

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.02.2021

PRONOUNCED ON : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WP.No.4050 of 2021
WMP.Nos.4619 and 4620 of 2021

T.Pajaniammalle

.. Petitioner

Vs

1.The Union of India, represented by
Government of Puducherry, through
Secretary to Government for Education,
Chief Secretariat, Puducherry

2.The Director of School Education
Anna Nagar, Puducherry

3.M.Kumutha

4.The Registrar, Central Administrative Tribunal
Chennai Bench, Chennai

..Respondents

Prayer:- This Writ Petition is filed, seeking to issue a Writ of Certiorarified Mandamus, to call for the records, of the respondent in RA.No.54 of 2013 in OA.No.1122 of 2010 dated 28.11.2019 and quash the same and consequently to direct the Respondents 2 and 3 to appoint the Petitioner to the post of Trained Graduate Teacher, with effect from the date, on which the other selected candidates were appointed, with all other consequential benefits.

For Petitioner : Mr.V.Ajayakumar

For Respondent : Mr.R.Syed Mustafa, SGP

ORDER

(Order of the Court was made by A.A.Nakkiran, J.)

- 1.This Writ Petition is filed, seeking to issue a Writ of Certiorarified Mandamus, to call for the records, dated 28.11.2019, in RA.No.54 of 2013 in OA.No.1122 of 2010, on the file of the 4th Respondent/ Central Administrative Tribunal, Chennai Bench, Chennai and to direct the Respondents 2 and 3 to appoint the Petitioner to the post of Trained Graduate Teacher, with effect from the date, on which the other selected candidates were appointed, with all other consequential benefits.
- 2.The facts, in brief, leading to filing of this Writ Petition, as culled out from the typed set of papers, are as follows:-
 - (a)The Petitioner had passed B.Sc (Mathematics) in the year 1996 and B.Ed in September 2005 and she belongs to SC category. The Respondents 1 and 2 had published a notification, dated 25.11.2009, calling for applications for the post of Trainee Trained Graduate Teacher, in various disciplines. There are two other candidates, namely one Andjaladevy and one M.Kumutha, who is the 3rd Respondent herein, both belong to SC Category.
 - (b)Common written test, practical test and interviews were conducted for appointment of the said post. Before publication of the selection list, the Respondents had published the aggregate marks (employment seniority+ academic marks (out of 40) and written marks (out of 40)) of all the candidates in the Internet, according to which, the Petitioner had allegedly secured 36.9203 marks and the 3rd Respondent had allegedly secured 30.8317 marks. After interview and practical test, the final marks of all the candidates were published in the Internet and the alleged marks secured by the Petitioner was 44.6203 and the alleged marks secured by the 3rd Respondent was 43.1817. In the selection list, dated 25.05.2010, the name of the Petitioner was omitted and the name of the 3rd Respondent was included in the wait list, showing her marks as 44.181.
 - (c)The Petitioner had made a representation dated 26.05.2010, to the authorities concerned, stating that the 3rd Respondent had got only 43.7817 marks and her name was wrongly included in the selection list even though the Petitioner has got 44.6203 marks. Thereafter, the 2nd Respondent had published the revised marks in the Internet, on 26.05.2010, according to which, the 3rd Respondent was allegedly given 44.1817 marks as given in the selection list and the marks of the Petitioner was allegedly reduced to 44.1203.
 - (d)Since the 2nd Respondent was allegedly taking steps to issue an appointment order to the 3rd Respondent, who is in the waiting list, without considering the objections of the Petitioner, the Petitioner herein, alleging mala

fide and malpractice, on the part of the concerned authorities, had filed the above OA.No.1122 of 2010, under Section 19 of the Administrative Tribunal's Act, 1985, to call for the records of the 2nd Respondent in No.162005/DSE/Estt-III/A/2009 (A6), dated 25.5.2010 and to quash the selection of the 3rd Respondent herein and consequently, to direct the 2nd Respondent to appoint the Petitioner to the post of Trainee Trained Graduate Teacher, in the faculty of Mathematics, with all other consequential reliefs, including seniority, arrears of wages, etc. Separate reply affidavits in the Original Application were filed by the Official Respondents and the 3rd Respondent.

(e) In and by the order dated, 13.03.2013, the Tribunal had quashed the order dated, 25.05.2010, in so far as the selection of the 3rd Respondent is concerned and directed the concerned authorities to appoint the Petitioner to the said post in the SC Category. Aggrieved by the said order, the 3rd Respondent had preferred a review application in RA.No.54 of 2013, before the Tribunal. Separate reply statements were filed by the Official Respondents and the Petitioner in the review application. The Tribunal, by the impugned order, dated 28.11.2019, had dismissed the OA. Hence, this Writ Petition has been filed by the Petitioner, seeking the reliefs as stated above.

3. The learned counsel for the Petitioner would submit that only when the Petitioner had questioned the inclusion of the 3rd Respondent in the selection list, by way of representation, though the 3rd Respondent had secured lesser marks than that of the Petitioner, only in order to accommodate the 3rd Respondent, the marks had been manipulated and after manipulation, the selection list was published in the internet and the marks obtained by the 3rd Respondent was increased, but at the same time, the marks obtained by the Petitioner was reduced and that the decrease and increase in marks were done only in respect of the oral interview and hence, the selection of the 3rd Respondent is illegal and liable to be quashed. The learned counsel would further submit that there is no error apparent on the face of record whatsoever in the order passed by the Tribunal in the OA and that the Tribunal, in the review application, has acted on misconception and in such circumstances, he would pray for allowing this Writ Petition, as prayed for.

