

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2019

CORAM

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

W.P.No.9840 of 2018
and
W.M.P.No.11773 of 2018

Dr. (Lt.) .K.Rajakumar

... Petitioner

vs

1.The Government of Tamil Nadu
Rep.by its Secretary, School Education Department
Fort St.George
Chennai - 600 009

2.The Director of Public Libraries
737/1, Anna Salai
Chennai - 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned advertisement published on 01.01.2018 in the daily newspaper "Thinathanthi" by the 2nd respondent for filling up the post of Director of Public Libraries through direct recruitment and quash the same and consequently, direct the respondents to forthwith appoint the petitioner as Director of Public Libraries.

For Petitioner : Mr.K.Raja

For Respondents : Mr.V.Kathirvelu
Special Government Pleader

ORDER

The Notification issued, for recruitment to the Post of Director of Public Libraries is under challenge in the present writ petition.

2.The Advertisement was published on 01.01.2018 in the Daily Newspaper "Thinathanthi" by the 2nd respondent. The writ petitioner is presently serving as Librarian(Selection Grade) in Dr.Ambedkar Government Arts College, Vyasarpadi, Chennai - 39,

under the control of the Department of Collegiate Education. The writ petitioner is working in the cadre of Librarian with effect from 11.12.1997 onwards.

3.The learned counsel appearing on behalf of the writ petitioner states that the petitioner is fully qualified for appointment to the Post of Director of Public Libraries under the Department of Public Libraries. The Adhoc Rules in relation to the Post of Director of Public Libraries was issued by the Government in G.O.Ms.No.223, Education Department dated 09.02.1974. An amendment was issued by the Government to the Post of Director of Public Libraries in G.O.Ms.No.102, School Education(PL.1) Department dated 01.07.2013.

4.Relying on the said Amended Rules, the learned counsel for the writ petitioner states that the mode of appointment is provided under Rule 3, which reads as under:-

"3.Appointment:- Appointment to the post shall be made as follows:-

(i) by promotion from the post of Joint Director of Public Libraries;or

(ii) by transfer from Class I in the said Service; or

(iii) by recruitment by transfer from any other service; or

(iv) by direct recruitment, if no qualified candidate is available for appointment by any of the above methods."

5.As per the above Adhoc Rules, no eligible persons are available in the Department of Public Libraries for promotion as well as by way of transfer from Clause 1 Service. Thus, the competent authority has taken a decision to fill up the post of Director of Public Libraries by recruitment and by transfer from any other service. The writ petitioner is fully qualified and eligible for appointment to the Post of Director of Public Libraries. The name of the writ petitioner was considered by the competent authorities and a panel was communicated by the Joint Secretary to Government to the Director of Collegiate Education in proceedings dated 05.05.2017. Pursuant to the preparation of panel, further proceedings were processed and the writ petitioner was allowed to participate in the interview conducted by the Selection Committee constituted for the purpose of filling up the Post of Director of Public Libraries.

6.The learned counsel for the writ petitioner, at this juncture, states that Constitution of such a Selection Committee itself is illegal and in violation of the Adhoc Rules. The writ petitioner is the only eligible candidate and the writ petitioner ought to have been appointed to the Post of Director of Public Libraries. In order to delete the name of the writ petitioner from the list of eligible candidates, the respondents had constituted the Selection Committee. Thus, Constitution of the Selection Committee itself was illegal.

7.Admittedly, the Selection Committee constituted, conducted an interview and the writ petitioner alone participated in the interview as he was chosen as the only eligible candidate for appointment to the Post of Director of Public Libraries. The Selection Committee did not select the writ petitioner. Therefore, the authorities competent by taking a decision to the fill up the post of Director of Public Libraries by way of Direct Recruitment, by conducting an open competitive process. Accordingly, the impugned advertisement was issued, inviting applications from all eligible persons to fill up the Post of Director of Public Libraries.

