



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]No.1444 of 2017

and

C.M.P.[MD]No.11043 of 2017

1.State of Tamil Nadu,
rep. by its Secretary,
Fort St. George,
Chennai.

2.The Secretary,
Department of Collegiate Education,
Fort St. George,
Chennai.

3.The Chairman,
Teachers Recruitment Board,
Chennai -6.

.. Appellants/Respondents 1 to 3

Vs.

1.R.Arivazhagan

... 1st respondent/Writ Petitioner

2.The District Employment Officer,
The District Employment Office,
Trichy.

...2nd respondent /4th respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 28.11.2011 passed by a learned Single Judge
of this Court in W.P.(MD)No.1171 of 2010.

Prayer in WP(MD)No.1171 of 2010

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records pertaining to the impugned order in O.Mu.No.2902/A6/09, dated 26-10-2009 on the file of the Respondent No.3 and quash the same as illegal and directing the Respondent No.3 to appoint the Petitioner in the Post of Lecturer in Economics Department in the Recruitment of Lecturers in Tamil Nadu Collegiate Educational Service for Government Arts and Science Colleges-2008 as per the G.O.Ms.No.50 dated 29-04-2009 for the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational institutions including Private Educational Institutions and of appointments of Posts in the Services under the State with in the Reservation for the Scheduled Castes) Act 2009 with consequential benefits.



For appellants : Mr.V.R.Shanmuganathan,
Special Government Pleader
For 1st respondent : Mr.T.Lajapathi Roy
For 2nd respondent : Mr.S.Srimathy,
Special Government Pleader

WEB COPY

JUDGMENT

[Delivered by **The Hon'ble The Chief Justice**]

The State has come up in appeal contending that the learned Single Judge by impugned judgment has extended a benefit to the first respondent / petitioner, who was otherwise not entitled to any such consideration of his candidature on the ground of reservation and further the direction to keep one post reserved was not justified.

2. The contention of the State is that the first respondent / petitioner had applied for the post of Lecturer in Economics against an advertisement that was notified on 14th January, 2008 and as on the said date, the first respondent/ petitioner was not entitled to any benefit of reservation as claimed by him now. He further states that the process of selection commenced with the verification of the certificates as marks were awarded for teaching experience, Ph.D., qualification, Research Contribution, etc., which was done on 07th March, 2009. On this date also, when the first respondent/petitioner was awarded his requisite marks, he was not within the reserved category.

3. It is on 29th April, 2009 that the Act extending the benefit of reservation to the first respondent/petitioner came into force. The contention on behalf of the State is that on this date, even if the first respondent/petitioner was entitled to any benefit of such reservation, the same could not have been applied retrospectively in respect of a selection process that stood commenced by issuance of the notification long before on 14.01.2008 and that actually commenced with verification of the certificates on 07.03.2009, on which date the marks were awarded in relation to criteria that was indicated in the notification. It is undisputed between the parties that this was not a case where the selection process had to commence with the holding of a written examination, and the selection had to be made only on the basis of the criteria referred to in the notification, including the marks for certificates followed by an interview.

4. The contention of the first respondent/petitioner is that the interview was held on 11th June, 2009 by which date the first respondent/ petitioner had acquired the status of a reserved category candidate and therefore, the benefit under the Act promulgated on 29.04.2009 could not be denied to him. For this, the additional argument is that the initiation of selection process which is only by way of interview had commenced much after the said date and consequently, the learned Single Judge was justified in



applying the ratio of the judgment in the case of **N.Sathya and others Vs. Chairman, Teachers Recruitment Board, Chennai and others**, reported in 2010 (4) MLJ 995.

5. It is urged that the learned Single Judge had relied on the Apex Court judgment in the case of **Uttar Pradesh Public Service Commission vs. Satya Narayan Sheohare and others**, reported in (2009) 5 SCC 473, where it was held that if the initiation had commenced prior to the written test, then, in that event, the benefit of reservation could be extended to the candidate in the circumstances as presently arisen.

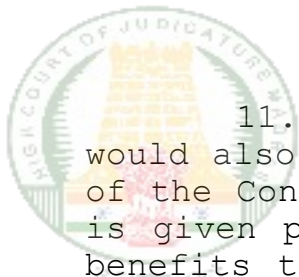
6. Having considered the submissions raised, we find that the judgment on which reliance had been placed by the learned Single Judge was in relation to a selection process that had a component of written examination as well. It is, in these circumstances, the Apex Court has held that if the benefit accrued prior to the commencement of the written test, then the same benefit should be extended to the candidates who was covered by the enactment that arrived prior to the holding of the written test.

7. In the present case, in contrast, firstly, there is no written examination and secondly, as indicated above, the notification had been issued on 14.01.2008 and the certificate verification process had been conducted on 07th March, 2009, which is part of the selection process as per the notification. The marks are awarded on the basis of the certificates and therefore, the process, having commenced, the first respondent/petitioner could not have claimed any such benefit arising out of an Act that was subsequently promulgated on 29.04.2009.

8. The contention that the process should be treated to have commenced only on the date of interview, that is on 11.06.2009, is unacceptable, inasmuch as the selection process cannot be segregated by treating the award of marks to be a simple exercise, bereft of the selection process. The marks awarded on assessment of certificates on 7.3.2009 contributes towards the assessment of the candidate for the purpose of selection and therefore, it is a part of the selection process. The selection process had therefore commenced much before the interview.

9. The learned Single Judge, in our opinion, therefore, inappropriately referred to the judgment in the case of N.Sathya (supra) and the judgment of the Hon'ble Supreme Court in the case of Uttar Public Service Commission (supra).

10. In view of the aforesaid conclusions drawn by us, the impugned judgment cannot be sustained on the basis of the law as referred to therein.



11. Apart from this, we find that such an interpretation would also lead to a constitutional violation of Articles 14 and 16 of the Constitution of India, inasmuch as if such an interpretation is given post-notification, the same would amount to depriving the benefits to such candidates who might have applied, had they known such an interpretation is available in respect of the selection process after the notification dated 14.01.2008. In the present circumstances, keeping in view the number of candidates and the percentage of reservation provided for, on a rough calculation, about 37 candidates could have been extended such benefits, who have been deprived of any such benefit.

12. In our considered opinion, in order to maintain uniformity and in order to avoid any such discrimination, so as to attract the wrath of Articles 14 and 16 of the Constitution of India, it would be appropriate that the date of notification should be treated to be the date of commencement of the selection process. Consequently, for the reasons aforesaid, we are unable to sustain the impugned judgment dated 28.11.2011.

13. Learned counsel for the first respondent / petitioner then urged that the learned Single Judge has simply given a direction for consideration and it does not, in any way, impede the legal process of selection. He further submits that one seat has been kept reserved and in the event, no other candidate is available, the same can be made available to the first respondent/petitioner.

14. Such a contention cannot be accepted by us, inasmuch as a Mandamus can be issued only for a discharge of legal obligation by a competent authority. A Mandamus cannot be issued for consideration without any right accruing in favour of a candidate. Consequently, for all the reasons aforesaid, the learned Single Judge ought not to have issued a Mandamus or a direction for keeping a seat reserved. If a seat remains unfilled for one or the other reason, the same cannot be a ground for consideration of the first respondent/petitioner on the issues raised in the present case.

15. In view of the above, the impugned order dated 28.11.2011 is set aside and the Writ Appeal is accordingly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



gcg/mm

To
The District Employment Officer,
The District Employment Office, Trichy.

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-8849[F]
dated 27/02/2020)

JUDGMENT MADE IN
W.A.[MD]No.1444 of 2017
26.02.2020

SMA/13/03/2020/5P/3C