

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2019

Pronounced on : 13.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.23351 of 2004

and

WMP.No.28278 of 2004

G.Murali Ravichandran

... Petitioner

Vs

1.The State of Tamil Nadu
rep. by
The Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.

2.The Secretary,
The Tamil Nadu Public Service Commission,
Government Estate,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to appoint the petitioner in the post of Motor Vehicles Inspector, Grade-II in pursuance to the notification dated 22.07.1999, by following 3% reservation for physically handicapped persons in accordance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1996.

For Petitioner : Mr.N.Manokaran

For Respondent-1 : Mr.S.Suresh Kumar, GA

For Respondent-2 : Mr.S.Ayyathurai, Sr. Counsel
Assisted by Dr.M.Devendran
Standing Counsel for TNPSC

O R D E R

Heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.S.Suresh Kumar, learned Government Advocate appearing on behalf of the first respondent as well as Mr.S.Ayyathurai, learned Senior counsel for the second respondent.

2. The grievance of the petitioner is that, in the notification dated 22.07.1999, for recruitment of Motor Vehicles Inspector, Grade-II, 3% reservation for physically challenged persons was not earmarked in accordance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1996 (hereinafter referred to as the Act). Since the petitioner herein is a physically challenged person, he has been deprived of the reservation and therefore, has sought for a direction to the respondents to appoint him to the said post.

3. The learned counsel for the petitioner submitted that in the previous notifications dated 27.08.1997 and 09.09.1998, reservation for appointment by Direct Recruitment to the post of Motor Vehicles Inspector, Grade-II in the Tamil Nadu Transport Subordinate Services, 1999-2000 for 38 vacancies, there was a 3% reservation for the physically challenged category. Subsequently, in the present notification dated 22.07.1999, the respondents had not reserved post for the physically challenged persons.

4. According to the learned counsel for the petitioner, since Section 33 of the Act, provides for 3% reservation for persons with disability, the notification dated 22.07.1999, not recognising the reservation is bad and when the petitioner had scored 293.92 marks in the written examination and oral interview, he would be entitled for appointment. The learned counsel further submitted that though he has not challenged the original notification in the present Writ Petition, this Court is entitled to mould the relief in exercise of its power under Article 226 of the Constitution of India.

5. The learned Senior counsel for the second respondent submitted that the Writ Petition deserves to be rejected on the sole ground that the original notification has not been challenged by the petitioner, since he is aggrieved against the non inclusion of the reservation for physically challenged category. It is his further submission that the second respondent had been following the reservation policy for physically challenged meticulously and in the present notification, since the reservation turn for physically challenged did not fall in the 56th turn in the second rotation, the reservation for physically challenged persons could not be allocated.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The petitioner has sought for a Writ of Mandamus, for a direction to the second respondent to appoint him to the post of Motor Vehicles Inspector, G-II and has not challenged the notification dated 22.07.1999. An overall perusal of the grounds raised by the petitioner and the submissions made by the counsels, it is seen that the petitioner is aggrieved against the notification, in which the reservation for physically challenged persons has not been allocated. The grievance of the petitioner is that the notification, without allocation of reservation for the physically challenged persons, is against the provisions of the Act and therefore, he is entitled for appointment. The effect of a relief being granted to such a grievance, would effectively amount to interfering with the entire selection process and the possibility of prejudice being caused to the selected candidates affecting their selection or seniority is eminent. While that being so, it is not only incumbent on the part of the petitioner to seek for a specific relief challenging the notification, but also to implead such other persons, who have already been selected or may be otherwise affected by any positive relief that the petitioner may obtain in the present Writ Petition.

