



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2019

Delivered on : 05.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.[MD]Nos.4703 of 2016 and 24021 of 2018
and

W.M.P. (MD)Nos.4242 and 8336 of 2016 and
21731, 21732 and 21733 of 2018

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W.P.[MD]No.4703 of 2016:

D.Yovan

: Petitioner

Vs.

1.The Director,
Government of Tamil Nadu,
Directorate of Employment & Training,
"Training Wing", Guindy,
Chennai-600 032.

2.The Joint Director (Crafts Men Training),
Directorate of Employment and Training,
"Training Wing", Guindy
Chennai-600 032.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to include the name of the petitioner for interview in the provisional list dated 03.03.2016 by following 1:5 ratio as per the notification dated 12.01.2016.

For Petitioner : Mr.A.Kannan

For Respondents : Mr.T.R.Janardhanan

W.P.[MD]No.24021 of 2018:

S.Balashankari

: Petitioner

Vs.

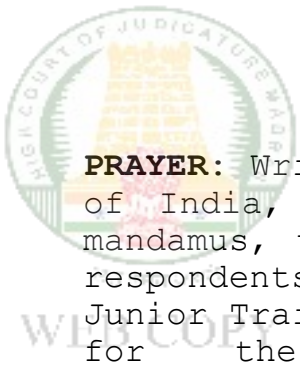
1.The Director,
Government of Tamil Nadu,
Directorate of Employment & Training,
"Training Wing", Guindy,
Chennai-600 032.

2.The Joint Director (Crafts Men Training),
Directorate of Employment and Training,
"Training Wing", Guindy,
Chennai-600 032.

<https://hcservices.ecourts.gov.in/hcservices/>

3.T.S.Kavitha

: Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified mandamus, to call for the records relating to the first and second respondents' impugned provisional selection list for the post of Junior Training Officer (JTO) (2014-15) for the category NTC/NAC and for the trade of Desktop Publishing Operator published on 26.11.2018 and quash the same and consequently direct the first and second respondents to conduct the recruitment afresh for the post of Junior Training Officer (JTO) (2014-15) for the category NTC/NAC and for the trade of Desktop Publishing Operator, within the stipulated time limit as fixed by this Court.

For Petitioner : Mr.A.Prasanna Rajadurai

For Respondents 1&2: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mrs.J.Padmavathi Devi,
Special Government Pleader

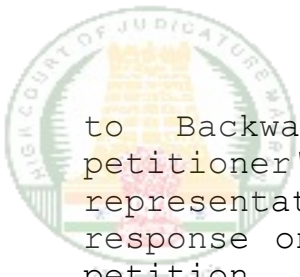
COMMON ORDER

While the relief sought in W.P.(MD)No.4703 of 2016 is to issue a mandamus, directing the respondents to include the name of the petitioner in the provisional list dated 03.03.2016 for interview for the post of Junior Training Officer (JTO) by following 1:5 ratio as per the notification dated 12.01.2016, W.P.(MD)No.24021 of 2018 is preferred to quash the provisional selection list for the post of Junior Training Officer (JTO) (2014-15) for the category of National Trade Certificate (NTC)/National Apprenticeship Certificate (NAC) and for the trade of Desktop Publishing Operator published on 26.11.2018 and consequently, direct the respondents 1 and 2 to conduct the recruitment afresh.

2.Both the writ petitions have been clubbed together, as they raise common issue(s) and they are decided, by this common order.

W. P. (MD) No. 4703/2016:

3.The petitioner is a holder of Diploma in Mechanical Engineering. On 12.01.2016, the second respondent issued a notification for direct recruitment to the post of Junior Training Officer in Government Industrial Training Institutes in the State of Tamil Nadu for the year 2014-2015. Pursuant to the same, the petitioner applied to the post of Junior Training Officer. He falls under the category of Backward Class General Non Priority. He attended the screening test on 21.02.2016. The result was published on 01.03.2016, in which, he scored 96 out of 150 marks. On 03.03.2016, the respondents issued a provisional list of candidates to call for skill test, certificate verification and personal interview. As per the provisional list, the respondents called 506 Mechanical Engineering diploma candidates, out of which, 61 belong



to Backward Class General Non-Priority Category. Since the petitioner's name was not included in the said list, he made a representation dated 04.03.2016 to the respondents. Finding no response on the said representation, he has come up with this writ petition.

