

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.02.2020
CORAM
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH
WP.No.3836 of 2020
and
WMP.No.4554 of 2020

T.Sivakumar

.. Petitioner

- Vs -

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai-600 009.
2. The Chair Person,
Teachers Recruitment Board,
Government of Tamil Nadu,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai-600 006.
3. The Member Secretary,
Teachers Recruitment Board,
Government of Tamil Nadu,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai-600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the Provisional List dated 02.01.2020 published by the Teachers Recruitment Board, Chennai -6, representing the 2nd and 3rd respondents herein, and quash the same and direct the 2nd and 3rd respondents to publish the revised Provisional Selection List and direct the 1st respondent to reserve one post of Post Graduate Assistant -Subject (Tamil) for the petitioner.

For Petitioner : Mr.M.Boopathy

For Respondents : Mrs.V.Annalakshmi
Government Advocate for R1
Mr.C.Munusamy
Special Government Pleader for R2 & R3

O R D E R

On the consent given by both sides, the main writ petition itself has been taken up for final hearing.

2. This writ petition has been filed challenging the Provisional List that has been published by the third respondent on 02.01.2020 and for a consequential direction to the third respondent to publish the revised Provisional Selection List by considering the candidature of the petitioner.

3. The case of the petitioner is that the third respondent had issued a notification on 12.06.2019 calling for applications to fill up the post of P.G.Assistant/Physical Education Directors Grade-I. The petitioner had applied for the said post and he also took the written examination and he scored 94 marks. Subsequently, the petitioner received an intimation from the third respondent calling him for certificate verification. The petitioner also submitted all the certificates.

4. The grievance of the petitioner is that the name of the petitioner was not found in the Provisional Selection List that was published by the third respondent on 02.01.2020. Challenging the same, the present writ petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the third respondent had not strictly followed the guidelines and the meritorious candidates were first considered in the backlog vacancies instead of considering them under the General Turn. By doing so, persons, who are entitled to be considered under the various categories were deprived of such an opportunity. The learned counsel, in order to substantiate his submissions, relied upon the judgment in *Shabana Vs. State of Tamil Nadu* and others dated 09.01.2020. The relevant portions of the judgment is extracted hereunder:-

"9. In the considered opinion of this Court, the entire confusion has arisen due to the wrong reading of the provision under Section 27 of the Act. The said provision provides for reservation of appointment. Section 27 (f) merely states that if the required number of candidates belonging to the communities which fall under reservation are not available, then, the vacancies, for which selection could not be made in the current year, should be treated as backlog vacancies and, in the subsequent recruitment, the backlog vacancies and the current vacancies for the particular community must be separately announced and that the direct recruitment must first accommodate the backlog vacancies and, thereafter only, the current vacancies

can be accommodated. This is very clear from a plain reading of the abovesaid provision.

10. In this case, the third respondent has read the provision as if the backlog vacancies must be fitted in MBC/DNC Category, irrespective of the merit of the candidate or the rank secured by him/her. This wrong understanding of the provision has resulted in confusion in preparing the Provisional Selection List.

11. Also, in the instant case, the highest mark that was secured was 109 and, up to 90 marks, the candidates were fitted in General Turn. Where the candidates have secured high marks and come within the merit category, the candidates will have to be selected under General Turn, irrespective of their community. While undertaking this process, the community does not play any role and it is only merit that is taken into consideration. The candidates, who fell within the Category of Backward Community and who secured the marks between 109 and 90 have rightly been fitted in General Turn. However, when it came to MBC/DNC Category, instead of fitting the candidates thereof in General Turn, they have been fitted in MBC/DNC Category. This mistake is very apparent on the face of the impugned Provisional Selection List, that has been made the subject matter of challenge in these Writ Petitions. The third respondent went wrong in understanding the purport of Section 27 of the Act. The said provision merely provides that the backlog vacancies will have to be first accommodated and, thereafter only, the regular vacancies should be accommodated. This does not mean that the backlog vacancies of a particular community will not be considered under General Turn, irrespective of the merits/rank.

12. In view of the above discussion, this Court is of the considered opinion that the Provisional Selection List, prepared by the third respondent, has to be reconsidered and, in lieu thereof, a fresh Provisional Selection List prepared. While preparing the fresh Provisional Selection List, the third respondent is directed to fit in all the candidates under General Turn, only based on their merit and ranks, irrespective of their community, and, when it comes to the selection of candidates belonging to a particular community, who do not fall within the merit/rank, they should be considered under the community quota, based on the marks fixed for that community. While doing so, the backlog vacancies must be first accommodated and, only thereafter, the current vacancies must be filled up. With the said clarity in

mind, the third respondent shall proceed to prepare the fresh Provisional Selection List for the posts of P.G. Assistants in Chemistry. This exercise shall be done within a period of two weeks from the date of receipt of a copy of this order and the fresh Provisional Selection List shall be published in the Board's Website."

6. Per contra, Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the first respondent submitted that the above judgment is yet to be acted upon and steps are being taken to file appeal against the judgment. The learned counsel submitted that as on date, the request made by the petitioner cannot be considered by the third respondent and the consideration of the request made by the petitioner will arise only where the judgment is put into operation.

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

8. The petitioner, who hails from a Most Backward Community had participated in the process of selection conducted by the third respondent. The petitioner has participated in the selection to the post of Post Graduate Assistant [Tamil]. The petitioner had secured 94 marks out of 150 in the written examination and the petitioner has also submitted the certificates. The grievance expressed by the petitioner is that persons, who were meritorious, instead of being accommodated in the General Turn, have been fitted in the Community category and thereby, persons, who would have otherwise got the selection were deprived of such an opportunity. The issue raised by the petitioner has been considered by this Court in detail in the above judgment. This Court has held that while preparing the Provisional Selection List, all the candidates, who have secured high marks and also placed at higher rank, must be fitted under General turn, irrespective of their Community and when it comes to Selection, all candidates belonging to particular community, who do not fall within a merit rank, they should be considered under the Community quota, based on the mark secured in that community. If this order is implemented by the third respondent, it will open up some vacancies in the MBC Category. Only at that point of time, the request made by the petitioner can be considered. Now, the third respondent is intending to go on an appeal against the judgment, this Court cannot give any positive directions to the third respondent at this juncture.

9. This writ petition is disposed of with a direction to the third respondent to consider the request made by the petitioner as and when the judgment of this Court referred supra is implemented/affirmed and when a fresh Provisional Selection List is prepared. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

KMI

To

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai-600 009.
2. The Chair Person,
Teachers Recruitment Board,
Government of Tamil Nadu,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
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Government of Tamil Nadu,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai-600 006.

+2ccs to Mr.M.Boopathy, Advocate, SR.No.13916.
+1cc to Government Pleader, SR.No.14258.

KK(CO)
CSR: 17.03.2020

WP.No.3836 of 2020

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