

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM :

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Rev.Appl. No.176 of 2018
in W.P.No.1387 of 2014

1. State of Tamil Nadu,
The Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Chairman,
Teachers Recruitment Board,
Chennai - 6.
3. The District Educational Officer,
Chennai Central, Saidapet,
Chennai -15.

.. Applicants

Vs.

1. E.Jayashree
2. The Secretary,
The P.S.Higher Secondary School,
No.215, R.K. Mutt Road,
Mylapore, Chennai - 600 004.

.. Respondents

Prayer : Review Application No.176 of 2018 filed under Order XLVII Rule 1 read with Section 114 of C.P.C. seeking to review the order passed in W.P.No.1387 of 2014 dated 13.06.2014.

Prayer in WP.NO.1387/2014:

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the third respondent in his proceedings Mu.Mu.No.5223/Aa2/2011 dated 24.12.2012 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T. Assistant (Mathematics) from 02.11.2011 and confer all the consequential benefits.

* * *

For Applicants : Mr.K.Karthikeyan,
Government Advocate

For Respondents: Mr.P.Ganesan
for C.S. Associates [R1]

Ms. Preethikaa Ravichandrababu
for Mr.T.K.Bhaskar [R2]

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ORDER

This review application has been filed to review the order dated 13.06.2014 passed by this Court in W.P.No1387 of 2014.

2. Earlier, the second respondent, an aided school, sought for permission to appoint a B.T.Assistant (Mathematics), in a promotion vacancy, and as per the roster. The above post has to be filled up by a Schedule Caste (Arunthathiyar) (hereinafter referred to as 'SCA') candidate from the CEO, Chennai. The second respondent also requested the State Employment Exchange, for the list of SCA candidates. The Employment Exchange recommended the name of one Ms.M. Jeyalakshmi, belongs to the SCA community. The second respondent school found that the candidate recommended by the State Employment Exchange was not qualified. Thereafter, the second respondent called for applications from open market, by giving advertisement, but no SCA candidates were applied, however three candidates belonging to Scheduled Caste(general) were applied. After interview, one Ms.Jayashree, who is the first respondent herein found to suitable and qualified and she was appointed as B.T Assistant. Subsequently, the second respondent sought for approval from the competent authority, but the competent authority rejected the request on the ground that as per the roster, the B.T. Assistant should be appointed from the SCA category, and should not filled up by SC category, and only those who have passed their "Teacher Eligibility Test" (hereinafter referred to as "TET") alone to be appointed, as B.T. Assistant after 15.11.2011. As the first respondent herein has not passed the Teacher Eligibility Test and belongs to the SC (general) Category, the approval sought by the 2nd respondent has been rejected.

3. Challenging the above order, the first respondent filed a writ petition in W.P.No.1387 of 2014 and this Court allowed the writ petitioner by holding that those who have appointed before 15.11.2011 without TET certificate should be allowed to work and their appointment should be approved. However, the appointee should pass the TET within five years from the date of appointment and also set aside the order passed by the competent authority.

4. Now the present review application has been filed on the ground that even though the competent authority refused to grant approval on two grounds, namely the first respondent belongs to SC(general) Community and she has not passed the TET exam, the learned single Judge has considered only one issue namely the TET qualification, but failed to consider the other ground of rejection, which is an error apparent on the record.

5. The learned counsel appearing on behalf of the review applicant, contended that when many SCA candidates are available, without considering their names, the 2nd respondent consider only one name sponsored by the Employment Exchange, and after founding her not qualified, they have called for applications in the open market and selected a SC(general) community candidate. As per roster, the appointment should be made only from the SCA candidate, hence, the appointment of first respondent is illegal, and that aspect was not considered by the learned single Judge and the order is liable to be review.

6. Per contra, the learned counsel for first respondent submitted that after getting the permission from the competent authority, the second respondent has approached the Employment Exchange and called for the candidates belongs to SCA community wherein only one candidate name was recommended and that candidate found not eligible, hence, the second respondent called for application from the open market by issuing a public notice. Pursuant to that only 3 SC(general) candidates were applied, and after interview the first respondent was found eligible and she was selected.

7. As per the Government order, if no SCA candidates found available, then the candidates from SC(General) can be appointed. As no SCA candidate was available, the second respondent school Management has appointed the first respondent to the post of B.T.Assistant.

8. The learned counsel appearing for the second respondent contended that even though the vacancy for SCA category, the second respondent approached the Employment Exchange and sought for suitable candidates belonging to SCA category. Since, only one candidate from SCA community was available, the Employment Exchange recommended the name of one Ms.I.Saravana Kalai Jyothi, as she was found not qualified. Hence, the second respondent left with no other option, called for application from the open market, only three SC(general) candidates applied.

9. Out of the three candidates, the first respondent alone was found suitable and she has been appointed as B.T. Assistant. G.O.(Ms).No.61, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.05.2009, amended Tamil Nadu Arunthathiyars (Special Reservation of Seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Scheduled Castes) Rules, 2009, as per the amended Rule, if no qualified SCA candidates are available, then the post could be filled up by the SC(general) candidates on merits basis, in the instant case, no SCA candidate was available, the first respondent, who belongs to SC (general) has been appointed and there is no illegality in it.

10. The learned single Judge while dealing with the writ petition has held that the candidates who are all appointed prior to 15.11.2011 should be allowed to work and they have to pass the TET exam within a period of five years from the date of appointment and there is no dispute about the said finding. So far as the community roaster is concerned, admittedly that issue was not considered by the learned judge. However, considering the materials available on record, it could be seen that, the vacancy was meant for SCA candidate, the second respondent called for the names from the Employment Exchange and the Assistant Director, Professional and Executive Employment, Chennai, has furnished only one name and that candidate was found not eligible, hence, the second respondent called for the applications by issuing a public notice, and only three SC (general) candidates alone responded.

11. As per the amended Rule and after following the procedure, the second respondent appointed the first respondent, who was found eligible for the post of B.T.

Assistant. Even though the learned counsel for the review petitioner contended that so many SCA candidates were available, the second respondent has appointed the SC(General) candidate on their own, the petitioner counsel did not produce any material to show that the SCA candidates were available at that time.

12. In the above circumstances, this Court is of the view that since no SCA candidates were available, the second respondent has rightly appointed the first respondent, who belongs to the SC (General) community and I find no error in appointment of the first respondent.

In the result, I find no merit in the review application, the reivev application stands dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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Chennai - 6.
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+lcc to M/s.C.S.Associates, Advocate sr.94345

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pm(co)
nr 18/02/2020