



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

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THE HON'BLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD) No.7436 of 2013

K.Seyadi Packeer Mohideen

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by it's Secretary to Government,
School Education Department,
Secretariat, Chennai-9.
2. The Tamil Nadu Public Service Commission,
Rep. by its Chairman, No.1, Greams Road,
Chennai-6.
3. The Director,
Directorate of Elementary Education,
DPI Compound,
College Road, Nungambakkam,
Chennai-600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to consider the petitioner for appointment to the post of Assistant either in the prison Department in the Tamil Nadu Ministerial Service under BC-M General or in the Finance Department in the Tamil Nadu Secretariat in the Tamil Nadu Secretariat Service taking into consideration of his marks as 220.50 and D.O.B as 13.05.1987 within the period that may be stipulated by this Court.

For Petitioner	: C.Venkatesh Kumar
For R1 and R3	: Mr.R.Sethuraman
	Special Government Pleader
For R2	: K.K.Senthil

ORDER

The relief sought for in this Writ Petition is to direct the respondent to consider the petitioner for appointment to the post of Assistant either in the prison Department in the Tamil Nadu Ministerial Service under BC-M General or in the Finance Department



in the Tamil Nadu Secretariat in the Tamil Nadu Secretariat Service taking into consideration of his marks as 220.50 and D.O.B as 13.05.1987 within the period that may be stipulated by this Court.

2.The learned counsel for the writ petitioner strenuously contented that the writ petitioner is eligible to be appointed to the post of Assistant either in the Prison Department or in the Tamil Nadu Ministerial Service under BC-M General or in the Finance Department in the Tamil Nadu Secretariat in the Tamil Nadu Secretariat Service taking into account the marks obtained by him as 220.50. The writ petitioner belongs to BC-M Category. He completed B.Sc.(Computer Science) in regular steam. Pursuant to the advertisement No.258 dated 30.12.201, the writ petitioner submitted an application and participated in the process of selection for group-II Services. The petitioner successfully passed in the written examination and accordingly secured 220.50 marks.

3.The grievance of the petitioner is that the persons, who secured equivalent marks, were appointed in the post of Assistant. The learned counsel for the writ petitioner states that the last candidate, who has been selected in the counselling held for the following non-interview post of included in combined subordinate services examination-I 2009-2001 for the post of Assistant in Finance Department in Tamil Nadu Secretariat in the Tamil Nadu Secretariat Service, the cut off marks is 214.50 and the candidates should born on or before 31.10.1978. Since the petitioner secured more marks than the cut of marks, he would be eligible for appointment to the post of Assistant.

4.The learned counsel appearing on behalf of the respondent states that the cut of marks, qualification and date of birth fixed for the admission to counselling to the Non-Oral test posts included in SCCE-I, 2009-2011 for BC-M(G) was 223.5, Degree and 10.05.1973. The petitioner secured 220.5 marks in the written examination. Thus, the petitioner had not reached the zone of selection for Non-Oral Test Posts under BC-M(G) category to call for counselling. The learned counsel for the respondent states that the selection list was properly published through Public Service Commission website and the petitioner has himself has enclosed a copy of the selection list at page 3 of the typed set of papers. Even as per the selection list, the writ petitioner had secured 220.50 marks and therefore the selection was conducted by following proper procedures and the cut of marks was made known to all the candidates, who participated in the selection process and there cannot be any dispute in this regard.

5.The learned counsel for the respondent is of an opinion that the petitioner had not established that the candidate, who secured laser mark than the cut of marks, was selected and appointed. No such person was

appointed by the respondent. Contrary to that the petitioner made a false allegation that the person, who secured 214.50 marks, was selected. But the statement made by the petitioner had not been established vide sufficient evidence. In the absence of any such proof, this Court cannot go by the version stated, in the affidavit filed in support of the writ petition, by the petitioner. Contrarily, the Tamil Nadu Public Service Commission filed an affidavit setting out the manner, in which, the selection was conducted and the relevant paragraphs are extracted here under:-

2.I am the Joint Secretary, Tamil Nadu Public Service Commission, Frazer Bridge Road, Chennai - 3 and as such, I am well acquainted with the facts of the case from the records. I am filing this Counter affidavit on behalf of the second respondent as I am authorized to file the same. I have read the affidavit filed by the petitioner and I deny all the averments and the allegations contained therein except those that are specifically admitted hereunder.

