



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 13.08.2018

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)Nos.17785 and 17690 of 2018
and W.M.P. (MD).Nos.15663 & 15664 of 2018
and W.M.P. (MD).Nos.15575 and 15576 of 2018

W.P(MD)No.17785 of 2018:

S.Peter Nelson Raj

..Petitioner

Vs

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government
School Education Department,
Fort St. George,
Chennai-09.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-06.
- 3.Teachers Recruitment Board,
rep. by its Chairman,
DPI Campus, College Road,
Chennai-06.
- 4.D.Bency Flora
- 5.C.Stella Sagayarani
- 6.L.Stalin Sasikumar
- 7.S.Sivaperumal

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to consider the petitioner for appointment to the post of Physical Education Teacher under the priority category of dependant of Ex-serviceman in pursuant to the notification issued by the 3rd respondent vide notification No.05/2017, dated 26.07.2017 taking into consideration of the marks secured by the petitioner within the period that may be stipulated by this Court.

W.P(MD)No.17690 of 2018:

P.Babu Xavier Dass

..Petitioner

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

Vs



1.The State of Tamil Nadu,
rep. by its Secretary to Government
School Education Department,
Fort St. George,
Chennai-09.

2.The Director of School Education,
DPI Campus, College Road,
Chennai-06.

3.Teachers Recruitment Board,
rep. by its Chairman,
DPI Campus, College Road,
Chennai-06.

4.Janani

5.Dharmaraja

6.Selvaprabha

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to consider the petitioner for appointment to the post of Drawing Teacher under the priority category of dependant of Ex-serviceman in pursuant to the notification issued by the 3rd respondent vide notification No.05/2017, dated 26.07.2017 taking into consideration of the marks secured by the petitioner within the period that may be stipulated by this Court.

In both W.Ps:

For Petitioner	:MrH.Mohammed Imran for M/s. Ajmal Associates
For Respondents	:Mrs.S.Srimathi Special Government Pleader for RR-1 & 2 Mr.V.R.Shanmuganathan Special Government Pleader for R-3

COMMON ORDER

These writ petitions have been filed for issuance of Writ of Mandamus directing the respondents to consider the petitioners for appointment to the post of Physical Education Teacher and Drawing Teacher respectively under the priority category of dependant of Ex-serviceman in pursuant to the notification issued by the 3rd respondent vide notification No.05/2017, dated 26.07.2017 taking into consideration of the marks secured by them, within the period that may be stipulated by this Court.

2.When W.P.(MD).No.17690 of 2018 came up for hearing on 09.08.2018, this Court had passed the following Order:

"The case of the petitioner is that the petitioner is the dependent of an Ex-serviceman. He has successfully completed Freehand Outline and Model Drawing Course through Department of Government



Examination and that he is eligible for the post of Drawing Teacher. On 26.07.2017, the 3rd respondent has issued a notification inviting application from eligible candidates for appointment to the post of Special Teachers including Drawing Teacher. The petitioner has applied to the said post through online indicating a column namely, "Are you an Ex-serviceman" as "No" since he is not an Ex-serviceman, however, he is a dependent of Ex-serviceman.

2.The grievance of the petitioner is that as per the Provisional List of candidates, who were selected for certification verification dated 23.09.2017 in S.Nos.379 to 384 does not come under the category of Ex-serviceman, but they are dependent of Ex-serviceman. Hence, the petitioner is entitled to be considered for such post as he is a dependent of Ex-serviceman.

3.The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that in view of Section 22 (ab) of Tamil Nadu State and Subordinate Service Rules, the reservation is only for Ex-serviceman and hence, the same is not applicable to the petitioner as he is a dependent of Ex-serviceman. However, he seeks time to ascertain as to whether Serial Nos.379 to 384 are Ex-serviceman or dependent of Ex-serviceman.

4.Admittedly, the petitioner is not an Ex-serviceman and the said fact has been admitted by him while he has made his application to the said post through online by answering the question viz., "Are you an Ex-serviceman - No". Hence, post this matter on 14.08.2018 for the respondent getting instruction as to whether persons in S.Nos.379 to 384 are Ex-serviceman or dependent of Ex-serviceman."

3.Section 22(ab) of the Tamil Nadu State and Subordinate Service Rules, reads as follows:

"22:Reservation of Appointments:

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.....

(ab) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five percent in each such category shall be reserved for Ex-Serviceman and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in SCHEDULE III-B to this Part:



Provided that if no qualified and suitable Ex-Serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-Serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d)."

4. The petitioner drawn the attention of the Court to Section 27 (c) (d) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, hereinafter, referred as Act, which reads as follows:

"Section 27: Reservation of appointments:

.....
.....
.....

"27(c) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five per cent in each such category shall be reserved for Ex-Servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in Schedule-VII:

Provided that if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d).

(d) The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities), the Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe. Backward Class (Other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community is selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities), Backward Class Muslims or the Most Backward Classes/Denotified Communities, as the case may be, shall not in any way be affected."

5. Admittedly, there is a reservation referred to in



G.O.Ms.No.762, General (Ex-Serviceman) Department, dated 29.08.2002 and it is applicable only for Ex-Serviceman.

6.On instructions, the learned counsel appearing for the respondents stated that certificate verification is going to take place and that some of the candidates, who are in serial Nos.379 to 384 have been called for certificate verification on the ground that they have mentioned that they belong to Ex-Servicemen category. Neither the petitioners nor the aforesaid persons belong to Ex-Servicemen category and they are dependents of Ex-Servicemen and that the dependents of Ex-Servicemen are not entitled to any relief. If the other petitioners are considered, the petitioners are also entitled to be considered. Sections 27(c)(d) of the Act, which are extracted supra very clearly shows that in case of non-availability of suitable candidates, the particulars of the other communities mentioned in Section 27(d) of the Act will be considered.

7.Taking note of the submissions that certificate verification is going to take place, even assuming that the petitioners are going to call for certificate verification, the petitioners would not be entitled to get relief under the Ex-Servicemen Quota, as they are not Ex-Servicemen. The other members who are in serial Nos.379 to 384 are also not entitled to any relief, as admittedly they also did not belong to Ex-Servicemen category.

8.In view of the above stated facts and circumstances of the case, both the writ petitions are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-II)

To

1.The Secretary to Government
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-09.

2.The Director of School Education,
DPI Campus, College Road,
Chennai-06.

3.The Chairman,
Teachers Recruitment Board,
DPI Campus, College Road,
Chennai-06.



+2cc to M/S.AJMAL ASSOCIATES, Advocate, SR.No. 78535,78536

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VS

KK/SKN/SAR-2/26.09.2018/6P-6C