

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.11.2019
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A.No.3577 of 2019
and CMP.No.22949 of 2019

K.Sathish .. Appellant
Vs.

1.The Secretary to Government
Department of Employment and Training
Fort St.George,
Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC
Park Town, VOC Nagar,
Chennai-600 003. Respondents

Prayer in Writ Appeal: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order made dated 18.09.2019 passed in W.P.No.27665 of 2019 and allow the writ petition.

Prayer in Writ Petition: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, to direct the respondent to consider the name of the petitioner to the posts of Principal ITI and Assistant Engineer (Industries) under the category BC (G), (PSTM) category.

सत्यमेव जयते

For Appellant : Mr.R.Sivakumar

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Government Pleader for R1

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JUDGEMENT

(Judgement of the Court was delivered by M.SATHYANARAYANAN, J.)

The Writ Petitioner is the appellant and in the affidavit filed in support of W.P.No.27665 of 2019, would state among other things that he belong to Backward Class category and his entire school studies were in Tamil medium and between 2008 to 2012, he studied Bachelor of Engineering in the discipline of Mechanical Engineering at Adhiyamaan College of Engineering, Hosur, Krishnagir District. According to the petitioner, there was no Tamil Medium of instructions in the said discipline and therefore left with no other option, he studied Bachelor of Engineering in English medium. It is further averred by the petitioner that the 2nd respondent, vide notification No.35 of 2018 dated 26.11.2018, called for application to fill up nine posts of Principal, Industrial Training Institute/Assistant Director of Training and 32 posts of Assistant Engineer (Industries) and the educational qualification prescribed for the posts of Principal, Industrial Training / Assistant Director of Training Institute/Assistant Director of Training is a Degree in any branch of Engineering or Technology of any recognised University or institution under the purview of All India Council for Technical Education (AICTE) and practical experience in a workshop or factory for a period of not less than three years and the educational qualification prescribed for the post of Assistant Engineer (Industries) are a Bachelor Degree in Engineering and practical experience in General Purpose Engineering Workshop or in an Engineering Industry or in a recognised concern for a period of not less than six months. According to the petitioner, he has fulfilled the necessary criteria and accordingly submitted the application and in the written examination, he secured 305 marks and based upon his performance, he was called for the oral test / interview to be held on 20.08.2019 for the post of Assistant Engineering for Industries and in the oral test, he secured 52.50 marks and thus secured total score / marks of 357.50 and for the post of Principal ITI, he was not called for the interview. However a candidate belonging to BC category, who secured 231 marks, was called for oral test and in the light of the same, he has also sought certain clarifications and later on, he came to know that the 2nd respondent has not considered his candidature under BC (PSTM) category and challenging the said decision and aggrieved by the said decision came forward to file the above said Writ Petition praying for issuance of writ of Mandamus directing the respondents to consider his candidature for selection to the post of Principal ITI and Assistant Engineer (Industries) under the category BC(G), (PSTM). The said writ petition came to be dismissed at the admission stage itself, vide impugned order

dated 18.09.2019, granting liberty to the petitioner to workout his remedy before the appropriate forum in the manner known to law. Challenging the legality of the said order, the appellant/writ petitioner came forward to file this Writ Appeal.

2. Mr.R.Shivakumar, learned counsel appearing for the petitioner/appellant has invited the attention of this Court to the Tamil Nadu Act No.40 of 2010 Tamilnadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010 and would submit that in terms of Section 7, the Government may, by general or special order, for just and equitable reasons, exempt any appointment or post in the services under the State from the provisions of the Act and also appointment in respect of disciplines namely Mechanical and Civil, only Tamil medium of instructions is important and that too in selected Government Engineering Colleges and in the absence of Tamil medium of instructions in other disciplines, there is no necessity to prescribe 20% reservation for PSTM categories and if Tamil medium of instructions is important in respect of other discipline also, the writ petitioner/ appellant would have definitely opted for it and as a consequence he would have get eligibility to consider his claim under PSTM category. The learned counsel appearing for the appellant has also invited the attention of this Court to the decision rendered by a Full Bench of this Court in 2019 (2) Writ L.R.481 (R.Boominathan Vs. The Government of Tamil Nadu rep. By its Secretary, Home Department Secretariat, Fort St.George, Chennai-600 009 and others) and would submit that in the said judgement, though one of the issues relating to appointment was urged by the learned counsel for the petitioner, the said issue has not been got decided or answered by the Full Bench and therefore, prays for appropriate orders to consider his candidature under PSTM category. It is also urged by the learned counsel appearing for the appellant that in the application to be filled up, there is no specific column relatable to PSTM category and hence prays for interference in the impugned order with the consequential appropriate order for considering his claim positively on above said basis.

3. This Court paid it's best attention to the arguments advanced by the learned counsel appearing for the petitioner/appellant and also perused the materials placed before it.

4. TNPSC has issued a notification No.35 dated 26.11.2018 inviting application for direct recruitment to the post of Principal Industrial Training Institute / Assistant Director of Training and Assistant Engineer (Industries) and it is relevant to extract Clause 12 - General Information:

(A) The rule of reservation of appointments is applicable to this recruitment.

