



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.19920 of 2019

and

W.M.P. (MD)Nos.16416 to 16419 of 2019

WEB COPY

M.Britto Stalin

... Petitioner

vs.

The Tamil Nadu National Law University,

Rep. by its Assistant Registrar,

Dindigul Main Road,

Tiruchirappalli - 620 027.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent pertaining to his Advertisement Recruitment Notification No.1665/REGR/TNNLU/RECRUITMENT/2019, dated 25.08.2019, released in Tamil Hindu News Paper, quash the same only pertaining to Serial No.5 Assistant Professor (History) and consequently, direct the respondent to afford equal opportunity in employment to the petitioner, by accepting the application of the petitioner.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.M.Vallinayagam
Senior Counsel
for Mr.V.Meenakshisundaram

ORDER

This Writ Petition has been filed seeking to quash Serial No.5 [Assistant Professor (History)] of the notification dated 25.08.2019, issued by the respondent in Tamil Hindu Newspaper, and consequently, direct the respondent to afford equal opportunity in employment to the petitioner, by accepting his application.

2.According to the petitioner, he belongs to Backward Community. After completion of M.A. (History) and B.Ed., he served as Lecturer in Don Bosco College, Maram, Manipur, from 2003 to 2006 and gained experience in teaching in the College. Thereafter, he joined Master of Philosophy in Bharathidasan University and successfully completed the same during the year 2008. Subsequently, he joined at St. Joseph's College as Assistant Professor (History) and served there from 2009 to 2016. In the meantime, he enrolled Ph.D. course and successfully completed the same during 2017. While so, the respondent issued an advertisement dated 23.05.2016, calling for applications to the post of Guest Lecturer. The petitioner participated in the selection process and was appointed on



06.08.2016 as Assistant Professor (History) on contract basis. He is discharging his duties to the utmost satisfaction of his superiors. Due to his sincerity, devotion and hard work, during July 2017, he was given an additional responsibility as Faculty In-charge of Men's Hostel of the respondent University. While discharging his duties as an Assistant Professor (History) on contract basis, at the instructions of the respondent, the petitioner shifted his family to the quarters of the respondent University and he will be literally on duty for 24 hours as per the instructions of the Vice Chancellor of the respondent University. While so, the respondent issued an advertisement on 25.08.2019 in Tamil Hindu Newspaper and also in the University's Website, calling for applications to the post of Professors, Associate Professors, Assistant Professors, Deputy Librarian and Assistant Librarian. The last date for submitting the application is 25.09.2019.

3. Further, according to the petitioner, to fill up the vacancy of one Assistant Professor (History) was called for, but the said post was reserved for SC (A)(W). The said reservation is contrary to the judgment of the Hon'ble Apex Court. The respondent must give equal opportunity to all the community, but has restricted the opportunity to the particular community. In the earlier two notifications dated 11.06.2014 and 19.07.2015, the respondent University called for applications for single post from General Turn (GT). In the advertisement dated 19.07.2015, the respondent called for applications to the post of Assistant Professors and stated that the reservation is as per the reservation policy of the Government of Tamil Nadu. However, in the impugned notification, the respondent called for candidates for Assistant Professor (Economics) in General Turn and wrongly allotted one post of Assistant Professor (History) to SC (A)(W). Hence, the petitioner has come up with the present Writ Petition.

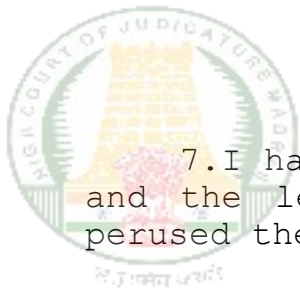
4. The learned counsel appearing for the petitioner submitted that a single post cannot be reserved for any particular community and the reservation for the post of Assistant Professor (History) for SC (A)(W) is contrary to the judgment of the Hon'ble Apex Court. Further, the present vacancy is a backlog vacancy and the same should be filled up from the General Turn and not from SC (A)(W). The impugned notification was not placed before the academic Council and the procedure is not properly followed. The respondent has issued the notification reserving one post of Assistant Professor (History) for SC (A)(W) only, which is arbitrariness and colourable exercise of power. Unless opportunity to be granted to the petitioner, the right guaranteed to him under the Constitution of India would be infringed. Since non-law subject is imparted to the Students along with the law subject, the same cannot be bifurcated and treated as separate Department inasmuch as it comes under the integrated Course. Therefore, the notification must be issued independently on subject wise.