8. The learned counsel for the petitioner relied upon a decision of the Hon'ble Apex Court in the case of Girimallappa V. Special Land Acquisition Officer M and MIP and another reported in 2012 (11) SCC 548 and submitted that when proper pleading including appropriate grounds challenging the notification has been raised, this Court is entitled to examine the notification and appropriately mould the relief. The aforesaid case arises out of the land acquisition proceedings, where the order was sought to be challenged on the ground of nullity and want of competence of the Issuing Authority. In a case of such nature, it is no doubt true that the High Court exercising its power would be competent to mould the relief and set aside an order, even in the absence of a specific relief to that effect. Whereas, in a case where the recruitment itself is put under challenge, without impleading successful candidates and the notification is sought to be quashed at a stage when the recruitment process itself has concluded, this Court will not be justified in moulding the relief and quashing the notification. Even otherwise, if the selection process is quashed after a lapse of more than 14 years, serious prejudice could be caused to the persons, who have already been selected and are undergoing their service. The learned senior counsel appearing for the second respondent placed reliance on the decision of the Division Bench of this Court in the case of Medical Council of India, rep. by its Secretary, Pocket-14, Sector-8, Dwarka Phase-I, New Delhi-110 011 V. P.Divya, rep. by her mother P.Lakshmi,

Old No.151, New No.198, Amani Ammal Thotam, Royapuram, Chennai-13 and two others and in another case, Dr.S.Kavitha V. The State of Tamil Nadu, rep. by the Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai-600 009 and 3 others reported in 2013 (3) CTC 791, wherein it was held as follows:

"20. As rightly found by the learned Single Judge, the appellant has not challenged the notification issued by the fourth respondent-Medical Council of India. Merely because the appellant was allowed to get a seat under the special category, it will not create vested right to seek admission in the P.G. Course in the same category. It is settled law that Article 14 of the Constitution of India is positive in nature and an illegality committed will not enure to the benefit. The appellant was found by the Medical Board as not suffering from locomotor disability. The notification was issued by the other respondents in pursuant to the regulation of the Medical Council of India. In view of the discussions made in the connected writ appeal, which is related to this appeal also, and the relief sought for in this writ appeal has also become infructuous as the academic year for which the appellant sought for admission is also over long time back, we do not find any reason to interfere with the order of the learned single judge."

9. In the light of the above observations, this Court is of the view that the prayer seeking for a Writ of Mandamus, to appoint the petitioner to the post of Motor Vehicles Inspector, Grade-II on the ground that the non allocation of 3% reservation is opposed to Section 33 of the Act, without challenging the notification, is not maintainable.

10. On the merits of the case, he learned counsel for the petitioner relied on various decisions of the Hon'ble Apex Court to substantiate the point that 3% reservation has to be mandatorily allocated in the recruitment process, in view of Section 33 of the Act. The second respondent herein has not denied or refuted such a requirement for allocation of the reservation for physically challenged persons. On the other hand, it is their submission that even though, the physically challenged persons are eligible for reservation, such a reservation has not reached its turn. According to them, the previous recruitment for the post of Motor Vehicles Inspector, Grade-II ended against 37th turn in the second rotation and the present selection based on the notification dated 22.07.1999,

started for 38th turn in the second rotation and ended against 56th turn in the second rotation. As the reservation turn for physically challenged did not fall in the said turn in the second rotation, the reservation for physically challenged was not allocated. In view of this factual clarification and also taking into account that the respondents have not denied the ground raised by the petitioner that the physically challenged persons are entitled for reservation, I am unable to accept the submissions of the learned counsel for the petitioner.

11. Above all, the notification that came to be issued in the year 1999, was completed even when the Writ Petition came to be filed and the petitioner, who had sought for appointment is now aged about more than 54 years. At this juncture, no effective orders can be passed in the present Writ Petition, since the prayer itself has become infructuous.

12. For all the foregoing reasons, I do not find any merits in the present Writ Petition. Hence, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Secretary to Government,
State of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.

2.The Secretary,
The Tamil Nadu Public Service Commission,
Government Estate,
Chennai-600 002.

+1cc to Mr.M.Devendran, Advocate, S.R.No.48935
+1cc to Mr.N.Manokaran, Advocate, S.R.No.48457

W.P.No.23351 of 2004
and
WMP.No.28278 of 2004

MP (CO)
RRS (08/07/2019)