

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7405 of 2019

M.Vijaya

.. Petitioner

v.

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Chennai-3.
2. The Registrar General,
High Court, Madras.
3. The Secretary,
Home (Courts) Department,
Fort St. George, Chennai-9.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondent to forthwith consider the claim of the petitioner on the basis of the merit ranking and that of the total marks of 249.75 obtained by her in any one of the unfilled vacant post of Civil Judge in any of the category viz., Blind/Deaf/Ortho earmarked for under the Physically Handicapped category as per Statutory Rules and to also satisfy the quota intended for the physically handicapped pursuant to the Notification No.15/2014 in view of the same having occurred by dismissal of Civil Appeal No.83/2019 dated 22.01.2019 and on the basis of the representation dated 25.01.2019.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Ms.C.N.G.Niraimathi
for respondent No.1

Mr.S.Thangavel
for respondent No.2

Mr.V.Jayaprakash Narayanan
Government Pleader
for respondent No.3

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We heard Mr.L.Chandrakumar, learned counsel for the petitioner; Ms.C.N.G.Niraimathi, learned counsel for respondent No.1; Mr.S.Thangavel, learned counsel for respondent No.2 and Mr.V.Jayaprakash Narayanan, learned Government Pleader for respondent No.3.

2. This petition is in the shape of a plea that in the absence of any observation made by the Apex Court in the case of V.Surendra Mohan v. State of Tamil Nadu and others, reported in (2019) 4 SCC 327, the petitioner's request for appointment under the physically disabled category has been erroneously declined, which could have been and ought to have been considered by the Tamil Nadu Public Service Commission, keeping in view the fact that the petitioner was the next meritorious candidate upon the failure of the Special Leave to Appeal (C) No.17223 of 2015 filed by V.Surendra Mohan (supra).

3. The background is that with regard to the selection to the posts of Civil Judge (Junior Division), the Tamil Nadu Public Service Commission, had issued Notification No.15/2014 dated 26.8.2014 advertising 162 vacancies, out of which 4 vacancies are stated to be reserved for physically handicapped category, specifying two for Blind, one for Deaf and one for Orthopedic deficiencies. V.Surendra Mohan was claiming reservation in the blind category and having failed before the High Court, he had filed Special Leave to Appeal (C) No.17223 of 2015 before the Apex Court, which was entertained on 10.7.2015 and an interim order was passed directing that during pendency of the Special Leave to Appeal (C) No.17223 of 2015, one post must be kept vacant. A copy of the order is on record. The Civil Appeal No.83 of 2019 filed by V.Surendra Mohan came to be dismissed on 22.01.2019. Thus, one post amongst the physically handicapped category could not be filled up and the said vacancy was available till 22.01.2019.

4. The petitioner herein, for her claim under the said category, had filed a separate writ petition being W.P.No.19041 of 2015, which came to be dismissed by a Division Bench of this

Court on 16.03.2017 with the following observations in paragraphs 6 and 7:

"6. However, one post reserved for visually challenged was the subject matter of consideration before the Supreme Court in S.L.P.No.17223 of 2015 filed by one Mr.V.Surendra Mohan. In case the said special leave petition gets dismissed, the counter affidavit of the Public Service Commission, in paragraph 12, categorically pointed out that it is the writ petitioner - M.Vijaya, belonging to BC (OBCM) (W) (Ortho) category will be considered for appointment. The Public Service Commission would enter a further caveat by submitting that before the said special leave petition gets dismissed, no next batch of selection should be finalised for recruitment as Civil Judges (Junior Division). Once the next batch of selection gets finalised, the selections made in pursuance of Notification No.15/2014 dated 26.8.2014 lapse and then, the writ petitioner herein cannot be considered for appointment.

7. While taking note of the above caveat entered by the learned counsel on behalf of the Public Service Commission, we need to observe that the Public Service Commission will get regulated in the matter of filling up the vacancy as per the directions that might be issued by the Supreme Court in the above mentioned special leave petition. In that special leave petition, if the Supreme Court were to give a direction that the vacancy must be filled up with the next most meritorious candidate, the Public Service Commission, being bound by the principle enshrined behind Article 141 of The Constitution of India, has to give effect to such an order. But, not otherwise, if the next batch of selections gets finalised in the meantime."

5. The learned counsel for the petitioner states that an application for intervention had been filed before the Apex Court by the petitioner after the dismissal of the said writ petition in the light of the observations made in the paragraphs quoted above in the matter that was pending consideration in the case of V.Surendra Mohan (supra). It is also stated that no orders were passed on the said intervening application, but the Civil Appeal came to be dismissed on 22.01.2019.

6. It is in this background that this writ petition came to be filed praying that the petitioner should be given the benefit of reservation and the request made by the petitioner to the Tamil Nadu Public Service Commission should be directed to be considered under the physically handicapped category and appoint her as she is next in merit to V.Surendra Mohan as against the vacancies notified under Notification No.15/2014. It is reiterated that this would be possible in as much as the vacancy of V.Surendra Mohan was available keeping in view the interim protection given by the Apex Court vide an order dated 10.07.2015 referred to herein above.

7. We are in agreement with the learned counsel for the petitioner to the extent of the existence of vacancy on account of the interim order passed by the Apex Court, but in view of the fact that the petitioner had already filed an application for intervention before the Apex Court and no orders were passed thereon, it will not be appropriate for us to exercise the jurisdiction under Article 226 of the Constitution of India to issue a Mandamus in view of the earlier decision of the Division Bench of this Court dated 16.03.2017 passed in W.P.No.19041 of 2015. In the event the petitioner is desirous, she may approach the higher forum against the order passed on 16.03.2017 or otherwise stake her claim in accordance with law even against the present order.

8. The writ petition is, accordingly, consigned to records. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar,
Chennai-3.

2. The Registrar General,
High Court, Madras.

3. The Secretary,
Home (Courts) Department,
Fort St. George, Chennai-9.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.94868
+1cc to the Government Pleader, S.R.No.95541

W.P.No.7405 of 2019

SJ(CO)
CS/09/12/2019



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