



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

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WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.6836 of 2013

and

M.P(MD)No.1 of 2013

R.Dhanaselvi

... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-09.

2.The Secretary,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Compound, College Road,
Chennai-06.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the non-selection of the petitioner to the post of Post Graduate Assistant (Commerce) as null and void and illegal and consequently to direct the Respondents to consider the petitioner to the post of Post Graduate Assistant (Commerce) by placing the petitioner in the appropriate roster point with consequential benefits within the time stipulated by this Court.

For Petitioner :Mr.T.Lajapathi Roy

For Respondents :Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

The Writ of Declaration is filed declaring the non-selection of the writ petitioner for appointment to the post of Post Graduate Assistant (Commerce) as null and void and consequently TO direct the respondents to consider the petitioner to the post of Post Graduate Assistant (Commerce) by placing the petitioner in the appropriate roster point with consequential benefits.



2.The learned counsel appearing on behalf of the writ petitioner states that the petitioner is a candidate studied under the Tamil Medium (PSTM) and therefore, she is eligible to avail the quota fixed for the persons studied under the Tamil Medium (PSTM). However, the petitioner admittedly has not opted the PSTM quota in her application. The writ petitioner had failed to inform the authorities in the application form that she is submitting her application under PSTM category. In other words, the petitioner had not submitted her application under PSTM category. In this regard, the learned counsel for the petitioner states that it is a mistake committed by the writ petitioner at the time of filling up the application and therefore, she cannot be penalised for such a mistake. The writ petitioner otherwise is eligible to avail the benefit under the PSTM category. The learned counsel appearing for the writ petitioner is of an opinion that such mistake committed by candidate cannot be held against her, more specifically, for the purpose of selection and appointment when the petitioner could able to establish subsequently that she is eligible to get appointment under the PSTM category. The case of the writ petitioner ought to have been considered by the competent authorities. The writ petitioner has already attained the age limit and she may not be get further opportunity to participate in the further process of selection.

3.The learned counsel appearing for the writ petitioner referred the judgment of this Court, dated 27.04.2019 in W.P(MD) No.22006 and 22055 of 2018 and in paragraphs 17 & 18 are extracted hereunder:-

"17.Having regard to the above said legal position and also considering the fact that the petitioners have already sent representations dated 01.10.2018 and 04.08.2018 respectively to rectify such mistakes before the certificate verification, I am of the considered view that for such mistake that was due to inadvertence, which can be rectified, the petitioners cannot be penalized by denying employment, as vacancies are available, in case they are otherwise found eligible, apart from community.

18.In view of the above stated position, the Tamil Nadu Public Service Commission is, hereby, directed to consider the claim of the petitioners and pass appropriate orders rectifying the mistake by entering the community status of the petitioner (M.Kavin Kumar) as 'DNC' instead of 'BC' and and the petitioner (R.Uma Maheswari) as 'DNC Maravar' instead of 'BC Maravar' and treating them as candidates belonging to DNC and DNC Maravar category respectively, consider them for appointment to the post of Assistant Horticultural Officer if they are otherwise found eligible and if there are no other legal impediments. The said exercise shall be carried out, as expeditiously as possible,

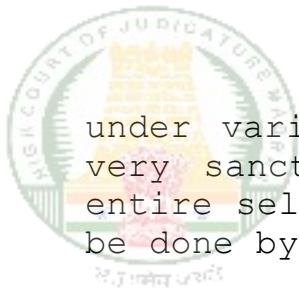


preferably, within a period of six weeks from the date of receipt of a copy of this order."

4. Relying on the above said judgment, the learned counsel for the petitioner contended that the mistake committed by the writ petitioner cannot be held against her and therefore he must be treated as a candidate under PSTM and the benefit of appointment to be extended under the PSTM category.

5. The learned Special Government Pleader appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioner by stating that the instructions provided to the candidates by the respondents made clear that the category under which the application is submitted to be mentioned by the candidates. The details of the categories are also furnished in the application as well as the brochures issued to the candidates. When the instructions are clearly mentioned, the writ petitioner admittedly not applied under the PSTM category. Now after the completion of the selection process she cannot come and say that his case has to be considered under the PSTM category. Once the application is treated as general category and after the selection of such candidate, once again cannot brought back to the PSTM and it will unsettle the entire selection already completed. The process of selection had already been completed and the selected persons appointed and served for the past five years. Under these circumstances, if the case of the writ petitioner is considered under the PSTM then larger number of such applications which were rejected by the respondents are also to be re-opened for the purpose of considering those cases also. In such a event, the same would amount to repetition and the entire process of selection would be unsettled.

