

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24617 of 2019

K.Sathiaseelan

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Petitioner

Versus

1.The Union of India
represented by the Director
Adi Dravidar Welfare Department
Thattanchavadi, Puducherry.

2.The Central Administrative Tribunal
Madras Bench, represented by its
Deputy Registrar, Chennai 600 104.

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records relating to the impugned order of the 2nd respondent in OA.No.1023/2013 dated 15.03.2019 and quash the same and direct the 1st respondent to appoint the petitioner as Assistant Cook-cum-Server under the MSP Quota.

For Petitioner : Mr.P.Rajendran

For R1 : Mr.R.Syed Mustafa, GP
[Puducherry]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1)By consent, the writ petition is taken up for final disposal. Mr.R.Syed Mustafa, learned Government Pleader [Puducherry] accepts notice on behalf of the 1st respondent.
- (2)The applicant in OA.No.1023/2013 before the Central Administrative Tribunal, Madras Bench, is the writ petitioner herein.
- (3)According to the writ petitioner, he is a meritorious sports person and as such, his case is to be considered under the Meritorious Sports Person Quota [hereinafter referred to as 'MSP Quota']. The name of the petitioner was also sponsored by the jurisdictional Employment Exchange for appointment to

the post of ''Part Time Assistant Cook-cum-Server'' in Adi Dravidar Welfare Department of Government of Puducherry and he attended the interview held on 02.08.2007. The petitioner claims that he has also produced all the Certificates including the Certificate issued by the Deputy Director [Sports and Youth Services], Government of Puducherry, certifying that the petitioner is a meritorious sports person. The petitioner expresses his grievance that despite production of authenticated certificates, he was not selected for the said post and he also took a stand that while Communal Reservation was followed, there was no reservation for MSP Quota and therefore, action of the 1st respondent in not considering his claim under the said quota is per se unsustainable and therefore, he initially made a challenge to the proceedings dated 26.05.2008 passed by the 1st respondent by filing OA.No.93/2009.

- (4) The said Original Application was entertained and vide order dated 15.04.2010, the Tribunal/2nd respondent herein had observed that though the applicant [writ petitioner herein] cannot claim the post under the said quota as a matter of right, however, taking into consideration of the fact that the respondent / Puducherry Government is consistently following communal reservation for the past ten years in such appointments, directed that the claim of the applicant may also be treated on par with them as and when vacancy arise in the future.
- (5) It is the case of the petitioner that since the above cited orders of the Tribunal have not been followed or complied with in letter and spirit, he filed yet another Original Application in OA.No.1023/2013, praying for appropriate direction, directing the respondent to appoint him as Assistant Cook - cum- Server under MSP Quota.
- (6) The said Original Application was entertained and the respondent has filed counter/reply statement, wherein they took a stand that they have selected Part Time Assistant Cook-cum-Server which is not Group ''C'' or Group ''D'' post and therefore, the applicant has no right to claim that he should be appointed to the said post under MSP Quota.
- (7) The Tribunal, after considering the rival submissions and perusing the materials, accepted the case of the respondent and found that there was no reservation for MSP Quota and the petitioner herein was not appointed under the said quota and also taken into consideration of the fact that the petitioner did not obtain requisite mark for selection and therefore, dismissed the Original Application vide impugned order dated 15.03.2019 and challenging the legality of the same, the present writ petition is filed by the writ petitioner / Original Applicant.
- (8) Mr.P.Rajendran, learned counsel for the petitioner would strenuously contend that the need of the hour is to encourage

the persons who excel in sports and admittedly, the petitioner took part in the 48th National Bridge Championships, 2006 held at Bhopal and a Certificate was also issued to him to that effect by the Deputy Director [Sports and Youth Services], Puducherry, certifying that he is a meritorious sports person. It is the further submission of the learned counsel that the Tribunal, on an earlier occasion, vide order dated 15.04.2010, in OA.No.93/2009, had directed the respondent therein to consider the claim of the petitioner on par with the candidates under communal reservation and therefore, it is not open to the 1st respondent to take a diametrically opposite stand and would further aver that in respect of the said post, for the past two decades, no appointment has been made under MSP Quota and therefore, prays for appropriate direction to accommodate the petitioner in the said post under MSP Quota.

(9) *Per contra*, Mr.R.Syed Mustafa, learned Government Pleader [Puducherry] appearing on behalf of the 1st respondent has invited the attention of this Court to the reply statement filed before the 2nd respondent/Tribunal in OA.No.1023/2013 as well as the impugned order, which is the subject matter of this writ petition and would submit that if at all MSP Quota is available, it is only in respect of permanent post and as of now, a policy decision has been taken not to go for recruitment of Group 'D' post ; but only through outsourcing in the light of series of orders passed in the Public Interest Litigation Petitions and also would contend that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not issue a positive direction to accommodate the petitioner under MSP Quota in respect of Part Time Assistant Cook-cum-Server and prays for dismissal of the writ petition.

(10) This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(11) It is not in doubt that the petitioner had participated in the National Bridge Championships, 2006, held at Bhopal and he was also issued with a Certificate to that effect by the Deputy Director [Sports and Youth Services], Puducherry, certifying that he is a meritorious sports person. The name of the petitioner was sponsored by the jurisdictional Employment Exchange for selection to the post of Part Time Assistant Cook-cum-Server in the services of Adi Dravidar Welfare Department of the Government of Puducherry and admittedly, no reservation has been provided under MSP Quota, though communal reservation was followed. When the petitioner had approached the Central Administrative Tribunal, Madras Bench, on an earlier occasion by filing OA.No.93/2009, the Tribunal had directed the respondent to consider the claim of the petitioner on par with the candidates following communal reservation and the petitioner expressing grievance that despite such a positive direction, his claim has not been considered, filed

OA.No.1023/2013 seeking for appropriate direction, wherein, the 1st respondent herein took a stand that there is no MSP Quota for Part Time Assistant Cook-cum-Server and it is also the submission of the learned Government Pleader [Puducherry] that as of now, there is no selection either for Part Time post or for Full Time post.

(12)As rightly pointed out by the learned Government Pleader [Puducherry], in the absence of any quota for Meritorious Sports Person, that too, in respect of a Part Time Post, this Court cannot issue a positive direction to create such a quota. The Tribunal has also taken note of the fact that the petitioner did not reach the cut off mark for selection to the said post. In the considered opinion of the Court, the Tribunal/2nd respondent herein, has taken into consideration all the materials and on proper appreciation, has rightly reached the conclusion to reject the claim of the petitioner.

(13)This Court, on an independent application of mind to the entire materials and upon going through the reasons assigned by the Tribunal in the order impugned herein, is of the considered view that there is no error apparent on the face of the record or infirmity to interfere with the said order.

(14)In the result, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director
Union of India
Adi Dravidar Welfare Department
Thattanchavadi, Puducherry.

2.The Deputy Registrar,
Central Administrative Tribunal
Madras Bench, Chennai 600 104.

+1 cc to M/s.P.Rajendran,Advocate Sr.No. 76987

+1 cc to The Government Pleader(Puducherry), Sr.No.76610

AKM/26.09.19/4P-5C /

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