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W.A(MD)No.622 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.08.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.622 of 2020

and

C.M.P(MD)No.3955 of 2020

S.Muthumanickaraja

... Appellant / Petitioner

-Vs-

1.The Manaing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 10.

2.The Assistant Director,
Professional and Executive Employment Office,
Santhome,
Chennai - 04.

3.R.Sudharsun Babu,

4.G.Muthuvelan

... Respondents / Respondents

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P(MD)No.14938 of 2013 dated 02.06.2020 on the file of this Court.

PRAYER in WP(MD) No. 14938 of 2013:

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in Rc.No.AE7/66288/2008, dated 02.03.2010 and quash the same and consequently direct the first respondent to appoint the petitioner as Assistant Manager in the office of the first respondent as against the MBC Male (priority) quota .

For Appellant

: Mr.S.Rajasekar

For R-1 & R-2

: Mr.K.P.Krishnadoss,
Special Government Pleader

For R-4

: Mr.H.Md.Imran for
M/s.Ajmal Associates



JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

The appellant is the writ petitioner. The appellant / writ petitioner made a challenge to the impugned proceedings of the first respondent dated 02.03.2020, in and by which, a challenge was made to the selection of the fourth respondent as Assistant Manager (General) in the services of the first respondent Corporation. The said writ petition after contest came to be allowed partly by quashing the selection of the fourth respondent with a direction to the first respondent Corporation to redo the selection exercise. The appellant / writ petitioner aggrieved by the same, has filed this writ appeal.

2. The appellant / writ petitioner in the affidavit filed in support of the writ petition would among other things aver that he is a master degree holder in M.Com and M.B.A and belongs to Most Backward Class Community and also hails from a family of freedom fighter and after obtaining necessary qualifications, got his name registered in the second respondent Employment Exchange.

3. The appellant / writ petitioner would further aver that the office of the first respondent requested the second respondent to sponsor eligible candidates for filling up 13 Posts of Assistant Manager (General) as per community roster and accordingly, name of the petitioner was also sponsored by the second respondent. The first respondent has also sent a call letter to the appellant / writ petitioner on 27.11.2009 and others and in the priority category, in the written test, he was successful and he had also attended the viva voce and attended the certificate verification conducted on 29.01.2010 and he totally scored 56.23 marks.

4. The claim of the appellant / writ petitioner is that since he was the only person sponsored under the 'male-priority quota' and also scored 56.23 marks, he was very optimistic that he will be one of the successful candidates for the Post of Assistant Manager (General) in the services of the first respondent office. Since the result of the selection process having been announced, the appellant / writ petitioner filed W.P(MD)No.782 of 2011 praying for issuance of a Writ of Mandamus, directing the first respondent Corporation to give him appointment under the priority category of Freedom Fighters quota relating to Most Backward Class Community and during the course of proceedings, the impugned order came to be passed and therefore, prayed for amendment to quash the said proceedings also.

5. It is also the grievance of the appellant / writ petitioner that the third respondent secured 59.55 % marks and got fifth place in the merit list and he must be appointed under 'non-priority



category' in Most Backward Class Community. But, he was appointed under the 'priority quota' and therefore, filed the writ petition.

6. The first respondent Corporation has filed a counter-affidavit and took a stand that based on the marks scored in the written test, 13 candidates in MBC category including the writ petitioner had attended the interview on 29.01.2010 and based on the marks scored in the written test and oral interview, merit list was prepared and six candidates were selected including one R.Sudarson Babu, who was a physically challenged candidate under priority basis and he was in Serial No.5 in the merit list, whereas the appellant / writ petitioner was in Serial No.12 with total score of 56.23% and does not deserve for consideration and four MBC candidates, who scored total marks from 65.15 % to 60.20% were selected and under the priority category, the said R.Sudarson Babu(Physically challenged), who scored 59.55% was selected and as such, the claim of the appellant / writ petitioner is wholly untenable and prayed for dismissal of the writ petition.