6. This Court is of the considered opinion that the candidates, who are submitting the applications for selection must fill up the application strictly in accordance with the instructions provided in the brochure and as per the columns all necessary documents are to be enclosed if such instructions are provided, more specifically, with reference to the reservation quotas, the candidates are bound to mention under which category they are submitting their applications. The reservations and quotas for various categories are all paramount importance and the candidates must be cautious while filling up the application and mention that in which category he/she submitting the application. In the event of not mentioning or obeying the instructions, their applications would be treated as one under general category and after completion of selection, those candidates cannot make a complaint that they are entitled to avail the quota under PSTM or as a matter of fact to any other category. If any such exercise is made after five years, the entire selection would be unsettled and many such candidates whose applications were rejected also come and say that their cases also to be considered



under various such preferential categories. In such event, the very sanctity and the importance are not only deleted but the entire selection will be unsettled. Thus, such an exercise cannot be done by this Court after completion of selection.

7. The learned counsel appearing for the respondents cited the judgment of the Division Bench of this Court, dated 05.12.2017 passed in W.A(MD)No.632 of 2015 and the relevant paragraphs are extracted hereunder:-

"15. It is to be borne in mind that the Respondent/Writ Petitioner had secured only 213 marks in the written examination and she was not summoned for counseling to Non-OT posts. Since the cut-off marks for MBC/DC(W) category, for admission to counseling to Non-OT posts was 228 and since the Respondent/Writ Petitioner had secured only 213 marks in the written examination, she was not summoned for counseling to Non-OT posts and as such, she was not selected by the Appellant/Service Commission.

16. In the instant case on hand, the Respondent/Writ Petitioner had not even furnished an undertaking that she had studied the prescribed qualification in Tamil Medium, while sending her application for direct recruitment to the posts included in CSSE-I, 2009-2011, with reference to Para-3A(iii) of the Notification dated 30.12.2010. Therefore, her application was not considered under PSTM Category. When the other candidates, who had not produced PSTM certificates together with the applications, were considered only as Non-PSTM candidates by the Appellant/Service Commission and they were admitted for counseling only if they were otherwise qualified and within the zone of selection, the Respondent/Writ Petitioner cannot take a contra plea in this regard. Because of the absence of the requisite PSTM Certificate, the Respondent/Writ Petitioner was not treated as a candidate belonging to PSTM Category by the Appellant/Service Commission and hence, the view taken by the Appellant/Service Commission, in the considered opinion of this Court, is a correct one."

8. Even recently, the Principal Bench of Madras High Court considered the same issues elaborately in W.P.Nos.1928, 1954 and 2082 of 2019 dated 26.03.2019. The importance of instructions and brochures issued to the candidates and the rejection of applications in the event of not furnishing the requisite information were all discussed in the above judgment. The relevant paragraphs are extracted hereunder:-

<https://hcservices.ecourts.gov.in/hcservice> Regarding the effect of Information Brochure, the Full Bench has concluded that the cumulative effect of the above well enunciated principles of law, is that the

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<https://hcservices.ecourts7.gov.in/hcservices/>

"29. Before winding up, it is to be noted that the Notification for calling for applications for the posts of Assistant Surgeon (General & Speciality) Tamil Nadu Medical Services for the year 2003-2004 was notified on 7.2.2005. The last date for receipt of application by the Government was 4.8.2005. It is brought to our notice that number of candidates applied for the post were 7123



out of which 5317 candidates were found eligible to take up the examinations and 1806 candidates were found ineligible and 1182 were found unsigned the applications, the petitioners challenged the same in these Writ Petitions. Though it is pointed out that some of the persons who wrote the written examinations on the orders of the Court were successful, in view of our discussion and ultimate conclusion, we are not inclined to show any leniency or indulgence to those who unsigned the applications merely because they were permitted to write written examinations. It is not in dispute that the applicants are highly qualified medical practitioners and after successful in their course, they registered their names in the Medical Council of India. We have already referred to various instructions mentioned in the Notification as well as in Information Brochure. In addition to the same, every application form was enclosed with duly filled up specimen form to enable the applicant to fill up all the columns wherever required, which include signature in the places indicated. In such circumstances, we do not find any merit in the contentions raised by the learned counsel for the petitioners or error or infirmity in the impugned order of the respondent. Consequently, all the Writ Petitions fail and are accordingly dismissed. No costs."

10. Relying on the said principle, this Court is of the considered opinion that the settled selection is of the year 2013 cannot be now unsettled by providing concession to the writ petitioner enabling her to secure selection or appointment under PSTM category in view of the fact that the petitioner had not even applied under the PSTM category at all. The learned counsel for the petitioner states that the writ petitioner may not get further opportunity for appointment. It is needless to say that if any recruitment notification is issued, the writ petitioner is at liberty to participate in the process of selection, if she is otherwise qualified in accordance with law.

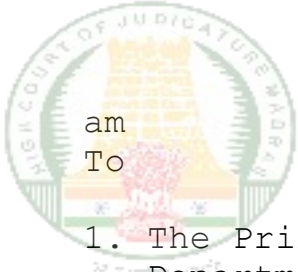
11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)



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To

1. The Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-09.

2. The Secretary,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Compound, College Road,
Chennai-06.

+1CC TO M/S T.LAJAPATHI ROY, ADVOCATE, SR.NO, 70016

W.P (MD) No.6836 of 2013

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BUC (01/07/2019) 7P/4C