



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.10.2018
CORAM
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.9314 of 2017 and
W.M.P.(MD) No.7092 of 2017

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C.T.Aruljitha

... Petitioner

-Vs-

1. The Director,
Ministry of Social Justice and Empowerment,
No.636, 'A', Wing, Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.
2. The State of Tamil Nadu
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai-9.
3. The Director of School Education,
O/o.the Directorate of School Education,
DPI Campus, College Road,
Chennai-6.
4. The Chief Educational Officer,
O/o.the Chief Educational Office,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to appoint the petitioner as Lab Assistant taking into account the marks secured by the petitioner under disability quota in terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and in terms of Rule 22(aa) of the Tamil Nadu State and Subordinate Service Rules within the period that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.C.Venkatesh Kumar
For M/s.Ajmal Associates

For R1 : No Appearance

For R2 to R4 : Mrs.S.Srimathi
Spl. Govt. Pleader

**ORDER**

This writ petition has been filed, seeking a direction to the 3rd respondent to appoint the petitioner as Lab Assistant on the basis of her marks secured under disability quota in terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and in terms of Rule 22(aa) of the Tamil Nadu State and Subordinate Service Rules.

Brief Facts:

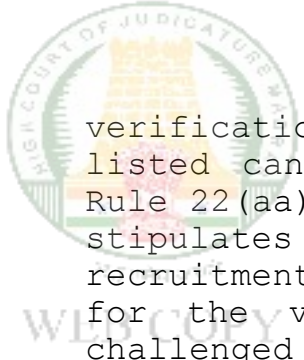
2. The case of the petitioner is that she, a physically challenged person with 40% of disability, belongs to Backward Class Community and has completed her graduation in B.Sc.(Physics). The 3rd respondent had invited applications to fill up the post of Lab Assistant on direct recruitment with 30 years age limit for BC Community by granting relaxation of age upto 10 years in respect of disabled persons. She has also participated in the selection and was awarded 111 marks out of 167 and though she had obtained 2nd rank under physically challenged quota, her name was not found in the selection list and out of three posts meant for disabled persons, two posts were not filled up and shown as reserved for PWD under GT PWD Turn.

2.1. It is submitted by the petitioner that as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the "Act, 1995"), not less than 3% posts shall be reserved for persons with disability of which, 1% each shall be reserved for persons suffering from i) blindness or low vision, ii) hearing impairment and iii) locomotor disability or cerebral palsy, in the post identified for each disability.

2.2. It is the claim of the petitioner that out of three posts, one post was filled up in the category of physically handicapped by one Mrs.V.Anithakumari and out of remaining two posts, no post was reserved for blind candidate and no deaf candidate was available and therefore, those two posts shall be filled up with available candidates in the category of physically handicapped. Therefore, the act of the 3rd respondent in not considering the petitioner under Disability Quota is highly unsustainable and it is absolutely necessary to issue a direction to the 3rd respondent to appoint the petitioner as Lab Assistant under disability quota in terms of the Act, 1995.

3. The 4th respondent has filed a detailed counter, wherein it has been inter alia stated as under:

i) The Lab Assistant Post is basically a post working with chemicals and fragile apparatus and the visually impaired and hearing impaired candidates are not eligible to deal with the risky post and therefore, they were not called for the certificate



verification. During the time of publication of the list of short listed candidates, the selection committee had decided to follow Rule 22(aa) of Tamil Nadu State and Subordinate Service Rules, which stipulates that "in the case of the appointment made by direct recruitment one person in such category shall be separately reserved for the visually impaired, hearing impaired and orthopedically challenged candidates and appointment shall be made in turn and in the order of rotation as specified in Schedule III-A to this part."

ii) It is further stated in the counter that the reservation of 3% of the alternative skilled persons would be each one percent for the visually impaired, hearing impaired and physically challenged (Ortho) persons and therefore, the Selection Committee decided to appoint physically wounded person so as to withhold the other two communal rotation reservation and out of two wounded persons, including the petitioner, one V.Anithakumari had scored 114 marks and therefore, she was duly considered for appointment. Merely because the process of appointing another 2% of the physically challenged and alternative skilled persons could not be proceeded by the Department, the petitioner, as a matter of right cannot demand that the vacancy meant for visually impaired and hearing impaired has got to be given to the petitioner.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for R2 to R4. This Court also perused the material documents available on record.

