

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.10.2020

Delivered on: 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.13072 of 20219

and

W.M.P.No13200 f 2019

V.Karthikeyan

...Petitioner

.Vs.

1. State of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
DPI Complex,
College Road, Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Cuddalore District,
Cuddalore.
4. The District Educational Officer,
Virudhachalam,
Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the concerned records from the 3rd respondent and quash the order of the 3rd respondent dated 20.03.2018 bearing Na.Ka.No.8602/A1/2014 and the order of the 3rd respondent dated 11.04.2019 bearing Na.Ka.No.8602/A3/2014 as illegal, arbitrary and contrary to law and consequently direct the respondents to consider the petitioner to the post of Lab Assistant in the existing vacancies earmarked for MBC PWD- PSTM based on the marks secured in the written exam and in the certificate verification pursuant to the issue of the notification dated 22.04.2015 of the 2nd respondent and appoint the petitioner in the post of Lab Assistant with all consequential benefits.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.P.Raja,
Government Advocate

O R D E R

The matter is taken up through web hearing.

2. This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the concerned records from the 3rd respondent and quash the order of the 3rd respondent dated 20.03.2018 bearing Na.Ka.No.8602/A1/2014 and the order of the 3rd respondent dated 11.04.2019 bearing Na.Ka.No.8602/A3/2014 as illegal, arbitrary and contrary to law and consequently direct the respondents to consider the petitioner to the post of Lab Assistant in the existing vacancies earmarked for MBC PWD- PSTM based on the marks secured in the written exam and in the certificate verification pursuant to the issue of the notification dated 22.04.2015 of the 2nd respondent and appoint the petitioner in the post of Lab Assistant with all consequential benefits.

3. The case of the petitioner is that he is physically challenged person suffering from 70% disability. He belongs to Most Backward Community. According to him, he had applied for consideration of his candidature in response to the notification issued on 22.04.2015 inviting applications for recruitment to the post of Lab Assistant in the Government Schools in the State of Tamilnadu. Out of the total number of invited vacancies, 3% was earmarked for candidates with disability. The petitioner participated in the selection and appeared for the written examination, followed by certificate verification. The result of the selection was finally published in 2017 and the petitioner appeared to have secured 92 marks out of 150 in the written examination and was awarded 13 marks out of 17 marks in the certificate assessment.

4. According to the petitioner, in Cuddalore District, total number of Lab Assistant posts invited was 166 and out of the said vacancies, 3% of the same works out to 4.8. In the said circumstances, 5 posts were earmarked for persons with disability. According to the petitioner, in the selection, the petitioner was overlooked and 2 other persons were accommodated in the disability category and despite vacancies were available in the earmarked posts.

5. In the said circumstances, the petitioner approached this

Court by filing a writ petition in W.P.No.32434/2017. This Court, by order dated 13.12.2017, disposed of the writ petition directing the respondents to consider the petitioner's name for appointment to the post of Lab Assistant within a period of four weeks. However, the direction was not obeyed and a contempt action was initiated against the respondents in Contempt Petition No.2197/2019. When the Contempt Petition was being heard, the petitioner was informed that the 3rd respondent had already passed an order on 20.03.2018 stating that 3 vacancies which were available were in fact, earmarked towards candidates suffering from visual impairment, hearing impairment and speech impairment and no further vacancy was available for physically challenged persons like the petitioner. On being informed by the development, this Court closed the Contempt Petition on 20.11.2018. Thereafter, a communication dated 11.04.2019 was marked to the petitioner reiterating the said position, which led to closing of the Contempt Petition on 20.11.2018. The rejection of the candidature of the petitioner dated 11.04.2019 is put to challenge in this writ petition.

6. Mr.Balan Haridas, learned counsel for the petitioner would submit that the claim of the petitioner has been unjustly denied, despite the petitioner suffering from 70% disability. According to the learned counsel, there were vacancies earmarked against disability quota but still the respondents were not inclined to accommodate the petitioner. According to him, the petitioner was next in the line to be appointed in his category and in fact, this Court, when passed the direction on 13.12.2017 in W.P.No.32434/2017 has observed as follows:

"4. Learned Special Government Pleader for the respondents submitted that if the petitioner comes within the zone of consideration and if the candidates above the petitioner fail to join the services, then the claim of the petitioner would be considered."

7. According to the learned counsel that one of the selected persons, ultimately did not join. In fact, additional affidavit was filed stating that one Ms.Kavitha, belongs to Most Backward Community like the petitioner herein and who was also orthopedically challenged and who was placed under first position, did not join after her selection. Therefore, there is a clear vacancy in the category of the petitioner and therefore, a direction may be issued to accommodate the petitioner in the said vacancy.

8. Notice was ordered in the writ petition and Mr.P.Raja, learned Government Advocate entered appearance on behalf of the respondents. A detailed counter affidavit has been filed.

9. In the counter affidavit, it is stated that overall 5 posts were reserved for the disabled persons and out of the 5 posts, 3 posts were reserved for visually impaired, hearing impaired and speech impaired and only 2 posts were reserved for physically challenged persons. The 2 posts reserved for physically challenged persons had been filled up by 2 candidates who had secured more marks than the petitioner. However, it is also stated that the petitioner is the next person to be posted in the reserved category meant for physically challenged person. This Court has directed the counsel for the respondents to verify the statement made on behalf of the petitioner that one Ms.Kavitha who was selected against the physically challenged category did not choose to join and on instruction, the learned counsel for the respondents would submit that the said statement was true. However, the learned Government Advocate Mr.P.Raja who reiterated the averment in the counter affidavit would submit that there may be other candidates belonging to the same category who may be aggrieved if the appointment is issued to the petitioner herein.

10. This Court considered the submissions made on behalf of the petitioner as well as the respondents.

11. Though the petitioner herein was originally not entitled to be appointed in his category (physically challenged) as 2 other candidates from the same category had secured higher marks and given appointments, yet subsequently, it is learnt and admitted that one of the selected candidates Ms.Kavitha did not choose to join and that vacancy is earmarked for physically challenged persons is available on date.

12. In fact, in the counter affidavit, it is clearly admitted that the petitioner is next in the line to be appointed against the physically challenged quota by virtue of his securing marks in the selection. In which event, the vacancy which could not be filled up due to non-joining of Ms.Kavitha has to be filled up only by accommodating the petitioner herein, who is admittedly next in line for the subject appointment. Though some reservation was expressed on behalf of the respondents as there may be other claims, this Court is not concerned with any claim which has not come up for consideration before this Court. Even otherwise, this Court is of the view that according to the respondents' averment, the petitioner is the next eligible person to be accommodated against the physically challenged category. Therefore, this Court does not think that there is any legal impediment for appointing the petitioner in the existing vacancy.

13. In the above circumstances, this Court has no hesitation in allowing the Writ Petition. Accordingly, the Writ Petition is

allowed. The impugned orders of the 3rd respondent in Na.Ka.No.8602/A1/2014 dated 20.03.2018 and Na.Ka.No.8602/A3/2014 dated 11.04.2019 are hereby set aside and the respondents are directed to grant appointment to the petitioner as Lab Assistant in the existing vacancy earmarked for the physically challenged person and grant consequential posting order to him. The respondents are directed to pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
DPI Complex,
College Road, Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Cuddalore District, Cuddalore.
4. The District Educational Officer,
Virudhachalam, Cuddalore District.

+1cc to M/s.Balan Haridas, Advocate, Sr.No.34833
+1cc to the Government Pleader, Sr.No.35034

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Order made in
W.P.No.13072 of 2019

rr ii (03/12/2020)