

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.14256 OF 2013

AND

M.P.NO.1 OF 2013

M.Abdul Rahman

.. Petitioner

- Vs -

1. State of Tamil Nadu, rep. By
its Secretary to Government
Personnel & Administrative
Reforms Department
Fort St. George, Chennai - 9.
 2. Tamil Nadu Public Service Commission
rep. By its Secretary
VOC Nagar, Frazer Bridge Road
Park Town, Chennai 600 003.
- .. Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the second respondent commission to fill the backlog vacancies in the BC Muslim category in the post of Junior Assistant as notified in the notification No.14/2012 dated 27.4.12 with regard to the selection for Group IV services.

For Petitioner : Ms.Dakshayani Reddy

For Respondents: Mr.S.Thangavel, Spl.GP for R-1
Mr.Balamurali Krishnan for R-2

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ORDER

The writ petition has been filed for a direction to the 2nd respondent to fill up the backlog vacancies to the post of Junior Assistant as notified in the Notification of the 2nd respondent dated 27.4.12.

2. It is the case of the petitioner that the 2nd respondent, vide Notification No.14/2012 dated 27.4.12 had notified 10718

vacancies of which 4402 vacancies pertained to the post of Junior Assistant. It is the further averment of the petitioner that another 463 vacancies in the post of Junior Assistant were also notified as backlog vacancies. Of the 463 backlog vacancies, 200 vacancies were to be filled up with person from Backward Class (Muslim) category (for short 'BCM').

3. It is the case of the petitioner that he participated in the selection process and in the written examination had secured 192 marks. It is the further averment of the petitioner that the 2nd respondent had not set apart the vacancies as notified in the notification and the distribution of the vacancies as published would stand testimony of the same. It is the further averment of the petitioner that the cut off marks for BCM category in the different phases of counselling, viz., 1st to 3rd phase ranged from 201 to 193.50 marks. It is the grievance of the petitioner that the 2nd respondent had set apart only 136 vacancies instead of 359 vacancies, which prevented calling the petitioner for counselling.

4. It is the further case of the petitioner that he gave a representation dated 28.3.13 to the 2nd respondent under the Right to Information Act seeking information about the number of vacancies set apart as per the notification to which reply was furnished on 22.4.13 stating that the total number of vacancies for the post of BCM category in the post of Junior Assistant was arrived at 359, viz., (carry forward vacancies 192 and fresh vacancies 167). It is the further contention of the petitioner that as per the policy decision of the State, 3.5% of the vacancies are to be set apart for BCM category. Therefore, 167 vacancies notified as fresh vacancies and added to that, the backlog of 200 vacancies in the post of Junior Assistant totals to 367 vacancies. However, the distribution of vacancies published reveals that only the fresh vacancies were filled up and the backlog vacancies have not been filled up, which is in detriment to the case of the petitioner.

5. It is the further contention of the petitioner that Rule 22 of the Tamil Nadu State and Subordinate Service Rules (for short 'Rules') mandate that the backlog vacancies have to be filled up from amongst the most meritorious of the candidates, whereinafter alone, the fresh vacancies are to be filled up from amongst the BCM candidates. It is further submitted by the petitioner that the 2nd respondent, though conducted counselling in phases, however, did not fill up the backlog vacancies and only filled up the fresh vacancies. The non-filling up of the backlog vacancies has acted as deterrent to the selection of the petitioner and, therefore, the present petition has been filed for the relief supra.

6. Learned counsel appearing for the petitioner vociferously contended that the rule of reservation, as mandated u/r 22 of the Rules has been given a go-by and this has had a detrimental effect on the selection of the petitioner. It is the vehement submission of the learned counsel for the petitioner that the meritorious candidates, irrespective of their choice, have to be first accommodated in the open category, viz., General Turn and only thereafter, the BCM vacancies have to be filled up. It is the further contention of the learned counsel for the petitioner that the non-filling of the backlog vacancies in the first instance before filling up the fresh vacancies has robbed the petitioner of his rightful opportunity to get selected. It is the further submission of the learned counsel for the petitioner that though the reply of the 2nd respondent dated 22.4.13 clearly reveal the number of vacancies set apart for the BCM category, however, the distribution of vacancies published by the 2nd respondent reveals that the backlog vacancies have not been filled up. It is the further submission of the learned counsel for the petitioner that the 2nd respondent has counted the number of BCM persons, who were selected on their own merit for the purpose of satisfying the reservation policy, in total abdication of the Rules and reservation policy, which is against the well settled proposition of law adumbrated by the Court time and again. In fine, it is the pointed submission of the learned counsel for the petitioner that the act of the 2nd respondent in not filling the vacancies in the General Turn with meritorious candidates is against the Rules and is against the constitutional guarantees envisaged under Article 16 of the Constitution of India and, therefore, prays this Court to issue appropriate direction to accommodate the petitioner in any one of the backlog vacancies under the BCM category. In support of the above contention, learned counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in Union of India & Anr. - Vs - Satya Prakash & Ors. (2006 (4) SCC 550).