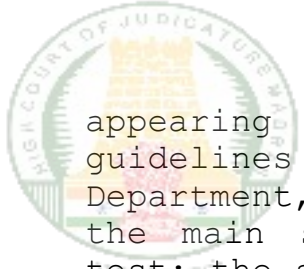
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4. The learned counsel for the petitioner vehemently contended that the provisional list dated 03.03.2016 published by the respondents is contrary to clause 6(2) of the notification dated 12.01.2016 and the respondents have not followed the procedure as found in the said notification. According to the learned counsel, the respondents short-listed the candidates belonging to the Backward Class General Non-Priority category in the ratio of 1:4 instead of 1:5 for the interview, due to which, the name of the petitioner did not figure in the provisional list and he had lost his valuable right to participate in the interview. Hence, the learned counsel sought appropriate direction to the respondents 1 and 2 to consider the petitioner's candidature for the post in question.

5. This Court, vide order dated 09.03.2016 in WP(MD)No.4703 of 2016, directed the respondents to keep one post of Junior Training Officer under the category of Diploma in Mechanical Engineering in Government Industrial Institute in the State of Tamil Nadu as vacant pending disposal of the said writ petition.

6. Subsequently, to vacate the aforesaid interim order granted by this Court in favour of the petitioner, the respondents have taken out a Miscellaneous Petition in WMP(MD)No.8336 of 2016, stating *inter alia* that initially, 16 vacant posts under Diploma in Mechanical Engineering category were notified for BC General Non-priority category, but before the conduct of examination, due to re-allotment of vacant posts to the NTC/NAC category for Engineering Drawing and Maths subjects, the earmarked vacancies for Diploma in Mechanical Engineering were reduced to 108, in which, 12 vacancies were allocated for BC General Non-priority category; the least cut-off marks for BC General Non-priority category in the provisional selection list is 97 marks; and as the petitioner had scored only 96 marks, his name did not find place in the said provisional list. According to the respondents, it was clearly stated in the notification issued by the Department that the tentative vacancies are subject to change from time to time and the candidates scoring the same cut-off marks in a particular communal turn will be called for main selection process; the number of vacancies earmarked for BC General Non-priority category was 12 and accordingly, 61 candidates were provisionally selected for the main selection process, which satisfied the ratio of 1:5 as per the norms. Hence, the respondents 1 and 2 sought to dismiss this writ petition.

7. Referring to the averments made in the counter affidavit in the vacate stay petition, the learned Additional Advocate General



appearing for the respondents 1 and 2 submitted that as per the guidelines framed in G.O.Ms.No.156, Labour and Employment (P2) Department, dated 28.09.2015, the candidates will be shortlisted for the main selection process after conducting a written screening test; the short-listed candidates will be called in the ratio of 1:5 for the practical skill-cum-teaching ability test followed by interview; based on the performance and the mark scored by the candidates in the practical skill test, teaching ability test and the interview, the merit list will be prepared and the candidates will be selected for appointment.

8.Adding further, the learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the notification inviting applications for 329 vacant posts of Junior Training Officer under Direct Recruitment method, was published in leading dailies on 12.01.2016; the post of Junior Training Officer in the Training Wing of Department of Employment and Training is an instructor post to impart vocational training to students in Government ITIs in respective disciplines; the selection process involved two stages, i.e., written screening test and main selection process; the main selection process comprised three stages, viz., practical skill test, teaching ability test and personal interview; as per the qualification fixed for the post of Junior Training Officer, 194 posts under diploma category in 17 branches and 135 posts for National Trade Certificate/National Apprenticeship Certificate holders for different trades, were also notified to be filled as per the roster system; and furthermore, in the notification, it was also mentioned that the estimated number of vacancies given above is tentative and the same is subject to modification and inclusion from time to time. The learned Additional Advocate General also submitted that the award of marks in an interview in terms of performance of the candidates cannot be subjected to judicial review, unless allegations are made against the selection committee and hence, the writ petition is liable to be dismissed.

