

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.No.3725 of 2020
and
W.M.P.Nos.4393 & 4394 of 2020

U. Vignesh

... Petitioner

Vs.

1.The State,

Represented by its Principal Secretary,
Welfare of Differently Abled Persons (DAP.3.2.) Department
Fort St. George, Chennai - 600 009.

2.The Tamil Nadu Public Service Commission,

Rep.by its Secretary,
Frazer Bridge Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records in respect of the Notification Advertisement No.01/2019 dated 01.01.2019 issued by the second respondent and quash the Notification, as it does not specify categories of PWD such as Low Vision, Hard of Hearing, Locomotor, Autism and others, consequently call the petitioner for interview under Hard of Hearing category as he being the second rank in the PWD category.

For Petitioner : Mr. G. Thyagarajan

For Respondents : Mr. K. Parameswaran, for R1
Government Advocate
Mr. C.N.G. Niraimathi, for R2
Standing Counsel

O R D E R

This writ petition has been filed challenging the notification issued by the second respondent dated 01.01.2019 in Group I services towards various posts. The petitioner submitted his application and he participated under persons with disability quota (PWD-H). The petitioner was permitted to appear for the preliminary examination and he cleared the same and he qualified himself for the main examination. The petitioner had secured 412 marks in the main examination and he was awaiting the call from the second respondent for interview.

2. The grievance of the petitioner is that the name of the petitioner did not find place in the provisionally selected list that was published by the first respondent and that the seat has been allotted to a person belonging to MBC Category who had only secured 317 marks and he is a person with disability suffering from low vision. The petitioner has also identified yet another candidate who was selected and who belongs to BC Community who has secured only 314 marks and he also falls under disability-Low vision category. According to the petitioner, the distribution of the seats towards various categories indicates that there was a reservation against the category of B.C(G)(DA) and this disability has not been properly categorised in the notification. The petitioner who had secured very high marks was not able to find a place in the selected list and the persons who had secured lesser marks than the petitioner have been accommodated under the disability category.

3. The learned counsel for the petitioner submitted that candidates who had obtained lesser marks in the PWD category have been called for Oral Test. The petitioner who had secured second mark was not called for oral test. The learned counsel further submitted that the notification itself contemplated 4% reservation for persons with disability and it is seen from the selection list that this 4% has not been filled up and the persons who have been accommodated under this category is much lesser. The learned counsel would further submit that the notification itself must specifically state the category of persons with disability who are going to be considered for the selection and this will atleast enable the candidates to take a decision whether to participate or not to participate in the selection and if this is not done, ultimately even if the candidate had secured high marks and he eventually does not fall within the category that is decided at the last moment as per the roster, all the efforts made by the candidate becomes a waste. The learned counsel submitted that the selection list that has been published by the second respondent requires interference and the petitioner must be considered for further selection in Group I service.

4. The second respondent has filed a detailed counter affidavit in this case. The relevant portions in the counter affidavit is extracted hereunder:-

"5. In this regard, it is submitted that the particulars of the above said notification issued for the posts included in Group I Services (CCS-I) is as follows:-

Notification No./Date	Name of the post	No. of Vacancies
01/2019 dated 01.01.2019 (Adv. No.536)	Deputy Collector	27
	Deputy Superintendent of Police (Cat-I)	90
	Assistant Commercial in Commercial Taxes	18
	Deputy Registrar of Co-operative Societies	13
	District Registrar in Registration Department	7
	Assistant Director of Rural Development	15
	District Employment Officer	8
	District Officer (Fire and Rescue Service)	3
	Total Vacancies	181

6.Hence, with regard to the prayer of the petitioner the following points are submitted for kind perusal.

(i) Rule of reservation of appointment is applicable for each post separately.

(ii) Among the notified posts, the posts of Deputy Superintendent of Police (Cat-I) and District Officer (Fire and Rescue Services) have not been identified as suitable for DAP reservation. Further, the following posts have been identified as suitable for 4% DAP reservation, as per G.O (Ms) No.20, Welfare of Differently Abled Persons (DAP 3.2) Department, dated 20.06.2018:-

Deputy Collector - LV, HH, LD(with mobility), CP, LC, DF, AC, SLD, MD.

Assistant Commissioner (CT) - VI, LV, HH, HI, LD, CP, LC, DF, AC, MuD, ASD, SLD, MD, MI.

Deputy Registrar of Co-operative Societies - LV, HI, HH, LD, CP, DF, AC.

District Registrar - LV, HH, LD, CP, DF, AC.

Assistant Director of Rural Development Dept.-LD, LC, DF, AC.