5. In support of his contentions, the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and others** reported in **1998 (4) SCC 1**, wherein at Paragraph No.35, it has been held as follows:-

''35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100 reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.''

6. The respondent filed counter affidavit and denied all the averments made by the petitioner. The learned Senior Counsel appearing for the respondent submitted that the respondent University has decided to adopt and follow the rule of reservation applicable in the appointment as per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The University has three cadres, viz., (i) Teaching Staff (Law), (ii) Teaching Staff (Non-Law), (iii) Non-Teaching Staff, which is approved by the Executive Council, in its meeting held on 25.07.2019 as per Rule 20 (d) of the Tamil Nadu National Law University Duties and Powers of Officers Service Regulation, 2016. Each cadre has number of posts. The teaching staff (Law) has Professor, Associate Professor and Assistant Professor. In teaching staff (non-law), there are faculties, viz., English, Economics and History. Each faculty has the post of Associate Professor and Assistant Professor. All the faculties teaching staff (Law) have come under the same cadre and the said cadre has multiple posts. As per 200 point roster, reservation is made in different faculties in the same cadre as per the alphabetical order. Following the said roster system, the post of Assistant Professor in Economics comes under the General Turn (GT) while the post of Assistant Professor (History) comes under reservation for SC (A) (W). The respondent did not reserve single post of Assistant Professor (History) for SC (A) (W). The said post is one among the multiple posts in the cadre of teaching post (non-law). The contentions of the learned counsel for the petitioner are not valid. The respondent has not reserved the post of Assistant Professor (History) contrary to the judgment of the Hon'ble Apex Court and prayed for dismissal of the Writ Petition.



7.I have heard the learned counsel appearing for the petitioner and the learned Senior Counsel appearing for the respondent and perused the materials on record.

8.The petitioner has come out with the present Writ Petition challenging the impugned notification with regard to the post of Assistant Professor (History) on the ground that the respondent has erroneously reserved single post of Assistant Professor (History) for SC (A)(W) instead of General Turn (GT). The said contention is not correct in view of the contention of the learned Senior Counsel appearing for the respondent and the provisions of the Tamil Nadu National Law University Act and Rules. As rightly pointed out by the learned Senior Counsel appearing for the respondent, there are three cadre of posts in the respondent University and the post of Assistant Professor (History) comes under the cadre of teaching staff (Non-Law). The said cadre consists of various faculties/Departments. The Department of History is one among the many Departments in the said cadre. From the impugned notification it is seen that the respondent has not called for appointment to a single post in the cadre of teaching staff (Non-Law). The respondent has called for application for appointment to the post of Assistant Professor in Economics and History in addition to the appointment to the post of Associate Professor in English.

9.From the materials on record, it is seen that the cadre of teaching staffs (Non-Law) has multiple posts in various subjects. The Department of History cannot be considered in isolation and the appointment of one Assistant Professor (History) cannot be termed as single post. In the judgment referred to above, the Hon'ble Apex Court has held that when there are plurality of posts in a cadre, reservation can be made and until there is plurality of a post in a cadre, no reservation can be made and roster system cannot be applied in rotation. The said judgment does not advance the case of the petitioner. On the other hand, from the said judgment, the reservation made by the respondent is valid, as there are plurality of posts in a cadre.

10.For the above reasons, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)



To

The Assistant Registrar,
The Tamil Nadu National Law University,
Dindigul Main Road,
Tiruchirappalli - 620 027.

WEB COPY

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-90953[F] dated
03/10/2019)

+1 CC to Mr.D. NALLATHAMBI, Advocate (SR-90967[F] dated
03/10/2019)

W.P.(MD)No.19920 of 2019

01.10.2019

smn2

VB(21.10.2019) 5P 4C