W.P. (MD) No.24021 of 2018:

9.The petitioner is a BBA Graduate and has completed trade test of Desktop Publishing Operator and obtained NTC and Diploma in Teacher Education, besides passing Typewriting Examination both in Tamil and English Junior Grade. She belongs to Most Backward Class and registered her name in the Employment Exchange concerned. On 12.01.2016, the second respondent issued a notification for direct recruitment to the post of Junior Training Officer for a total vacancy of 329 posts in Government Industrial Training Institutes in the State of Tamil Nadu for the year 2014-2015, wherein, 3 posts belong to the category of Desktop Publishing Operator, in which, only one post was allotted to the Most Backward Class - General - Non Priority. Pursuant to the said notification, the petitioner applied for the said post and she scored 101 marks out of 150 marks in the written test. However, her name was not included in the provisional list published by the first and second respondents



on 26.11.2018, but, the name of the third respondent, who secured only 54 marks in the written test, found place. Aggrieved over the same, the petitioner is before this Court for the aforesaid relief.

10. The learned counsel for the petitioner submitted that though the petitioner secured higher marks of 101 out of 150 in the written test than the third respondent, who secured only 54 out of 150, she was not included, but the name of the third respondent was included in the impugned provisional list by overlooking merit and seniority, which is arbitrary and violative of Article 14 of the Constitution of India. The learned counsel further submitted that the selection process commenced in the year 2016, but it was concluded only in 2018, which shows the *mala fide* object of the respondents 1 and 2. The learned counsel also submitted that the provisional list does not disclose any cut off marks regarding communal category and there is no transparency in selection process. Hence, the impugned provisional list is liable to be set aside.

11. Per contra, the learned Additional Advocate General appearing for the respondents 1 and 2, reiterating the averments made in the counter affidavit filed by the second respondent, contended *inter alia* that the petitioner, along with five other candidates, appeared for the practical skill -cum- teaching ability test followed by personal interview on 09.11.2018 for the most backward class category of Desktop Publishing Operator trade under NTC/NAC category at Government Industrial Training Institute, Guindy; in the aforesaid test, the petitioner scored 88.4 marks, whereas the third respondent scored 88.6 marks; as the third respondent scored more marks than the petitioner, she was considered for the provisional selection of 1 vacancy notified under the Most Backward Class Category for the trade of Desktop Publishing Operator; the selection was made, considering the merit of the candidates in the practical skill-cum- teaching ability followed by personal interview and also as per the guidelines issued in G.O.Ms.No.156, Labour and Employment Department, dated 28.09.2015 and subsequently, the candidates, who have been provisionally selected, were issued appointment orders on 05.12.2018 and the provisional selection list dated 26.11.2018 which is impugned herein, need not be set aside. The learned Additional Advocate General also submitted that the claim of the petitioner considering her for the future vacancies after the issuance of the notification, will amount to violation of settled legal principles and hence, the same could not be taken into consideration.

12. The learned counsel for the third respondent made his submission supporting the stand taken by the respondents 1 and 2. According to him, based on the marks obtained, the third respondent was selected and hence, the same is perfectly valid in law and does not call any interference at the hands of this Court.



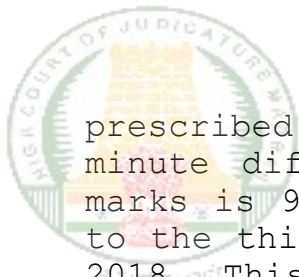
13. Heard all the parties and perused the materials available on record.

14. The petitioner in WP(MD) No. 4703 of 2016 is aggrieved of the non-consideration of his case for recruitment to the post of Junior Training Officer in Government Industrial Training Institutes, on the ground that the provisional list dated 03.03.2016 issued by the respondents is contrary to Clause 6(2) of the notification dated 12.01.2016, wherein, it is specifically mentioned that the candidates short-listed based on the screening test marks in the ratio of 1:5 depending on the number of vacancies in each category, will be allowed for main selection process and if more than one candidate secures the lowest same cut off marks for a particular communal turn, all such candidates will be called for main selection and in violation of the said provision, the respondents short-listed the candidates belonging to Backward Class General Non Priority in the ratio of 1:4 instead of 1:5 for the interview and they also fixed different ratios with respect to the remaining 25 categories.

