

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-01-2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.34099, 33167, 33175, 33176, 34106, 34109, 34118, 34127,
34133 & 34144 of 2019

1 K.SHOBANA ... PETITIONER in WP No.34099 of 2019
1 K.KOTHAVARI ... PETITIONER in WP No.33167 of 2019
1 S.KALAIMUHIL ... PETITIONER in WP No.33175 of 2019
1 R.SATHIYA ... PETITIONER in WP No.33176 of 2019
1 M.VIJAYAKANTH ... PETITIONER in WP No.34106 of 2019
1 K.MANIKANDAN ... PETITIONER in WP No.34109 of 2019
1 K. VENGATESAN ... PETITIONER in WP No.34118 of 2019
1 P.GOVINDASAMY ... PETITIONER in WP No.34127 of 2019
1 T.VIJAYAKUMAR ... PETITIONER in WP No.34133 of 2019
1 S.ELAVARASAN ... PETITIONER in WP No.34144 of 2019

-vs-

1. The State of Tamilnadu,
rep.by the Principal Secretary to Government,
Department 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.

...Respondents

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 in the said post.

For Petitioner : Mr.M.R.Jothimanian(in all W.Ps)
For Respondents 1 & 2 : Mrs.V.Annalakshmi,
Government Advocate.
For Respondent 3 : Mr.C.Munusamy,
Spl.Govt.Pleader(in all W.Ps)

COMMON ORDER

The common issue that has been raised in all these Writ Petitions is that the candidates, who secured high marks and should have been fitted in General Turn, have been fitted in MBC/DNC Quota and, thereby, 34 persons, who would have got seats under MBC Quota, have been deprived of selection.

2. The third respondent issued a Notification on 12.06.2019, inviting applications through On-line from eligible candidates for direct recruitment to the posts of Post Graduate Assistants/Physical Education Directors, Grade-I, in School Education and other Departments for the year 2018-2019.

3. In the present case, this Court is concerned about the filling up of vacancies with respect to P.G.Assistants in Chemistry. In the Notification, totally 356 posts were notified in so far as Chemistry subject is concerned. Out of that, 117 vacancies were available for MBC candidates. Of those 117 vacancies, 74 were backlog vacancies and the balance 43 vacancies were identified as the current vacancies.

4. Petitioners had applied on-line for the said posts and they were issued Hall Tickets for the written examination that was held on 28.09.2019. Petitioners were also called for certificate verification. Subsequently, the third respondent published the Provisional Selection List on 20.11.2019 and the petitioners did not find their names in the list. On going through the list, the petitioners found that the third respondent had fitted meritorious candidates under MBC Quota instead of General Turn and, thereby, 34 vacancies, which ought to have been considered under General Turn, were fitted into MBC/DNC Quota. Aggrieved over the same, the present Writ Petitions have been filed before this Court.

5. Learned counsel for the petitioners submitted that the third respondent went wrong, by following a wrong procedure in this case. The learned counsel, by bringing to the notice of this Court the Provisional Selection List, submitted that a person, by name, Mr.A.Vasanthakumar, who had secured the highest mark and who ought to have been fitted under General Turn as a meritorious candidate, has been fitted within MBC/DNC Quota. Likewise, learned counsel for the petitioner was able to point out nearly 34 candidates. The learned counsel submitted that the apparent mistake in the Provisional Selection List gets glaring since a candidate belonging to Backward Class community and who had secured third rank was rightly fitted under General Turn. Similar such candidates with high marks, even though belonged to other communities, were brought within General Turn. Accordingly, the learned counsel submitted that the third respondent had treated the MBC/DNC candidates differently and, therefore, the Provisional Selection List requires interference. The learned counsel also brought to the notice of this Court the Provisional Selection List, that was published by the third respondent, in so far as the candidates selected for Mathematics Subject. Pointing out to that List, the learned counsel submitted that the third respondent had rightly fitted the meritorious candidates belonging to MBC/DNC under General Turn Category. Therefore, the learned counsel submitted that the meritorious candidates, who have been brought in MBC/DNC Category, must be fitted in General Turn and, in their place, the eligible candidates belonging to MBC/DNC Category must be given the opportunity.

6. Third respondent has filed a Counter Affidavit and the relevant portions thereof are extracted hereunder :

"It is submitted that the petitioner has averred in the affidavit that if the merit list is prepared firstly for current vacancies followed by Backlog vacancies the vacancies available at 20% in the 215 current vacancies would be 43 vacancies and 74 vacancies and it total 117 vacancies would be available for Most Backward Class turn. Further in the vacancies earmarked for GT (Turn) (@ 31%) if the Most Backward Class categories are accommodated additional vacancies of 34 vacancies and in total 151 candidates in Most Backward Class category would have been selected.

It is submitted that as per the provisions of Tamil Nadu Government Servants (Conditions of Service) Act 2016 in para 27 (f) it is stated as follows :

Tamil Nadu Government Servants (Conditions of Service) Act, 2016 Section 27 (f) "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 recruitments 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.'

It is submitted that as per the above instructions only the Provisional Selection List was prepared by considering the Backlog vacancies first followed by current vacancies and there is no violation of Rules in the above selection.

It is submitted that the Board filled all vacancies for the subject Post Graduate Assistant in Chemistry strictly following the rules of reservation following the communal turn as notified.'

7. Mrs.V.Annalakshmi, learned Government Advocate, appearing on behalf of the respondents submitted that totally 117 vacancies were available for Most Backward Class Category and, out of the same, 74 were backlog vacancies and 43 vacancies were current vacancies. The learned counsel, bringing to the notice of this Court Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in short, 'the Act', submitted that the said provision specifically states that selection for appointment should be made first for the backlog vacancies and then to the normal rotation and that by strictly following the said provision, the backlog vacancies were filled up, based on the marks obtained by the candidates. She further submitted that in so far as current vacancies are concerned, the third respondent went strictly by the marks, which were assigned to MBC Quota. Therefore, according to the learned Government Advocate, the Provisional Selection List was strictly prepared in accordance with the above provision and there is no violation in following the Rules of reservation.

8. This Court has carefully considered the submissions made on either side and the material available on record.

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.

13. All these Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.M.P.Nos.33603, 33605, 33614, 33615, 33617, 33618, 34701, 34704, 34708, 34710, 34711, 34716, 34718, 34720, 34727, 34731, 34733, 34739, 34740, 34741, 34743, 34744, 34745, 34754, 34756 and 34757 of 2019 are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Secretary to Government,
State of Tamilnadu,
Department of School Education,
Secretariat,
Chennai-600 009.

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

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

+1 CC to The Govt. Pleader sr 3254(06/03/2020)

W.P.No.34099 OF 2019 & BATCH

RP(CO)
SP(20/01/2020)