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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.419 and 421 to 429 of 2020
and C.M.P.Nos.6607 to 6618, 6620 to 6626, 6628
and 6629 of 2020

- 1.The State of Tamilnadu,
Rep. by the Principal Secretary to Govt.,
Dept. of School Education,
Secretariat, Chennai 600 009.
- 2.The Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006.
- 3.The Teachers Recruitment Board,
Rep. by its Member Secretary,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006. .. Appellants/Respondents

-vs-

K.Shobana	.. Respondent/Petitioner in WA.419/20
P.Govindasamy	.. Respondent/Petitioner in WA.421/20
Kothavari	.. Respondent/Petitioner in WA.422/20
T.Vijayakumar	.. Respondent/Petitioner in WA.423/20
S.Elavarasan	.. Respondent/Petitioner in WA.424/20
S.Kalaimuhil	.. Respondent/Petitioner in WA.425/20
K.Manikandan	.. Respondent/Petitioner in WA.426/20
K.Vengatesan	.. Respondent/Petitioner in WA.427/20
M.Vijayakanth	.. Respondent/Petitioner in WA.428/20
R.Sathiya	.. Respondent/Petitioner in WA.429/20



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Appeals filed under Clause 15 of the Letters Patent against the order dated 09.01.2020 passed in W.P.Nos.34099, 33167, 33175, 33176, 34106, 34109, 34118, 34127, 34133 and 34144 of 2019 on the file of this Court.

WA.Nos.419 & 421 to 429/2020:

Common Prayer in WP.Nos.34099,33967,33175,33176,34106
34109,34118,34127,34133 & 34144/19

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned Selection list dated 20.11.2019 issued by the third respondent in respect of P.G.Assistants in Chemistry quash the same, Consequently direct the respondents to select the petitioner as P.G.Assistant in Chemistry and appoint her/his in the said part.

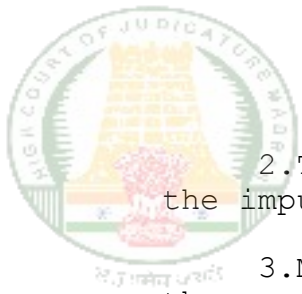
For Appellant : Mr.C.Munusamy
Spl.G.P.

For Respondents : Mr.N.L.Rajah
Senior Counsel
for Mr.K.Balu

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The challenge raised in these appeals is to the judgment of the learned Single Judge dated 09.01.2020. The writ petitions giving rise to these appeals had been filed contending that the writ petitioners, who belong to the MBC category, on account of their merit, ought to have been fitted in the general category instead of Most Backward Category/Denotified Communities (DNC) quota. The action of the Government was questioned on the ground that if the fitment of the writ petitioners was there in the general category due to their being higher in merit, they could not be pushed down and on the other hand, 34 persons could have got their seats under the Most Backward Category quota for filling up the backlog vacancies, which were available for them. This has, therefore, deprived the writ petitioners of their meritorious position and consequently such other deserving candidates who were entitled for the benefit of reservation for selection in the said category.



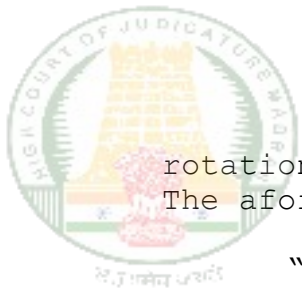
2.The details of the case have already been indicated in the impugned judgment, which need not be repeated here.

3.Mr.C.Munusamy, learned Special Government Pleader, for the appellant State contends that the proviso to Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, clearly envisages that first the backlog vacancies have to be filled up and therefore, the writ petitioners had been given the benefit of selection by placing them in the backlog vacancies meant for Most Backward Category candidates. The emphasis being on the word "first" occurring in the proviso, and therefore, the fitments have been made which was in tune with the standards of reservation and rotational quota that was required to be adhered to. The learned Special Government Pleader, therefore, contends that the learned Single Judge has virtually reversed this and consequently, the direction to re-arrange the select list is unjustified.

4.Mr.N.L.Rajah, learned Senior Counsel appearing for the respondents writ petitioners, however, submits that the learned Single Judge has done nothing more than what is required under the Rules, inasmuch as the backlog vacancies of the Most Backward Category/DNC has to be filled up from amongst candidates of that category alone, but that does not amount to precluding those candidates of the said category, who by virtue of their own merit, can be placed in the general turn.