14.1 The allegation so made by the petitioner was stoutly refuted on the side of the respondents 1 and 2. It is their stand that initially 16 vacant posts under Diploma in Mechanical Engineering category were notified for BC General Non-priority category, but before the conduct of examination, due to re-allotment of vacant posts to the NTC/NAC category for Engineering Drawing and Maths subjects, the earmarked vacancies for Diploma in Mechanical Engineering were reduced to 108, in which, 12 vacancies were allocated for BC General Non-priority category; the least cut-off marks for BC General Non-priority category in the provisional selection list is 97 marks; and as the petitioner had scored only 96 marks, his name did not find place in the said provisional list and the respondents satisfied the ratio of 1:5, as per the norms.

15. The grievance of the petitioner in WP(MD) No. 24021 of 2018 is that the third respondent scored less marks of 54 out of 150 than her, who secured 101 marks out of 150 in the written test, however, she was selected for the post in question, based on the marks obtained in the interview, which is *mala fide* on the part of the respondents, whereas, according to the respondents 1 and 2, the petitioner scored less marks than the third respondent in the test and interview that mattered for the final selection; as only one vacancy was notified for which the petitioner was eligible, she stood next to the third respondent in the final merit list, by virtue of the marks scored and hence, she was not considered.

16. Admittedly, the petitioner in both the writ petitions are unsuccessful candidates in the selection process initiated, pursuant to the notification dated 12.01.2016 issued by the second respondent for direct recruitment to the post of Junior Training Officer in Government Industrial Training Institutes in the State of Tamil Nadu for the year 2014-2015, as they have not secured the cut off marks



prescribed by the Selection Committee and they missed the bus by minute difference i.e., scoring 96 marks as the minimum cut off marks is 97 in WP.No.4703 of 2016 and scoring 88.4 marks compared to the third respondent, who scored 88.6 marks in WP(MD)No.24021 of 2018. This Court is of the opinion that though the petitioners possess the prescribed qualification and are eligible for consideration, but they would be out of the field of consideration by reason of not crossing the cut off marks as fixed by the Selection Committee. Further, the awarding of marks in interview would depend upon the performance of the candidates at the time of interview.

17.The main aim behind prescribing the cut off marks is that the candidate, who is to be selected for a particular post, should be eligible for the said post. When the candidate has failed to secure the required cut off marks even by a molecular extent, he/she cannot come within the zone of consideration. This observation of this Court is fortified by the judgment of a Division Bench of this Court dated 08.09.2017 in WA(MD) No.1207 of 2017 [*P.Premkumar v. the Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and another*] wherein, the appellant's case that he was short of only 0.6 cm for the post of Grade -II Police Constables/Grade II Jail Warders/Fireman-2017, did not merit consideration before the Division Bench.

18.The law is settled in this regard that an unsuccessful candidate can challenge the selection process, but only on limited grounds [Refer: *K.A.Nagamani v. Indian Airlines and others* (2009) 5 SCC 515].

19.The Supreme Court, in *Dalpat Abasaheb Solunke etc. v. Dr.B.S.Mahajan etc.*, [AIR 1990 SC 434], observed as follows:

"9.....It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not, has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved malafides affecting the selection etc....."

(Emphasis Supplied)

20.Also, it is apt to refer to the decision of the Supreme Court in *Madan Lal and others v. State of Jammu and Kashmir and others* [AIR 1995 SC 1088], wherein, it was observed as under:

"9. Therefore, the result of interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said



24. In the upshot, both the writ petitions stand dismissed. No costs. The interim order dated 09.03.2016 already granted in WP.(MD) No.4703 of 2016 and WMP(MD) No.4242 of 2016 shall stand vacated. Consequently, connected Miscellaneous Petitions are also dismissed.

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Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director,
Government of Tamil Nadu,
Directorate of Employment & Training,
"Training Wing", Guindy,
Chennai-600 032.
2. The Joint Director (Crafts Men Training),
Directorate of Employment and Training,
"Training Wing", Guindy
Chennai-600 032.

+1CC to Mr.A.Parasanna Rajadurai, Advocate, Sr.No.74325.

Common Order made in
W.P. [MD] Nos. 4703 of 2016 and 24021 of 2018
05.07.2019

CS/ /SAR/18.07.2019/ 9P/ 4C