District Employment Officer - LV, HH, LD (OA,OL,OAL), LD, DF, AC, SLD.

The same has been announced in para 12(f) of the Notification dated 01.01.2019.

(iii) Even though, the posts of Assistant Commissioner (C.T), Deputy Registrar of Co-operative Societies and District Registrar have been identified as suitable for 4% DAP reservation as per G.O dated 20.06.2018, the turns earmarked for differently abled persons did not fall within the turns being utilized for the said recruitment. The information in this regard has also been announced in the addendum to the Notification dated 01.01.2019. Further turn allocation to DAP has been made as per Act 30/2017.

(iv) No Turn in regard to Deaf and Hard of Hearing has arisen in respect of the post of Deputy Collector and District Employment Officer. Further, the turn for the Deaf and Heard of Hearing has arisen in 71st turn of Rotation I against GT (W) category in respect of the post of Assistant Director of Rural Development. However, the said disability has not been identified as suitable for the said post. Hence the said turn has been substituted by LD, DF, LC, AC categories identified as suitable for the said post.

(v) The distribution of vacancies approved by the Commission has already been announced.

7. The extract of Rosters for the posts of notified in the Group-I Services examination from 2010 to 2019 in regard to the category i.e., Deaf and Hard of Hearing is as follows:-

- 2012- DAP identified for DEO post only among the notified posts - G.O.Ms.No.53, SW & NMP Department, dated 11.04.2005 - Turn for Differently Abled Persons category does not arise for the said post - Advertisement No.49/2012 dated 16.11.2012.
- 2013- DAP identified- (G.O.Ms.No.53, SW & NMP Department, Dated 11.04.2005, G.O Ms.No.25, Welfare of Differently Abled Department, dated 14.03.2013 and G.O.Ms.No.92, Welfare of Differently Abled Department, dated 29.10.2013- DAP Turn arises only for Ortho category (OA, OL) - Notification No.17/2013 dated 29.12.2013.
- 2015- DAP identified- (G.O Ms.No.53, SW & NMP Department, dated 11.04.2005, G.O Ms. No.25, Welfare of Differently Abled Department, dated 14.03.2013 and G.O.Ms.No.92, Welfare of Differently Abled Department, dated 29.10.2013- DAP Turn arises only for Ortho category (OA, OL) - Notification No.09/2015 dt.10.07.2015.

- 2016- DAP identified- (G.O. Ms.No.13, Welfare of Differently Abled (DAP 3.2) Department, dated 02.03.2016- Turn for Differently Abled Persons does not arise - Notification No.19/2016 dt.09.11.2016.

8. The abstract Rosters for the posts notified in Combined Civil Service Examination-I (Group-I Services) under Notification No.01/2019, dated 01.01.2019 are as follows:-

NAME OF POST	URNS UTILISED	REMARKS
Deputy Collector	120 - 146 (R-1)	DAP turn arise BC (LV) 124 th TURN SC (LD, CP, LC, DF, AC) -136 th TURN
Deputy Superintendent of Police (CAT-I)	135-24 (R-1 to R-2)	Not identified as suitable for DAP
Assistant Commissioner (C.T)	98-115 (R-1)	DAP turn does not arise
Deputy Registrar of Co-operative societies	1-13 (R-1)	DAP turn does not arise
District Registrar	18-24 (R-1)	DAP turn does not arise
Assistant Director of Rural Development	67-81 (R-1)	DAP turn arise GT (W) Deaf & Hard of Hearing 71 st turn. Category not identified hence substituted by LD, LC, DF, AC
District Employment Officer	21-28 (R-1)	DAP turn arise GT(LV) 25 th turn
District Officer (Fire & Rescue)	10-12 (R-1)	Not identified as suitable for DAP

*R - Rotation

9. It is submitted that in the said recruitment, only one vacancy earmarked for GT(W) under Hard of Hearing category in the post of Assistant Director of Rural Development. The said petitioner candidate was one among the candidate who had appeared for the aforesaid Main Written Examination. He belongs to BC (OBCM) (G) Hard of Hearing category. He is eligible to be considered only under GT(G) and BC(G) categories and since the turn is meant for women candidate, he cannot be considered under GT(W) category. The marks obtained by the last candidates admitted to Oral Test are as follows:

Category	Marks	Date of Birth
GT (G)	446.25	04.06.1991
BC (G)	430.25	19.04.1994

However, the petitioner has secured 412 marks in Main Written Examination. Hence, he has not reached the zone of consideration for admission to Oral Test for the said post with reference to the paras (c) and (d) of grounds in writ petition. It is submitted that MBC (W) LD candidate who secured 397.50 marks (which is lower marks than the petitioner) has been admitted to Oral Test under GT (W) (LD) category. The petitioner is not eligible to be considered under the above said category."