7. The learned single Judge after taking into consideration the facts and circumstances as well as the primordial ground raised by the writ petitioner as to his claim that he happened to be the grandson of a freedom fighter as well as the counter-affidavit filed by the first respondent Corporation in this regard and taking into consideration the order dated 10.10.2014 in W.P(MD)No.23104 of 2014, the order passed in W.P(MD)No.19076 of 2010 (*V.Anbuvalavan v. The State of Tamil Nadu rep. by its Secretary, Labour & Employment Department, Fort St. George, Chennai - 9 and three others*) as well as the decision reported in 2004 (5) CTC 704 (*T.T.Saravanan (Minor) represented by his father v. the State of Tamil Nadu rep. by its Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai - 9 and others*), found that the claim of the writ petitioner as to the selection under the priority category as a grandchild of a freedom fighter, is wholly untenable.

8. The learned single Judge has also noted that the first respondent had suppressed the material fact as to the selection of the fourth respondent with an oblique motive and it has been done only to accommodate the fourth respondent, who could not have been appointed otherwise and thus, fraud has been played in the public employment and accordingly, partly allowed the writ petition by quashing the impugned order of selection pertains to the fourth respondent alone with a consequential direction, directing the first respondent to go for fresh recruitment to fill up the Post of Assistant Manager following the regulations. The writ petitioner aggrieved by the said order, has filed this writ appeal.

9. Primordial submission is made by the learned counsel appearing for the appellant by drawing the attention of this Court to G.O.Ms.No.188, Personnel and Administrative Reforms (Per.P)



Department, dated 28.12.1976 and it is his interpretation that 'legal heirs of Tamil Nadu Servants' includes grandchildren also and as such, the claim of the appellant / writ petitioner for the employment of Assistant Manager (General) ought to have been considered under such priority category.

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10. In the considered opinion of this Court, the said submission totally lacks merits and substance.

11. In the decision reported in 2004 (5) CTC 704(cited supra), before the single Bench, a Mandamus has been sought, for the inclusion of grandchildren of freedom fighters in the Special Reservation Category for admission to MBBS Course and this Court while interpreting the word 'children' in the prospectus held that "it is plain and clear and therefore, must be understood to mean only 'children' and having found that the word 'grandchildren' in the previous prospectus has been consciously removed, we cannot give an inclusive meaning to the word".

12. If the Government is really intend to give the benefit to 'grandchild' or 'great grandchild' of freedom fighters, then it would have specifically included the 'grandchild' and 'great grandchild' as legal heirs of freedom fighters of Tamil Nadu Servants, whereas it has been consciously omitted to do so.

13. Even by applying the provisions of the Hindu Succession Act, 1956, the appellant / writ petitioner would not fall under the Class - I of the Schedule. The appellant / writ petitioner wants the G.O., to be interpreted like a Statute and claims employment.

14. In the considered opinion of this Court, in the absence of specification in G.O.Ms.No.188, Personnel and Administrative Reforms (Per.P) Department, dated 28.12.1976, specifically indicating that 'the legal heirs' includes 'grandchildren' also, the interpretation as put forth by the learned counsel appearing for the appellant / writ petitioner and the claim of the appellant /writ petitioner for appointment under the priority category of Freedom Fighters quota, is liable to be rejected.

15. The learned single Judge had rightly taken note of the legal position and denied the relief to the appellant / writ petitioner and this Court on an independent application of mind to the entire materials placed, is of the considered view that the findings rendered in this regard do not warrant interference.

16. In the result, this Writ Appeal is dismissed confirming the order dated 02.06.2020 passed in W.P(MD)No.14938 of 2013 insofar as the claim of the appellant / writ petitioner is concerned. No Costs. Consequently, connected Miscellaneous Petition is closed.



17. However, the appellant / writ petitioner is not precluded from participating in the future selection process pertains to the first respondent Corporation de hors dismissal of this writ appeal subject to the fulfilment of eligibility and required qualifications.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Manaing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 10.
- 2.The Assistant Director,
Professional and Executive Employment Office,
Santhome,
Chennai - 04.

+1 CC to M/s.GP (SR-14980[F] dated 26/08/2020)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-15065[F]
dated 27/08/2020)

Judgment in
W.A(MD) No.622 of 2020
25.08.2020

AP(01/09/2020) 5P 5C