



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.09.2019	26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.845 of 2018

and

C.M.P. (MD) No.5105 of 2018

- 1.The Member Secretary
Teachers Recruitment Board
Government of Tamil Nadu
E.V.K.Sampath Maligai
D.P.I.Compound
College Road, Chennai-600 006
 - 2.The Secretary to Government of Tamilnadu
Higher Education Department
St.George Fort, Chennai
 - 3.The Chairman
Teachers Recruitment Board
Government of Tamil Nadu
E.V.K.Sampath Maligai
College Road, Chennai-600 006
 - 4.The Director of College Education
E.V.K.Sampath Maligai
D.P.I.Compound
College Road
Chennai-600 006
- vs-
- P.Tamilarasi
- ... Appellants
- ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 28.02.2018, passed in W.P.(MD) No.1128 of 2018, on the file of this Court.



Prayer in WP(MD). 1128/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent, Member Secretary, Teachers Recruitment Board, College Road, Chennai - 600 006 vide its impugned order letter No.Rc.No.3048/L1/2016 dated 13.07.2017 received by the petitioner on 23.07.2017 and quash the same and to direct the 1st and 2nd respondents to select and appoint the petitioner in the Post of Lecturer in the Home Science Department in any one of the respondents Government Colleges in Tamil Nadu as per this Court Order in W.P(MD)No.3947 of 2011 dated 21.11.2016.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondents : Dr.R.Rajagobal

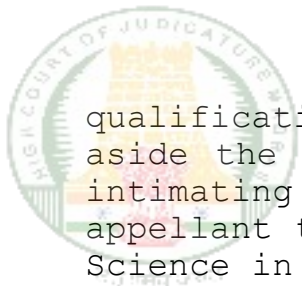
J U D G M E N T

T.S.SIVAGNANAM, J.,

The Member Secretary, Teachers Recruitment Board, and three others are the appellants in this writ appeal and they have questioned the correctness of the order and direction issued in W.P. (MD) No.1128 of 2018, dated 28.02.2018, filed by the respondent herein.

2. The first appellant issued Notification No.4 of 2008, for recruitment to the posts of Lecturers in Home Science and other subjects. The provisional selection list prepared in the order of merit following the communal rotation was published. One candidate by name S.Selvarani belonging to scheduled caste community scored 23 marks. The respondent had scored 21 marks and as the cut-off mark for scheduled caste community candidates was 23, she was not selected. In the same year i.e. 2008, the first appellant issued another recruitment notification for scheduled caste and schedule tribe candidates for the post of Lecturer in Home Science. The respondent participated in the said selection and scored 19 marks. One other candidate, by name, B.Bhuvaneswari also scored 19 marks and as there was a tie between both the candidates, the first appellant selected B.Bhuvaneswari as she was elder in age to the respondent being born on 25.11.1968, whereas the respondent was born on 09.08.1978. According to the first appellant, all the vacancies in the subject Home Science were filled-up in the recruitment done during 2008.

3. In the recruitment conducted pursuant to the Notification No.4 of 2008, the respondent's case was not considered, on the ground that she did not possess the requisite educational



qualification. The respondent filed W.P.(MD) No.3947 of 2011 to set aside the information furnished under the Right to Information Act intimating about her lack of qualification and to direct the first appellant to select and appoint her in the post of Lecturer in Home Science in anyone of the Government College.

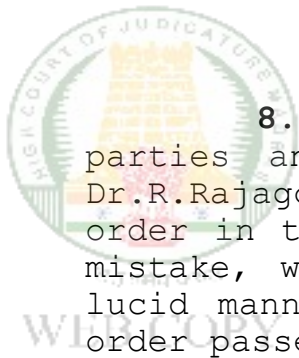
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4. The said writ petition was allowed, by order dated 21.11.2016, by following the earlier order in W.P.(MD) No.15796 of 2009, dated 26.07.2010. The question, which fell for consideration was whether M.Sc. Degree in Food and Nutrition, Food Science Management and Food Resource Management could be considered for recruitment to the post of Lecturer in Home Science. This question was answered in favour of the respondent and the respondent, who possessed M.Sc., Degree in Food Science and Nutrition and M.Phil., in the same subject and passed NET was directed to be considered for appointment as Lecturer in Home Science. Thus, the qualification possessed by the respondent was found to be the appropriate qualification to be considered for appointment to the post of Lecturer in Home Science.

5. The Government filed writ appeal in W.A.(MD) No.446 of 2017, against the order dated 21.11.2016 passed in W.P.(MD) No.3947 of 2011 and the same was disposed of by Judgment dated 15.06.2017. Subsequently, a contempt petition was filed by the respondent in Cont.P.(MD) No.590 of 2017 stating that in spite of the Court having held that the respondent has the necessary educational qualification for being appointed as Lecturer in Home Science, the first appellant had not appointed her in the said post. After the disposal of the writ appeal in W.A.(MD) No.446 of 2017, the first appellant passed an order dated 13.07.2017 setting out the reasons for non-selection of the respondent. This order was impugned in the writ petition, which was allowed by the learned Single Judge and challenging the same, the Teachers Recruitment Board and three others are before us by way of this writ appeal.

6. We have heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Dr.R.Rajagobal, learned counsel appearing for the respondent.

7. The Writ Court, while allowing the writ petition, held that the respondent possessed the requisite educational qualification for being appointed as Lecturer in Home Science and she cannot be thrown out on the ground that she did not secure the cut-off mark of 23 and if she is thrown out, it will be a gross violation of her fundamental rights guaranteed under Article 14 of the Constitution of India and identically placed candidates, who have secured lower marks were given appointment. Accordingly, the appellants were directed to issue an order appointing the respondent as Lecturer in Home Science.