4. Per contra, the learned Special Government Pleader for the Official Respondents would submit that after publication of the marks in the Notice Board on 25.05.2010, since there were erroneous data, which had crept due to inadvertence, found to have been supplied to the NIC, such errors had been rectified and published in the Website on 26.05.2010 at 16.00 hours and that the correct data published in respect of the Petitioner and the 3rd Respondent on 26.05.2010 are 44.1203 and 44.1817, however, it is a fact that the marks of the 3rd Respondent displayed in the Notice Board on

25.05.2010 and in the revised list published in the Website on 26.05.2010 are one and the same and that there was no change of marks and that such errors in data had occurred not only for the Petitioner, but also in all, for 21 other candidates and hence, genuine mistake or inadvertence cannot be taken advantage of by the Petitioner. The learned counsel would further submit that since the Petitioner had obtained lesser marks i.e. 44.1203 than that of the 3rd Respondent, i.e. 44.182, the Petitioner was not selected in the final list and that the name of 3rd Respondent was placed in the wait list and and hence, the Petitioner has no locus standi to question the selection of the 3rd Respondent and accordingly, this Writ Petition is liable to be dismissed.

5. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.
6. Since the facts of the case have been narrated above, it is not necessary to once again traverse into the same. In the Original Application, the Tribunal had quashed the selection of the 3rd Respondent, holding that the changing the marks of the Petitioner downwards and that of the 3rd Respondent upwards took place only in respect of the interview portion and hence, it is not reliable and accordingly, held that the Petitioner is eligible for appointment. But, the Tribunal, in the review application, had dismissed the OA, holding that the bona fide mistake or error, that had been crept due to inadvertence, cannot be permitted to be used by the Petitioner to her advantage.
7. Since the selection is based on aggregate marks, the core issue revolves around the marks published, both based on the erroneous data and the rectified data or otherwise as pleaded by the Petitioner, which needs to be decided now, so as to enable this Court to consider as to whether the Petitioner is eligible to be appointed or not.
8. Initially, the candidates were short-listed based on the aggregate marks awarded for academic qualifications (30 marks), employment seniority (10 marks) and written competitive examination (40 marks) and the Petitioner had secured 36.9203 marks and the 3rd Respondent had secured 30.8317 marks. After practical test and oral interview, the result of the selected and wait listed candidates was published in the Notice Board, indicating the name of the candidate, community and the marks obtained, on 25.05.2010 at 12.30 p.m.
9. Since it was noticed that some erroneous data was supplied to the NIC, after rectification, correct data was communicated to the NIC and the same was published in the official Website on 26.05.2017. Erroneous data regarding aggregate marks published on 25.05.2010 in respect of the Petitioner is 44.620 and in respect of the 3rd Respondent is 43.782 and the actual corrected data published on 26.05.2010 in respect of the Petitioner is 44.120 and in respect of the 3rd Respondent is 44.182. It is pertinent to note that such errors in data had occurred not only for the Petitioner

alone, but also in all, for 21 other candidates.

10.As per the overall merit list of the short-listed candidates, the Petitioner ranks at 101 and the 3rd Respondent ranks at 100. In the selection list, dated 25.05.2010, the name of the 3rd Respondent was included under the SC category in the faculty of Mathematics, in the Wait List, showing her marks as 44.181. Since the Petitioner secured low per centage of marks than that of the 3rd Respondent, she was not even placed in the Wait List.

11.The aggregate percentage of marks of the 3rd Respondent published on 25.5.2010 and in the Website on 26.05.2010 are one and the same and as such, there is no increase or decrease of marks done by the authorities as alleged. The error in the marks published in the internet is a bona fide mistake due to inadvertence on the part of the Department. Such a bona fide mistake cannot be permitted to be taken advantage of by the Petitioner and it cannot be said that there was malpractice or corruption in the selection process and consequently, the contention of the Petitioner that only when she had questioned the inclusion of the name of 3rd Respondent in the selection list, by way of representation, her marks came to be reduced, cannot be accepted.

12.The Tribunal, in the Original Application, while passing the order, has relied on the print out of marks taken from the internet, which has a disclaimer clause embedded on it. In the print outs, no proper time or date is shown, but the date of uploading is shown as 01.02.2002 at 10.56, which has no relevance with the date 25.5.2010. Whereas the mark lists published on 26.10.2010 clearly shows the date of publication as 26.05.2010, which is the correct date of publication in the website.

13.According to the Petitioner, she has given a representation immediately on 26.05.2010 and the Official Respondents had made corrections immediately. The selection list was approved by the Committee on 24.05.2010 itself and the minutes was signed and the result was published. The Tribunal, in the review application, had gone through the file and opined that there was no such correction took place as alleged and hence, there is no basis for the contention of the Petitioner that when she made the representation on 26.05.2010, the marks were changed. The above aspects were not considered by the Tribunal in the Original Application, but acted upon misconception and erred in relying upon the print outs downloaded from the internet. The Tribunal, while considering the OA, ought to have looked into the relevant file of the Department, instead of relying on the print outs downloaded from the internet, furnished by the Petitioner. Before the Tribunal, in the review application, the Official Respondents had produced the file, relating to the selection including the minutes of the meeting and the

original selection list and the Tribunal, after looking into the file produced by the Department and considering the authenticated data and the aspects discussed above, has rightly passed the impugned order, dismissing the OA, which warrants no interference by this Court, as there is no infirmity or perversity in the impugned order.

14. In fine, this Writ Petition is dismissed. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Srcm
To

1. The Union of India, represented by Government of Puducherry, through Secretary to Government for Education, Chief Secretariat, Puducherry
2. The Director of School Education, Anna Nagar, Puducherry
3. The Registrar, Central Administrative Tribunal, Chennai Bench, Chennai.

+1cc to Mr.V.Ajaya kumar, Advocate SR.No. 18808
WP.No.4050 of 2021
A.SK(09.04.2021)