

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.(TR) No.1300 of 2017

ORDER:

Heard Sri M.R.Tagore, learned counsel for the petitioner and the learned Government Pleader for Services-II. With the consent of learned counsel for the respective parties, this Writ Petition is disposed of at the admission stage.

This writ petition is filed seeking the following relief :-

“.....declaring the action of the respondents in rejecting the applicant's case for appointment as Lab.Technician Gr.II vide Rc.No.E3/1353/2014, dt.02.06.2014 as highly illegal, arbitrary and contrary to the Rules and consequential the Hon'ble Tribunal may pleased to set aside the same impugned order dt.02.06.2014 by declaring that the applicant herein is entitled for appointment as Lab Technician Grade II notionally with all consequential benefits on par with other selected candidates and may pass such order orders”

It has been contended by the petitioner that the respondents have issued a notification dt.23.08.2007 calling applications for appointment to the post of Lab Technician Grade-II notifying 6 posts for local STs. Petitioner responded to the said notification as he is fully eligible and qualified to be appointed as Lab Technician Grade-II and after undergoing regular selection process, petitioner has secured 39.5 marks. While so, in the final merit list, the name of the petitioner was placed at Sl.No.7 and since only 6 posts were notified, the case of the petitioner could not be considered for appointment to the post of Lab Technician Grade-II. The grievance of the petitioner

is that in the final merit list prepared by the respondents, the respondents have erroneously selected two women candidates, one an under aged candidate and the other who does not belong to local schedule tribe. Therefore, their names were deleted from the merit list and accordingly out of 6 posts, only 4 ST local candidates were selected. Challenging the said selection process, the petitioner has filed O.A.No.4382 of 2009 before the Tribunal and the Tribunal vide order dt.20.12.2013 was pleased to grant interim direction, directing the respondents to consider the case of the petitioner against the two resultant vacancies. Pursuant to the said order, the respondents have considered and rejected the case of the petitioner vide speaking order dt.02.06.2014. Thereafter, petitioner has filed amendment application seeking amendment of the prayer challenging the speaking order dt.02.06.2014. Learned counsel for the petitioner further contends that after deletion of the names of the two candidates who were not eligible to be included in the merit list, the petitioner stands at Sl.No.5 in the revised merit list as he has secured 39.5 marks. Thus, the petitioner deserves to be considered for appointment to the post of Lab Technician Grade-II. Therefore, speaking orders dt.02.06.2014 rejecting the case of the petitioner on the ground that two resultant vacancies have caused because of the deletion of names of two women candidates and those two vacancies would be carried forward in the next recruitment notification has no application at all. As one women candidate at Sl.No.6 was already appointed in vacancies of 6 Lab Technician Grade II

posts, still the case of the petitioner can be considered for appointment against the 4th vacancy in the general category. Therefore, appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for appointment to the post of Lab Technician Grade II by duly setting aside the impugned order dt.02.06.2014 with all consequential benefits.

Learned Government Pleader appearing for the respondents had contended that the Government had not issued any speaking orders to fill up non-joining posts. He further contends that as per Rules of Reservation, the two resultant vacancies that were caused because of the deletion of names two women candidates who were not eligible, would be carried forward for the next recruitment years and those posts are to be filled with eligible ST woman candidates only. Therefore, he contends that there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for the respective parties, is of the considered view that originally 6 posts were notified and the respondents have filled up three posts with male candidates and three posts with women candidates as per the Rules. Because of the erroneous selections by the respondents, i.e, selecting a woman candidate who is under aged and another woman who does not belong to local schedule tribe, the names of those two women candidates were deleted from the merit list resulting in two vacancies. If the selections were properly conducted, the name

of the petitioner would have been considered for appointment to the post of Lab Technician Grade-II against the 4th vacancy earmarked for general category.

Therefore, the impugned order dt.02.06.2014 rejecting the case of the petitioner for appointment to the post of Lab Technician Grade-II is liable to be set aside as the same is passed without application of mind and without taking into account one more vacancy meant for general category in the notification. Therefore, the case of the petitioner deserves to be considered against the 4th vacancy earmarked for general category.

Accordingly, the impugned rejection order dt.02.06.2014 is set aside and the writ petition is allowed directing the respondents to consider the case of the petitioner for appointment to the post of Lab Technician Grade-II along with other selected candidates with all consequential benefits. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 18-11-2019
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