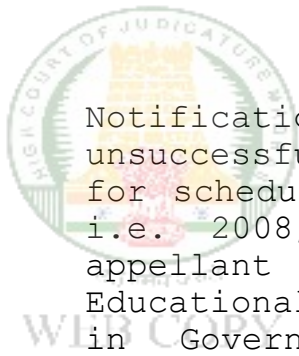


8. After elaborately hearing the learned counsels for the parties and perusing the voluminous set of documents filed by Dr.R.Rajagobal, we find that an error has crept in while passing the order in the writ petition, which appears to be owing to a factual mistake, which has not been set forth before the Writ Court in a lucid manner. Therefore, we are of the considered view that the order passed in the writ petition calls for interference.

9. We support such a conclusion by assigning the following reasons. The first aspect we need to take note of is with regard to the educational qualification possessed by the respondent. The respondent has secured Bachelor of Science Degree from Madurai Kamaraj University during April, 2000 in the subject Home Science and passed in first class. Subsequently, the respondent acquired Master Degree in Food Service Management and Dietetics from Avinashilingam Institute for Home Science and Higher Education for Women, Coimbatore, during May, 2002 and passed in first class. Thereafter, the respondent secured M.Phil. Degree in Food Service Management and Dietetics from the very same University at Coimbatore, during May, 2004 and passed in first class. The respondent participated in the National Educational Test conducted by the University Grants Commission and secured qualification to be eligible for Lectureship in Universities / Colleges. The respondent appeared for the State Level Eligibility Test (SLET) conducted by Bharathiar University during September, 2004 and secured qualification to be eligible for Lectureship in Universities / Colleges in Tamil Nadu. After acquisition of these qualifications, the respondent has been working on temporary basis in various Institutions and applied for participation in the selection notified by the first appellant / Teachers Recruitment Board. Initially, when the respondent applied pursuant to Notification No.4 of 2008 for selection to the post of Lecturer in Home Science, the first appellant refused to consider the respondent's candidature on the ground that she does not possess the requisite educational qualification, namely, Post Graduate Degree in Home Science. This issue stood settled in favour of the respondent pursuant to the orders passed in W.P.(MD) No.3947 of 2011, dated 21.11.2016.

10. It is the submission of Dr.R.Rajagobal, learned counsel for the respondent that the reason for non-selection pursuant to Notification No.4 of 2008 is only on the ground that the respondent did not possess the requisite educational qualification and such a plea cannot be permitted to be taken by the appellants, after the respondent succeeded in W.P.(MD) No.3947 of 2011 and the writ appeal filed by the appellants in W.A.(MD) No.446 of 2017 was disposed of.

11. From the facts placed before us, it is clear that after the orders passed by this Court with regard to the respondent's educational qualification, the appellants have considered the candidature of the respondent in the selection notified in



Notification No.4 of 2008. However, the respondent was unsuccessful, because she had scored 21 marks and the cut-off mark for scheduled caste community candidates was 23. In the same year i.e. 2008, a special recruitment was conducted by the first appellant for the post of Lecturer in Tamil Nadu Collegiate Educational Service for scheduled caste / schedule tribe candidates in Government Arts and Science Colleges. The respondent participated in the selection and secured 19 marks. However, there was a tie as one other scheduled caste community candidate, by name, B.Bhuvaneswari also secured 19 marks. As per the instructions, if there is a tie between two candidates, who had secured same marks, the selection has to be done by taking into consideration the age of the candidate and the candidate, who is elder has to be selected. The said instruction was applied and B.Bhuvaneswari was selected as she was born on 25.11.1968 much elder to the respondent, who was born on 09.08.1978.

12. The Writ Court observed that the appellants cannot take a different stand. However, this appears to be factually incorrect, because there were two recruitments done in the same year i.e.2008 and the respondent participated in both the recruitments. In the first recruitment pursuant to the Notification No.4 of 2008, the respondent was unsuccessful, because another scheduled caste community candidate, by name S.Selvarani, scored 23 marks and that being the cut-off mark, the respondent was not selected. In the second recruitment, which was also conducted during 2008 as a special recruitment for scheduled caste / schedule tribe candidates, though the respondent came within the zone of consideration, since another candidate elder to the respondent also a scheduled caste community candidate, who had secured same marks, had to be considered. Therefore, in our considered view, the appellants have not taken a different stand, but the cause for the confusion is on account of the fact that two recruitments were done for the same post in the same year and the respondent participated in both the recruitments. Her educational qualification was found to be in order, but, she lost out the chance in the first recruitment on account of the another scheduled caste community candidate secured higher marks and she did not reach the cut-off mark. In the second recruitment being a special recruitment for scheduled caste and schedule tribe community candidates, though she secured 19 marks, another scheduled caste community candidate also secured 19 marks and as there was a tie, the candidate, who was elder in age had to be selected and accordingly, the said candidate B.Bhuvaneswari was selected. Therefore, we find that there is no error in the selection process and the respondent's candidature was not rejected on the ground of lack of educational qualification, but for the reasons set out by the appellants, which we find to be acceptable and merits consideration.

13. For the above reasons, the writ appeal is allowed and



the order, dated 28.02.2018, passed in W.P.(MD) No.1128 of 2018, is set aside. Consequently, the writ petition petition in W.P.(MD) No.1128 of 2018 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

+2 CC to M/s.DR.R.RAJAGOBAL, Advocate (SR-89428[F] dated 26/09/2019)

W.A. (MD) No.845 of 2018

and

C.M.P. (MD) No.5105 of 2018

26.09.2019

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