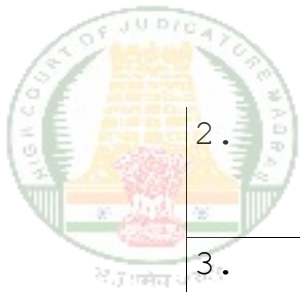
3.It is submitted that Thiru.K.Seyadali Packeer Mohideen has filed a Writ Petition in W.P.(MD).No.7436 of 2013 in the Madurai Bench of High Court of Madras, praying to issue a writ of mandamus to direct the respondents to consider the petitioner for appointment to the post of Assistant either in the Prison Department in the Tamil Nadu Ministerial Service under BCM(G) or in the Finance Department in the Tamil Nadu Secretariat Service taking in to consideration of his marks as 220.5 and D.O.B as 13.05.1987.

4.It is submitted that the Commission had invited applications for appointment by direct recruitment to the posts included in Combined Subordinate Services Examination-I, 2011 in its Notification dated 30.12.2010 and supplemental Notification dated 08,02-2011. The last date for receipt of filled in application in the Commission's office was announced as 21.06.2011. The written examination was held on 30.07.2011.

5. In this connection it is submitted that three phases of counselling were conducted to fill up 3475 vacancies in the Oral Test posts and the details of counselling process relating to Oral Test posts are as follows:

Oral Test Posts-Counselling

Sl.No.	Phase of Counselling	No. of Vacancies	No. of candidates called for and the ratio	Vacancies filed
1.	I Phase	3472	3475 (1:1)	2811



2.	II Phase	664	1265 (1:2) Due to paucity of candidates	593
3.	III Phase	71	107 (1:3) Due to paucity of candidates	35
			Total	3439

As it took more than one month to fill up the above vacancies in the Oral Test posts, the Commission, has decided to call for the candidates in the ratio of 1:1.5 for the first phase of counselling, for Non-Oral Test posts so as to complete the counselling process within time.

6. It is submitted that while selecting the candidates for admission to counselling in respect of 3171 vacancies in 56 Non-Oral Test posts, the following procedure has been followed:

The Non-Oral Test posts have been classified into following 5 categories of posts based on the qualifications prescribed for each of the post with reference to pars 4(8) of the Notification dated 30.12.10.

Sl.No.	Post	Vacancies	Qualification prescribed
1.	Common posts (i.e., other than posts mentioned below)	3119	Any Degree
2.	Assistant, Finance Department (Post Code: 1077)	37	A degree in Commerce or Economics or Statistics
3.	Assistant, Law (Post Code:1076)	6	A degree in Law
4.	PC, Finance	2	A Degree in Commerce or Economics or statistics
5.	PC, Secretariat (Post Code: 1078)	7	Any Degree with Short hand and Typing
	Total	3171	

7. It is submitted that the candidate were picked up against each communal category first for common posts, then for Assistant in Finance Department, Assistant in Law Department, Personal Clerk in Finance Department and Personal Clerk in Secretariat other than Finance Department as per the sequence mentioned above, be on merit following



rule of reservation of appointments and the qualifications possessed by the candidates. In the process certain candidates who have obtained lesser marks than those who possess common qualifications, have been admitted to counselling by virtue of possessing specific qualification (s) prescribed for the posts other than common posts.

8.It is submitted that while selecting the posts at the time of counselling, the candidates are being allotted to each post/ unit with reference to the category-wise vacancy position in each post / unit separately (i.e., General Turn category vacancies first and then the vacancies reserved for communal categories). Certain women candidates, who have scored higher than the Female reservation category cut-off but lesser than the General category cut-off, have opted for vacancies against General category in certain posts. Consequently the post-wise category-wise cut-off marks is lesser than the category-wise cut-off marks summoned for counselling.

9.Furthermore, certain candidates who were admitted to counselling on the basis of specific qualifications possessed by them, have exercised their option and opted for the posts coming under common category of posts. Hence a situation as mentioned above arises in such cases also.

12.It is submitted that with reference to para 3 of the affidavit it is submitted that the BCM candidate called for counselling under BCM-W, opted the post of Assistant in Prison Department reserved for BCM(G).

14.It is submitted that the cut off marks, qualification and date of Birth fixed for the admission to counselling to the Non-Oral Test posts included in CSSE-I, 2009-2011 for B.C-M(G) was 223.5, Degree and 10.05.1973 The petitioner had scored 220.5 marks in the Written Examination. Hence he has not reached the zone of selection for Non-Oral Test post Under BC-M(G) category to call for counselling.

6.In view of the above facts and circumstances no further consideration is required in this Writ Petition in respect of the grounds raised in the writ petition. Hence, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

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To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

2. The Chairman, No.1,
Tamil Nadu Public Service Commission,
Greens Road,
Chennai-6.

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 52233
+ 1 cc TO Mr.K.K.Senthil , Advocate in SR No. 52068
+ 1 cc TO The Special Government Pleader in SR No. 52046

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AE/JC/SAR2/18.04.2018/6P/6C

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