5. Ms. C.N.G. Niraimathi, learned Standing Counsel appearing on behalf of the TNPSC, apart from reiterating the specific stand taken by the second respondent in the counter affidavit, submitted that the second respondent is not in a position to determine the category and publish the same at the stage of the notification and the second respondent wants all persons with disability to participate.

6. The learned counsel submitted that ultimately the persons who are considered for selection under the PWD Category will have to satisfy that such a disability is considered suitable for the concerned post and apart from that the persons with the concerned disability must also fall within the roster point (Turn). The learned counsel submitted that in the present case, in the post of Deputy Collector, the persons suffering from H.H disability was identified as suitable under the PWD Category. The learned counsel submitted that in the said post, the turns 120-146 was utilised and in the 144th turn it was filled up with the candidate who belongs to BC category under (PWD-LV). The learned counsel submitted that HH category did not fall within the turn and therefore, the petitioner was not considered for selection.

7. The learned counsel further submitted that the candidate who was pointed out by the learned counsel for the petitioner under MBC category was not selected under the PWD category and he was fitted only under MBC category. However, since he was suffering a disability, his candidature was withheld on the ground that he must be capable of handling the job with the disability suffered by him. Learned counsel submitted that this candidate was not selected under the PWD quota.

8. The learned counsel further submitted that insofar as the turns that are utilized for selection to the persons belonging to PWD category, it is something which the Government decides and the second respondent does not have any say on the identity of the same.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. The notification issued by the second respondent had clearly earmarked the reservation made for various categories for the various posts. In this case we are concerned with the category of BC(G)(D). The petitioner had participated under this category since he is suffering from (PWD-H.H). The petitioner had cleared the preliminary examination and he has also written the final examination and the petitioner is said to have secured 412 marks in the main written examination. The petitioner was awaiting for a call to the oral interview. However, when the list was published, the name of the petitioner was not found and therefore, the petitioner has chosen to file the above writ petition challenging the selection.

11. In the writ petition, the petitioner had challenged the notification dated 01.01.2019. It is now a settled principle of law that a person who participates in the selection cannot turn around at a later point of time and challenge the notification on account of not getting selected. Therefore, this prayer that has been made in the writ petition will have to be rejected outright. If the petitioner was aggrieved by the notification, he should have challenged it even before he participated in the selection and he cannot be allowed to question the same after he was found to be not eligible at a later point of time.

12. The petitioner has also made a consequential prayer for a direction to the respondents to call him for interview by allowing him to participate in the selection under (PWD-HH) category. It is seen that the petitioner belongs to BC Community and he has submitted the application and participated in the selection under BC (G)(DA). It is found that posts persons falling under this category are provided reservation only in the post of Deputy Collector.

13. From the counter that has been filed by the second respondent, it is seen that the turn that was utilized to fit this category was identified as 124th turn. This turn fell under the category of BC(LV). It is seen from the selection list that was published by the TNPSC that the concerned candidate who was selected under this category had secured 344 marks. It is true that this is well below the marks secured by the petitioner. It is also true that in the post of Deputy Collector, hard of hearing was also a disability which was found to be suitable under GO.Ms.No.20 dated 20.06.2018.

14. The issue that requires consideration is whether, the petitioner insptie of having taken such high marks can be relegated from the selection by a person who had taken lower marks and who also falls in the same BC Community. In order to decide this issue, it is necessary to see the roster for the post that was notified under notification No.1/2019, dated 01.01.2019. The roster that was identified was within turn 120-146 and the disability that fell within those turns was BC(LV) 124th turn and SC (LD, CP, LC, DF, AC)-136th Turn. Unfortunately, in this case the roster did not fall under HH Category and therefore the petitioner inspite of getting such high marks, did not fall within the roster. If the petitioner had also fallen under the same category, then the marks secured by the petitioner would have automatically made the petitioner before qualified than the selected candidate. However, the petitioner did not fall within the BC(LV) category. Therefore, the petitioner cannot turn around and question the selection at this stage.

15. The next issue pertains to 4% reservation not being fulfilled in the present selection and that the seats that have been allotted to the differently abled persons fell short of the number of seats that was allotted. The persons suffering from PWD were totally identified towards four posts. According to the learned Standing Counsel for the second respondent, the second respondent does not have any role to play in this regard and it is something which is identified only by the Government. The complaint by the petitioner is that if 4% reservation had been applied, atleast 7 persons must have fallen within the category of differently-abled and in the present case, only 4 persons have been fitted within this category. This is another issue into which this Court does not want to go into at this stage of the selection. If the petitioner had brought this issue even at the time when the notification was issued, this Court would have atleast ventured to impress upon the Government to fulfill the requirement of allotting 4% of the total seats for persons with disability. If the same is done at this stage, it will result in

chaos and the entire selection should be redone. This Court cannot give such a direction more particularly since the selection involved in the present case pertains to Group I posts.