5.Having considered the submissions raised, we find that the argument of the learned counsel for the respondents petitioners is correct, inasmuch as if the candidates belonging to the Most Backward Category, by virtue of their merit, are filling in the slot of the open category/general turn, it is not necessary that they should be compulsorily placed and pushed against the backlog vacancies of that category. Those standing in merit do not have to compulsorily avail reservation against backlog vacancies. This would be denying their own merit and forcing them to accept reservation irrespective of their merit that would be irrational and arbitrary. The backlog vacancies can be filled up by offering it to the candidates of the said category.

6. A close look at Section 27(a) read with sub-section (bbb) and further to the last three lines of the third proviso to sub-section (f) would demonstrate that the backlog vacancies have to be offered to the same category in the succeeding recruitment year. However, the normal rotation shall be followed after first the backlog vacancies are filled up, so that the backlog vacancies attain the optimum reservation and the normal



rotational reservation in the succeeding year is not affected.
The aforesaid provisions are extracted herein under:

"Section 27. Reservation of appointment.- Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall be made on the following basis:-

(a) The unit of selection for appointment, for the purpose of this section, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

....

(bbb) wherein any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, such vacancy shall be filled up by appointment of a person, other than a person with disability:

...

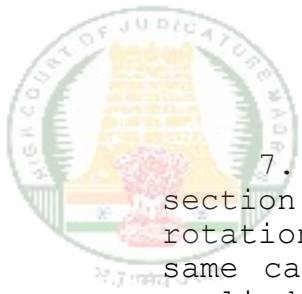
(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

...



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Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed."



7. The word "first" occurring in the third proviso to sub-section (f) of Section 27 means that before applying the rotation amongst the same category, the backlog vacancy of the same category will be filled up and then the rotation would be applied. The learned Single Judge has simply indicated this. The said proviso which contains the word "first" does not have any relation to the offer and placement of such reserved category candidates, including Most Backward Classes and Backward Classes who attain their position by way of merit in the open category/general turn vacancies. They occupy the post of open category/general turn by virtue of their merit and not by way of reservation. The backlog vacancies are to be filled up by such of the candidates who deserve reservation benefits according to their merit. It is quite possible, as in the present case, that the writ petitioners by virtue of their higher merit are placed in the select list of the open category/general turn. Their rights to remain in the open category/general turn is in no way affected by the existence of backlog vacancies which can still be filled up by those reserved category candidates, who according to the benchmark fixed for the reserved category candidates would be entitled to occupy the reserved category posts. In sum and substance, if some of the Most Backward Classes candidates are placed in the select list of open category/general turn vacancies, then the number of reserved category seats do not get decreased. For this, it is not necessary to fill up the backlog vacancies by placing high meritorious candidates of the same category by pulling them down from the open category/general turn.

8. The apprehension which has given rise to this contention appears to be that this will give an increased number of Most Backward Category candidates, inasmuch as if they, by virtue of their merit, are being allowed in the general turn also, the number of reserved category candidates will increase as they will have both. We cannot appreciate this apprehension, inasmuch as the constitutional mandate for reservation has to be fulfilled, but that does not amount to saying that if a reserved category candidate competes on his own merit in the general category, he should be denied his place in the open category. Merit has to be acknowledged, be it any category. The increase in number of Backward category candidates by itself does not in any way impinge any of the fundamental rights of any person inasmuch as no one's fundamental right is being impinged. We, therefore, do not find any merit in the submissions of the learned Special Government Pleader. The appeals lack merit, as no interference is warranted with the judgment of the learned Single Judge.



The Writ Appeals are, accordingly, dismissed. This dismissal is without prejudice to the rights of those who may raise any challenge to the very provisions of reservation itself. No costs. Consequently, connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

sra
To

1.The Principal Secretary to Govt. of Tamilnadu,
Dept. of School Education,
Secretariat, Chennai 600 009.

2.The Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006.

3.The Teachers Recruitment Board,
Rep. by its Member Secretary,
DPI Campus, College Road,
Nungambakkam,
Chennai 600 006.

+1 cc to Government Pleader sr24516,24517,24519,24520
24521,24522,24523,24524,24525,24526

W.A.Nos.419 and 421 to 429
of 2020

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