8.The learned Special Government Pleader appearing on behalf of the respondents disputed the grounds raised by the writ petitioner by stating that the writ petitioner alone was participated in the interview conducted by the Selection Committee. Thus, the Selection Committee after considering the merits and the demerits of the writ petitioner, decided not to select the writ petitioner. The respondents made an attempt to fill up the post by way of transfer of service from the employees, who all are serving in other departments. When there is no suitable candidates were found and the writ petitioner alone participated in the selection process, the committee has taken a decision to fill up the Post of Director of Public Libraries from open market by way of a direct recruitment and by providing opportunity to all the eligible persons, who all are aspiring to secure the Post of Director of Public Libraries.

9.Appointment can never be claimed as a matter of right. Mere participation in the process of selection would not confer any right on the candidate to claim appointment. Undoubtedly, the writ petitioner is only the candidate, who participated in the selection process. It is an admitted fact that the Selection Committee did not select the writ petitioner and found as not suitable for appointment to the Post of Director of Public Libraries.

10.This being the decision taken by the Selection Committee duly constituted, this Court is of an opinion that there is no infirmity in respect of the administrative decision taken by the competent authorities to fill up the Post of Director of Public Libraries through Direct Recruitment.

11.The grounds raised by the writ petitioner is that the Constitution of the Selection Committee is illegal. This Court is of an opinion that the writ petitioner had participated in the process of selection and attended the interview before the Selection Committee. After attending the interview before the Selection Committee, now the writ petitioner cannot say that the Committee constituted is illegal. Such a challenge cannot be made by the writ petitioner as he participated in the process of interview. It is always preferable that such important posts are filled up by way of Direct Recruitment in the absence of more eligible candidates in the Department. Admittedly, the name of the writ petitioner alone was considered for Selection to the Post of Director of Public Libraries. Under these circumstances, the decision taken by the competent authorities are to be construed as a prudent decision and this Court is of an opinion that such important posts of Director of Public Libraries are to be filled up only by way of Selection and by providing opportunity to all the eligible candidates, who all are aspiring to get appointment / Promotions.

12.As far as the Adhoc rules are concerned, the respondents had followed, the procedures and there is no infirmity as such. The case of the writ petitioner was considered undoubtedly. However, the Selection Committee found that the writ petitioner is not suitable for appointment to the Post of Director of Public Libraries.

13.This being the decision taken, the notification issued for Direct Recruitment, which is impugned cannot be an illegal one and the authorities competent are bound to fill up the Post only by following the recruitment rules and under the present circumstances, the decision taken to fill up the Post by way of Direct Recruitment is the prudent decision and this Court do not find any irregularity, illegality in respect of the decision taken by the competent authorities in this regard.

14.The learned counsel for the writ petitioner solicited the attention of this Court in respect of the judgment of the Apex Court of India in the case of K.Manjusree Vs. State of Andhra Pradesh and another, reported in (2008) 3 SCC 512. The learned counsel for the writ petitioner cited paragraph 36 of the judgment, which is extracted hereunder:

"36.The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the Resolution dated 30-11-2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of the Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible."

15.This Court is of an opinion that the Apex Court of India adjudicated the issues in relation to the minimum marks in the interview by an interpretative process and found that such a process adopted was not warranted. This apart, it is brought to the notice of this Court that the said judgment is now referred to the Constitution Bench for further adjudication.

16.This being the factum, the said rulings cannot be relied upon for the purpose of considering the present case on hand. This apart, the facts and circumstances in the present writ petition are certainly not akin to the facts and circumstances discussed by the Apex Court of India in the judgment cited supra. This being the factum, the judgment cited by the writ petitioner is of no avail for the purpose of considering the grounds raised in the present writ petition.

17.As stated earlier, this Court would like to reiterate that appointment/promotion can never be claimed as a matter of right. Appointment perse is not a right. Only in the event of any malpractices, corrupt activities or violation of rules, the process of selection can be questioned. In the present case on hand, the violations cited by the writ petitioner are untenable and therefore, the present writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Public Libraries,
737/1, Anna Salai,
Chennai-600 002.

+lcc to Mr.K.Raja, Advocate Sr.13732
+lcc to the Government Pleader sr.14143

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W.P.No.9840 of 2018

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