5. It is seen that the petitioner, who is suffering from 40% of disability had made an application for appointment to the post of Lab Assistant under Disability Quota and in the examinations, she secured total marks of 111 out of 167. The grievance of the petitioner is that though there were three posts allotted for physically challenged persons and the petitioner fell in the 2nd place, except filling up only one post, other two posts were kept vacant unfilled. Though the petitioner is a physically challenged, the advertisement calling for applications does not state that the posts can be swapped and therefore, the petitioner, as a matter of right cannot demand that the post / vacancy meant for visually impaired and hearing impaired has got to be given to her on the ground that she is a physically challenged person with locomotor disability.

6. The petitioner drew the attention of this Court to G.O.Ms.No.76 Personnel and Administrative Department dated 19.06.2009, wherein, in Rule 22, in Sub-Rule (aa) for the fifth proviso, the following provisos have been inserted:

"Provided also that insofar as the Executive posts are concerned, the reservation for physically handicapped candidates shall be made applicable in respect of suitable posts in Groups A and B as identified in the list approved by the State Government and to all posts in Groups C and D, subject to the



condition that the physically handicapped candidate shall, before appointment, produce a certificate of physical fitness from the Medical Board to the effect that his handicap will not affect the performance of the job to which he has been selected:

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Provided also that if the vacancies notified are identified suitable for only any two of the three categories of the physically handicapped, namely, blind and deaf or deaf and orthopedically handicapped or blind and orthopedically handicapped and if the total number of vacancies meant for the ineligible category of the physically handicapped is even, it shall be distributed equally between the other two eligible categories, or if the said total number of vacancies is odd, the extra vacancy shall be allotted to either of the two eligible category of physically handicapped, which has higher population as per the latest census:

Provided also that if the vacancies notified are identified suitable for only one category of physically handicapped then all the 3 per cent vacancies shall be allotted to that particular category of physically handicapped."

7. Learned counsel for the petitioner, by relying upon the above insertion, would point out that if the vacancies notified are identified suitable for only one category of physically handicapped, then all the 3 per cent vacancies shall be allotted to that particular category of physically handicapped. Though the argument of the learned counsel for the petitioner appears to be impressive at the first blush, when seen in depth, it is to be noted that the advertisement is silent and there was no provision provided for swapping of posts. But, at the same time, it is pertinent to mention here that the petitioner's case cannot be deprived, merely on the ground of non inclusion of the said clause.

8. Taking note of the submissions made on either side, the relief sought for by the petitioner cannot be granted. However, this Court makes it clear that in case of filling up of vacancies in future, the petitioner shall be given a preference in the matter of appointment relaxing her age, provided she fulfills all the eligibility criteria required for the post. Similarly, the respondents shall provide an option of swapping of posts in the advertisement in future, in the light of amendment to Rule 22(aa) dated 11.04.2005, so that other meritorious physically challenged candidates will have a chance to get employment, as the purpose of 3% reservation is to ensure that physically challenged persons are given a chance to get employment and the same cannot be deprived on the ground of erroneous advertisement being published by the respondents.



9. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Records)

Sub Assistant Registrar(CS-I)

To:

1. The Secretary to Government,
State of Tamil Nadu
School Education Department,
Secretariat, Chennai-9.
2. The Director of School Education,
O/o.the Directorate of School Education,
DPI Campus, College Road,
Chennai-6.
3. The Chief Educational Officer,
O/o.the Chief Educational Office,
Nagercoil, Kanyakumari District.

+1CC to M/s.Ajmal Associates, Advocate, SR.No.88538

+1CC to the Special Government Pleader SR.No.88701

W.P. (MD) No.9314 of 2017

03.10.2018

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ES/SKN/RSK/SAR 1/22.11.2018/5P/6C