(B) In G.O.(Ms.) NO.145, Personnel and Administrative Reforms (S) Department, dated 30.09.2010 and G.O.(Ms.) NO.40, Personnel and Administrative Reforms(S) Department dated 30.04.2014, the government have issued orders to fill 20% of all vacancies in direct recruitment on preferential basis with persons who have studied the prescribed qualification in Tamil Medium. The 20% reservation of vacancies on preferential allotment to persons studied in Tamil Medium (PSTM) will apply to this recruitment. (Applicants claiming this reservation should have joined and studied the prescribed qualification in Tamil Medium and should have the certificate for the same. Having written the University examinations in Tamil language alone will not qualify the candidate to claim this reservation). If applicants who have studied the prescribed qualification in Tamil medium are not available for selection for appointment against the vacancies reserved for PSTM, such vacancies shall be filled by Non-PSTM applicants, but belonging to the respective communal category. The PSTM certificate shall be produced / uploaded by the applicants in the prescribed format/ proforma available on the commission's website at www.tnpsc.gov.in which shall be obtained from the Head of the Institution and to be submitted when called for by the Commission.

5. It is to be pointed out that the candidates, who are applying for the said post, are requested to go through the general information before filling up the application form and therefore, the general information to the candidates, forms part of the application to be filled up by the candidates. Admittedly, the petitioner did not undergo B.E (E.C.E) in Tamil medium, which is the requirement contemplated under Clause 12(B) of the general information. Before the Full Bench, in the above cited decision, the following issues were referred:

"(i) Whether studied the Course in Tamil and having written University examinations in Tamil language will qualify the candidate for claiming reservation against Persons Studied in Tamil Medium (PSTM)?

(II) In the absence of Tamil Medium of Instructions in the Colleges, whether the candidates studied the Courses in Tamil, or having written examinations in Tamil can be placed on par with PSTM Candidates for the purpose of claiming reservation earmarked for PSTM?

(iii) Whether the Tamil Medium of Instruction is in vogue and is available in law colleges run by the State Universities and if available, from what period the

courses have been commenced in Tamil Medium and whether the same has been continuing uninterruptedly upto which period? If Tamil Medium of Instruction is available, factually which are the Law Colleges run by the State Universities conducting the Law Course in Tamil as Medium of Instruction?"

The Full Bench has answered as follows:

30. For the purpose of recognising a candidate, within the realm of selection to employment in government services, under PSTM category, a candidate should have studied in Tamil as medium of instruction. Therefore, in order to avail the benefit of reservation earmarked under PSTM category, a candidate has to furnish a certificate to the effect that he or she studied in Tamil as medium of instruction. Such certificate will be issued by the Head of the Institution/Registrar or Principal of the College, as has been contemplated under G.O. (Ms) No.145, Personnel and Administrative Reforms Department dated 30.09.2010, in the prescribed format, certifying that he or she studied the course in Tamil by indicating the duration (academic year) during which the candidate pursued the course. It is this certificate which will form the basis for recognising a candidate for having studied in Tamil medium of instruction so as to enable him or her to get the benefit of reservation under PSTM category. It is needless to mention that merely because a candidate writes the academic examination or competitive examination in Tamil, it will not recognise such candidate to get the <http://www.judis.nic.in> reservation under PSTM category. The requirement is that a Certificate issued by the Head of the Institution/Registrar or Principal of the college, in the prescribed format, certifying that he was imparted with the course in Tamil as medium of instruction, has to be furnished, so as to enable a person to get the benefits of reservation under PSTM category. In the absence of such a certificate, a candidate cannot be regarded or recognised as a preferential candidate, who can avail the benefit of reservation under PSTM category. In other words, if such a certificate is not produced, he or she cannot be recognised as a candidate, who can be extended the benefit of reservation under PSTM category. Therefore, we hold that compliance of the requirements contemplated under G.O. (Ms) No.145 dated 30.09.2010 to furnish a certificate issued by the Head of the institution/Principal or Registrar of the College, in the prescribed format, is a mandatory requirement to get

the benefit of concession and/or reservation earmarked by the State under PSTM category. We therefore answer the reference made to us as follows:-

(i) A person who studied the Course in Tamil or had written the University or Competitive examination in Tamil will not ipso facto recognise or qualify him or her to claim reservation under Persons Studied in Tamil Medium (PSTM) category

(ii) Even though a person opted for Tamil as Medium of Instructions in the Colleges or studied the Courses in Tamil or written examinations in Tamil, in the absence of a certificate issued by the Registrar/Principal or Head of the Institution in the prescribed format stating that he or she pursued the education in Tamil as Medium of Instruction throughout, he or she cannot be placed on par with PSTM Candidates for the purpose of claiming reservation under the preference quota

(iii) Tamil, as Medium of Instruction, is not in vogue in certain colleges, or <http://www.judis.nic.in> rather to say, Law Degrees are not imparted in Tamil as a Medium of Instructions. Only in few colleges, Law Degrees are imparted in Tamil as Medium of Instructions and in some other colleges, it is being imparted intermittently. Only if a student pursued the entire Course in Tamil and obtained a Certificate to that effect from the head of the institution/Registrar or Principal of the College, will he or she be declared as the one who is eligible to claim preference in public employment under PSTM category. As on date, Law Colleges at Chennai, Madurai, Coimbatore, Tiruchirapalli, Tirunelveli and Chengalpattu are imparting the courses in Tamil as medium of instruction, as could be evident from G.O. Ms. No.33, Law (LS) Department dated 31.01.2017 as well as the counter affidavit filed by Director of Legal Studies, Chennai.