7. Per contra, learned standing counsel appearing for the 2nd respondent, relying on the first of the counter filed by the 2nd respondent, submitted that 336 vacancies, including General Turn vacancies were filled up with Muslim candidates in three phases and 23 vacancies were left unfilled in the BCM communal category. It is the further submission of the learned standing counsel for the 2nd respondent that the cut-off marks even in the 4th counselling for BCM (General) is 193.50, whereas the petitioner had secured only 192 marks and, therefore, he does not fall within the zone of consideration and, therefore, his case has not been considered. It is the further submission of the learned counsel for the 2nd respondent that considering all the phases of counselling, for the purpose of selection in BCM category, the final cut-off marks considered was only 193.50 and

not below that and the petitioner having secured only 192 marks, which is not disputed, his name has not come within the zone of consideration. It is the further submission of the learned standing counsel for the 2nd respondent that the prayer of the petitioner being to fill up the backlog vacancies under BCM category in the post of Junior Assistant, the said posts have been filled up with BCM category persons and there are no backlog vacancies pending filling up as on date and, therefore, the prayer of the petitioner cannot be acceded. In fine, it is the submission of the learned standing counsel for the 2nd respondent that the 2nd respondent, having followed the policy of reservation well within the framework of Rule 22 of the Rules and having filled up the vacancies, both fresh vacancies as well as the backlog vacancies, no relief as prayed for by the petitioner could be granted and, accordingly, prays for dismissal of the petition.

8. This Court gave its anxious consideration to the elaborate submissions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the decision relied on by the learned counsel for the petitioner.

9. The pivotal submission advanced on behalf of the petitioner is that the posts in the BCM category has been filled up by candidates, though being Muslim, but they have been selected under the General category on their own merit and, therefore, counting the said candidates for the purpose of fulfilling the reservation is per se impermissible and unsustainable and is against the well settled proposition of law relating to reservation. However, this contention is countered by the learned standing counsel appearing for the 2nd respondent by submitting that though the persons in the Muslim category were selected on the basis of their own merit in the General category, but option to choose the category having been given to them, they chose to take up the BCM category and, accordingly, they have been fitted against the said posts, which were earmarked for BCM category.

10. Though such contention and counter contention, as above, has been advanced by the counsel on either side, however, a perusal of the prayer of the petitioner reveals a totally different scenario. The prayer of the petitioner pertains to filling up of backlog vacancies in the BCM category in the post of Junior Assistant and it is not the plea of the petitioner that the meritorious candidates in the BCM category, who have been selected in the General category, have been fixed against the posts reserved for BCM category.

11. Be that as it may. The prayer of the petitioner being for filling up of backlog vacancies in the BCM category in the post of Junior Assistant, this Court is entrusted with the task of only addressing the issue on that front and not divert itself into the ancillary/other contentions, for the simple reason that the matter pertains to the year 2013 and almost seven years have gone by since the said recruitment and no post has also been kept vacant pursuant to the filing of the present writ petition.

12. Though the petitioner avers that the total number of vacancies notified for recruitment are 359 (192 + 167), which includes carry forward and fresh vacancies, it is evident from the affidavit of the petitioner as also the reply affidavit filed by the petitioner that only the fresh vacancies have been filled up and the backlog vacancies have not been filled up and, therefore, earnest attempt is made by the petitioner for a direction to the 2nd respondent to fit in the petitioner in one of the existing backlog vacancies for the post of Junior Assistant. However, the counter as also the rejoinder to the reply affidavit filed by the 2nd respondent is otherwise.

13. Though in the counter initially the 2nd respondent averred that after filling up the fresh vacancies as also the backlog vacancies, there exists three vacancies that are left unfilled as of the 3rd counselling and only during the 4th counselling it will be known as to the filling up of the said backlog vacancies. It is also further evident from the counter of the 2nd respondent that the cut-off for BCM (General) category is 193.50 and the petitioner not within the said bracket, his name has not been taken up for consideration.

14. The further rejoinder filed to the reply affidavit of the petitioner reveals that after seven phases of counselling in which for varying number of posts, requisite candidates were called for interview based on the reserved posts that exists in the specified category, the posts were filled up with the candidates falling within the respective category and as on date, after the 7th phase of counselling, only one post in the GT (G) Ex-servicemen category is vacant and no other vacancy, either in the fresh vacancy or in the backlog vacancy exists. It is the further stand of the 2nd respondent that the recruitment being of the year 2013, the subsequent recruitments led to the filling up of all the vacancies, including the vacancies that were backlog in the 2013 recruitment and that even during the 2013 recruitment, between the last successful candidate and the petitioner, there are more than 79 candidates, who are above the petitioner and, therefore, even taking the stand that few vacancies are alleged to be backlog, that would have to be filled up with the persons, who are above the petitioners.