16. The last submission that was made by the learned counsel for the petitioner is that there was no reservation made for persons belonging to MBC Community under PWD category. The learned counsel for the petitioner by pointing out to the selection list submitted that a person who belonged to the said community has been selected under the disability category (LV). The learned counsel also pointed out the fact that his candidature has been withheld for the production of disability certificate. The learned counsel also pointed out to the fact that this candidate had obtained only 370 marks which is much lesser than the marks that was secured by the petitioner. The learned Standing Counsel appearing on behalf of the second respondent clarified that this candidate was not selected under disability category and he was selected only under MBC category. It was further clarified that since this candidate is suffering from disability, his candidature has been withheld and he has been asked to furnish the disability certificate in order to see if this candidate is suitable for holding the post for which he has been selected. In view of this explanation, this Court is of the view that the concerned candidate was not selected against the PWD category.

17. In view of the above discussions, this Court is not in a position to interfere with the selection list that was published by the second respondent. The main grounds that were raised by the petitioner with regard to the non mentioning of the category in the notification and 4% mandate not being satisfied in the notification are issues which should have been challenged even at the time when the notification was issued. The petitioner cannot be permitted to make this challenge after participating in the selection and was later found to be not eligible.

18. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

AT

To

1.The Principal Secretary,
Welfare of Differently Abled Persons (DAP.3.2.) Department
Fort St. George, Chennai - 600 009.

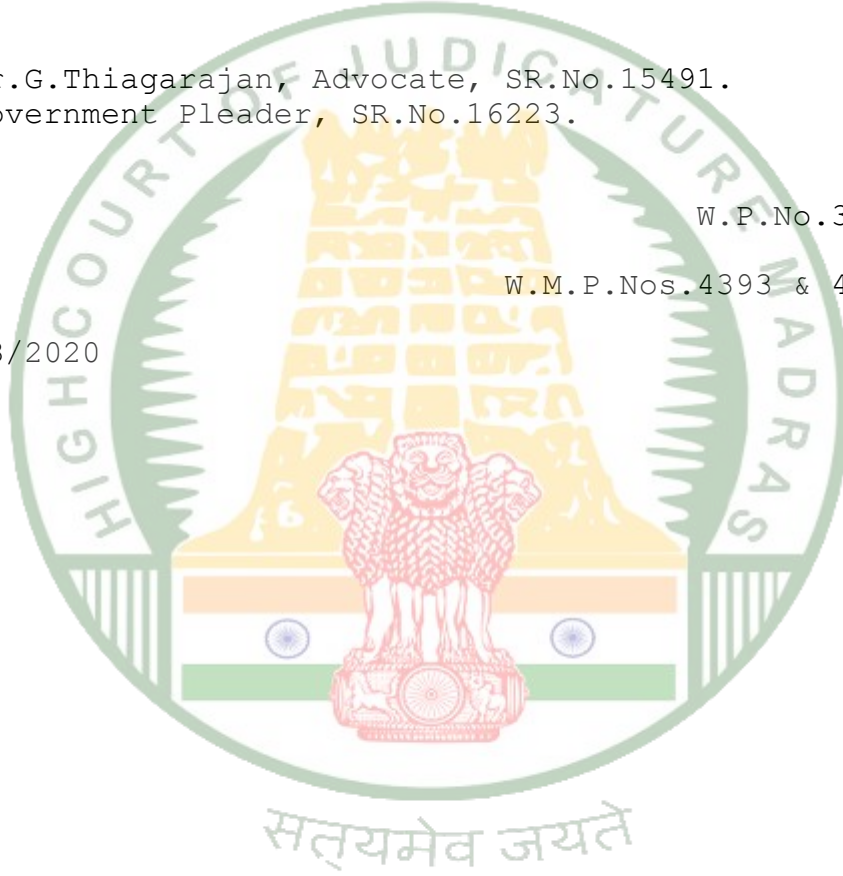
2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.

+1cc to Mr.G.Thiagarajan, Advocate, SR.No.15491.
+1cc to Government Pleader, SR.No.16223.

W.P.No.3725 of 2020
and

W.M.P.Nos.4393 & 4394 of 2020

CP (CO)
CSR: 17/03/2020



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