6. As per paragraph no.30(iii), the Full Bench has laid down the principle that 'only if a student pursued the entire course in Tamil and obtained a Certificate to that effect from the head of the institution/Registrar or Principal of the College, will he or she be declared as the one who is eligible to claim preference in public employment under PSTM category'. Admittedly the petitioner did not undergo B.E (E.C.E.) in Tamil medium and the explanation offered by the learned counsel for the petitioner is that with regard to the said discipline, there is no Tamil medium of instruction offered.

7. The learned counsel appearing for the appellant / writ petitioner by drawing attention of this Court to Section 7 of

the Tamil Nadu Act 40 of 2010 would also plea that in the light of the above said infirmity, a positive direction may be issued to the Government to pass general or special orders for just and equitable reasons to exempt any appointment or post in the services under the State from the provisions of the Act.

8. In the considered opinion of this Court, this Court in exercise of it's jurisdiction under Clause 15 of the Letter Patent cannot issue a positive direction as to the manner in which the Government shall exercise their power with regard to the exemption. Even otherwise, Clause 12(B) -General Information of the notification dated 26.11.2018 would also stipulate that in the event non availability of PSTM candidates, such vacancies shall be filled by non-PSTM applicants and on that ground, it cannot be said that the petitioner is an aggrieved person, for the reason that still his candidature can be considered under 80% general category.

9. It is also a well settled position of law that the petitioner, who has participated in the selection process, cannot turn around and challenge the criteria for selection and in-fact technically, the petitioner wants to challenge Clause No.12 (B) -General Information without making specific challenge. In the considered opinion of this Court, the relief sought for by the petitioner cannot be granted in the light of the reasons assigned above.

10. In the result, the Writ Appeal is dismissed at the admission stage itself confirming the order dated 18.09.2019 passed in W.P.No.27665 of 2019. No costs. Consequently connected miscellaneous petition is also dismissed.

Sd/-

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Asst.Registrar (CS II)

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Sub Asst. Registrar

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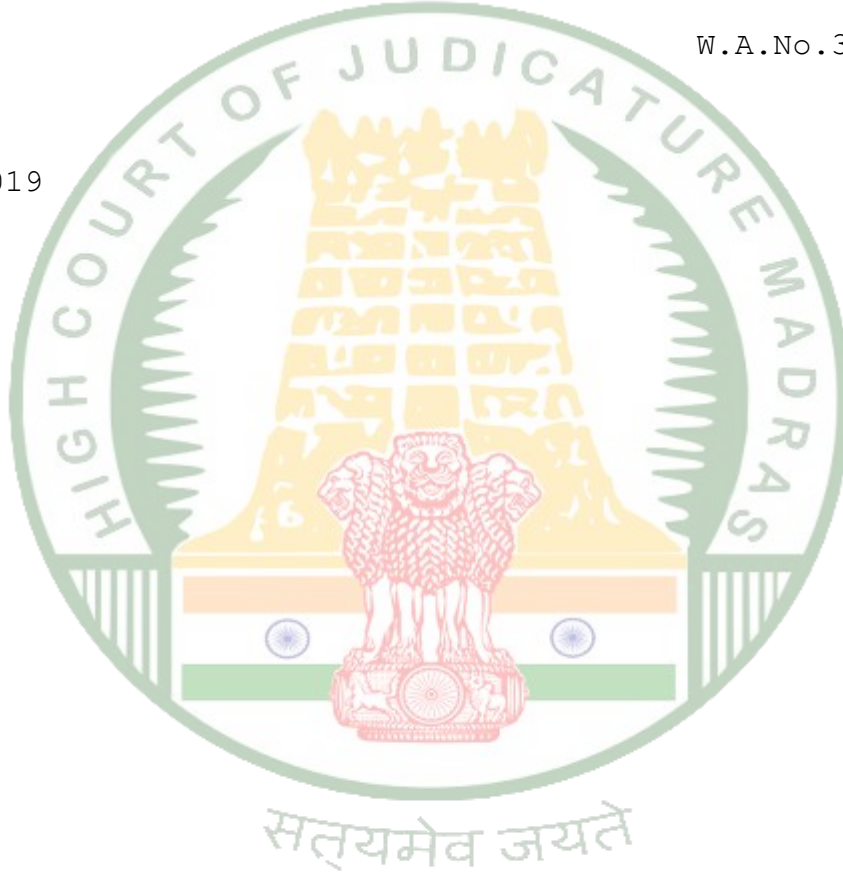
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+1 cc to the Government Pleader sr91156
+1 cc to Mr.R.Sivakumar Advocate sr90892

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