15. There being a categorical assertion by the 2nd respondent that there are no backlog vacancies that are yet to be filled up and the further fact that there are about 79 candidates above the petitioner in the merit list based on the marks obtained by them, and there being no post that has been kept vacant awaiting the order to be passed in this writ petition and the fact that the petitioner has also not stressed for keeping one post vacant pending the writ petition, after a lapse of seven years from the time of recruitment, disturbing the recruitment process at this distant point of time, more so, when the prayer of the petitioner itself is not on the question of reservation but only on the question of him being accommodated in the backlog vacancy, this Court is of the considered view that it would not be desirable to lean towards the petitioner to grant the relief sought for. After a lapse of almost seven years, it would not be prudent for this Court to conduct a roving adjudication as to the non-filling of the reserved post through the reserved category candidates, as such a plea has not been taken before this Court. In the absence of any backlog vacancy and the petitioner having not fallen within the zone of consideration as per the stand of the 2nd respondent, the filling up of the post on the basis of the reservation policy of the State having not been put in issue, this Court is not inclined to accede to the prayer as made by the petitioner.

16. For the reasons aforesaid, this writ petition sans merit and, accordingly, the same is dismissed. However, liberty is granted to the petitioner to work out his remedy in a manner known to law if the filling up of the vacancies is in contravention of the scheme of the constitutional framework and not in tandem with the Constitution of India. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

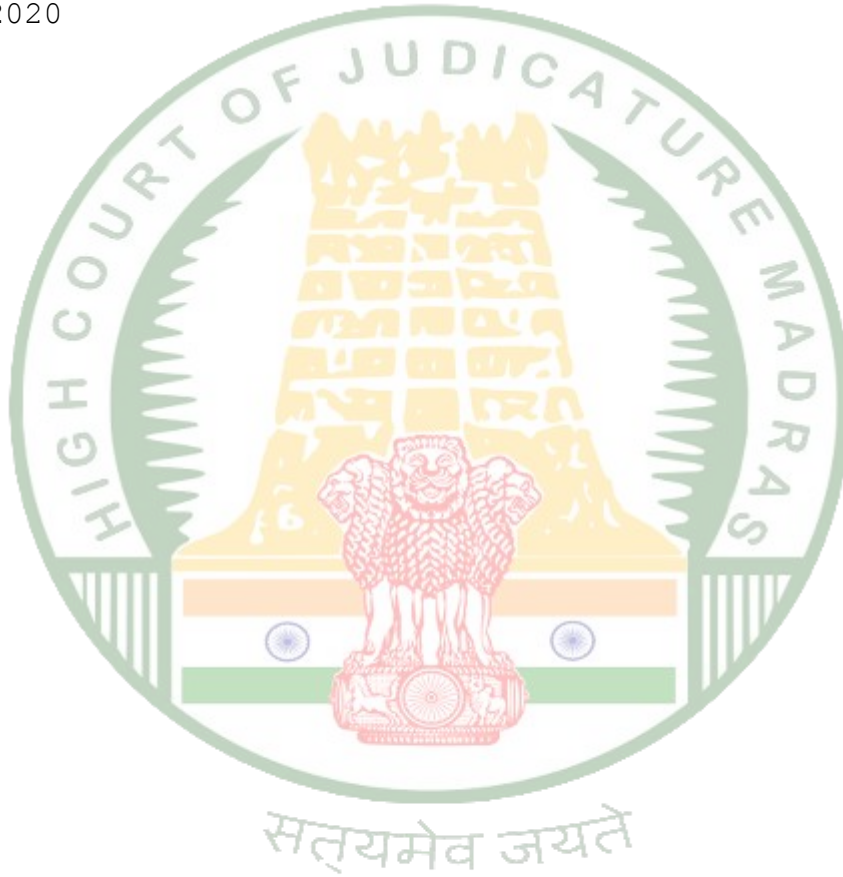
1. Secretary to Government
Personnel & Administrative
Reforms Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.

2. The Secretary
Tamil Nadu Public Service Commission
VOC Nagar, Frazer Bridge Road
Park Town, Chennai 600 003.

+1cc to Mr.Balamurali Krishnan, Advocate, S.R.No.35723
+1cc to Ms.Dakshayani Reddy, Advocate, S.R.No.35720
+1cc to Government Pleader, S.R.No.35647

W.P.NO.14256 OF 2013

AD(CO)
CS/08/12/2020



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