule caste in order of merit, and then find out the number of candidates among them who belongs to Special reservation group of Schedule caste (women) and if the number of women in such list is equal to or more than the number of Special reservation quota, there is no need for further selection towards the Special reservation quota, and only if there is any short fall, the requisite number of Schedule caste women shall have to be taken by deleting the corresponding number of candidates from the list relating to Schedule caste.

12. This Court has no hesitation in applying the said dictum laid down by this Honorable Supreme Court. The petitioner has scored only 50 marks out of 150 which is lower than the marks scored by the other Schedule caste women who have scored 67 marks



had been given appointment based on the marks scored by her and it is higher than the marks obtained by the petitioner. It is pertinent to refer G.O.M.S.No.107 School Education Department dated 24.07.2003, and the amendment issued by the said Government Order vide Letter No.1230/Q2/2003-2 dated 08.10.2003 the candidates belonging to Schedule Caste categories should obtain minimum of 45% marks in the written examination. The candidates who were selected under Schedule caste women and candidates who were selected under Schedule caste Arunthathiyar community vacancy had scored 67 marks out of 150 marks as published in the provisional list which is 45% of, as prescribed under the above referred Government order. So the persons who were qualified and selected under Schedule caste, and were published in the provisional list dated 21.07.2013 which is, as per the Government order in G.O.M.S.No.107.

13. From the above facts, it is categorically clear that the petitioner has not scored minimum required marks to be considered for appointment and hence, the petitioner cannot claim the same as a matter of right as she belonging to Schedule Caste Arunthathiyar Women, to be mandatorily appointed irrespective of the marks scored by her.

14. In the light of the above facts and the reasons assigned, this Court is of the view that the Writ petition has no legs to stand and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary
The State of Tamil Nadu
School Education Department,
St.George Fort, Chennai - 9.
2. The Chairman
The Teachers Recruitment Board
E.V.K. Sampath Maligai,
College Road, Chennai - 6.

+1cc to M/s. Ajmal Associates, Sr.No.48027

RAJA

VB/KKR/SAR4/07/03/2018/6P/4C

Order in
W.P (MD) .No.905 of 2014

and
M.P (MD) .Nos.1 to 3 of 2014
12.02.2018