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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2021
PRONOUNCED ON : 09.08.2021
CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.20213 of 2020
&
WMP.Nos.24983 & 24986 of 2020

C.Geetha

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by the Commissioner cum Secretary,
Archaeology Department,
Fort St. George,
Chennai-600 009.

2.The Controller of Examinations cum
Secretary-in-Charge, TNPSC,
Poonga Nagar, Chennai-600 003.

... Respondents

PRAYER: 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 notification of the second respondent dated 16.12.2020 for Original Certificate Verification and Counselling to the Post of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-2020 based on the results of the written examination conducted by the Commission on 29.02.2020 FN & AN and marks and rank published on 30.09.2020 and to quash the same and direct the second respondent to include the petitioner's registration No.010001187 for the Original Certificate Verification and Counselling which is going to be held on 29.12.2020.

For Petitioner : Mr.U.M.Ravichandran
For Respondent : Mr.K.Tippu Sultan
No.1 Counsel for Government
For Respondent : Mr.Karthik Rajan
No.2

O R D E R

This Writ Petition is heard through Video Conferencing on 23.07.2021.

2. The petitioner herein had participated in the selection process for appointment to the post of Archaeological Officer in the Tamil Nadu General Subordinate Services for the year 2019-2020. On 30.09.2020, the results



of the written examination was published in the web-site and the petitioner, who secured total marks of 290.5, was ranked at Serial No.7 with communal rank at Serial No.4.

3. The second respondent had called upon the candidates to upload the original documents for certain verification on 22.10.2020. However, when the subsequent list of candidates was published on 16.12.2020, calling upon them for original certificate verification and counselling, the petitioner's name was omitted to be included therein. Aggrieved against the same, the present Writ Petition has been filed.

4. It is the case of the respondents that since the petitioner had failed to upload the evidence of qualification of Tamil as one of the subjects in the Degree level, her candidature was rejected.

5. It is the case of the petitioner that, though she has taken Tamil as one of the languages in the Under Graduation level, she could not upload the same, since there was no column provided in the certificate verification portal for entering the mark statements of the I year and II year of the Under Graduation Course. The learned counsel for the petitioner submitted that even otherwise, the petitioner is fully qualified based on the marks secured by her in the written examinations and does not claim the benefit of priority under Persons Studied in Tamil Medium (PSTM) category.

6. An identical issue had already come up before this Court in W.P.(MD) Nos.19702, 19703 & 19705 of 2020 [D.Ananthy & 2 others V. The Secretary, TNPSC, Chennai & another] dated 07.07.2021, with regard to the same selection process for the posts of Archaeological Officer for the year 2019-2020 in which, this Court had held that, non-uploading of documents, evidencing Tamil as one of the subjects, for a candidate, who does not claim PSTM priority, will not be fatal to the selection process. The relevant portion of the order reads as follows:-

"5. The issue with regard to the sanctity of non uploading of the PSTM Certificate in cases of candidates who do not claim reservation under PSTM category is concerned, this Court, in a batch of cases, in W.P.No.5812 of 2020 [M.Nisha V. The Secretary, TNPSC, Chennai and Another] & batch, dated 07.07.2021, had found that such uploading of PSTM certificates is not mandatory to the candidates who do not claim reservation under PSTM category and their candidatures cannot be rejected on that ground. The relevant portion of the order reads as follows:-

" 8. It is the case of all the petitioners herein that they had not claimed any special reservation under PSTM category and even without applying the reservation under PSTM category, they



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have qualified themselves in the open category for selection to the posts. This aspect has not been disputed by the learned Senior counsel appearing for the TNPSC.

9. The respondents are unable to substantiate as to on what basis, they had come to the conclusion that all these petitioners had claimed reservation under PSTM category. Merely because the On-line application provides for a column, calling upon the applicants to mention their medium of instructions, it cannot be construed as if these applicants had claimed reservation under the PSTM category. It is reiterated that there is no column in the application, calling upon the candidates to exercise their option to claim reservation under PSTM category.

10. In all recruitment processes held by the Government or other Governmental bodies and where the rule of reservation is made applicable, irrespective of whether it is horizontal or vertical reservation, the recruiting authority cannot subject the candidates to the rule of reservation, just because they qualify themselves for such reservations. The method of recruitment adopted by the recruitment authorities ratifies this proposition, since the first stage of evaluating the On-line applications is on the merits in the open category for all the applicants universally and irrespective of whether they had qualified themselves for any horizontal or vertical reservation, their candidature was short listed in the open category on merits. For instance, a candidate may belong to Most Backward Caste or Scheduled Caste or Scheduled Tribe community and when he/she qualifies themselves in the open category, their candidature cannot be considered under the communal reservation. It is needless to point out the right for employment is a fundamental right as guaranteed under the Constitution of India and depriving such an opportunity would also be violative of Article 14 of the Constitution of India. This proposition has been reiterated by the Hon'ble Supreme Court in the case of Ritesh R. Sah Vs. Dr.Y.L.Yamul & Others reported in 1996 (3) SCC 253.

11. In the instant case, when the petitioners have qualified themselves in the open category itself, there was no justification on the part of the TNPSC to treat them as candidates claiming reservation under PSTM category and insisting for production of a PSTM Certificate. Hence, the proper course that ought to have been adopted by TNPSC is to straight away to include the names of the candidates who had qualified themselves in the open merit category and ought not to have resorted to demand supporting testimonials for any kind of reservation



which the candidates may or may not claim. In these circumstances, the reason assigned the reason assigned by the TNPSC for rejection of the petitioners' candidature is unjust and illegal."

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6. The aforesaid extract is self explanatory. As such, the only ground on which the petitioners' provisional selection came to be rejected for non uploading of PSTM Certificates, cannot be sustained."

7. The aforesaid order is self explanatory. As such, the respondents are not justified in referring to the non uploading of the certificates evidencing Tamil as one of the subjects in the Under Graduation Course, as an embargo for selection and hence such a reasoning cannot be sustained and consequently, the petitioner is entitled to succeed.

8. Accordingly, the action of the respondents in omitting the name of the petitioner herein in the provisional list of selected candidates to the posts of Archaeological Officer in the Tamil Nadu General Subordinate Service for the year 2019-20, pursuant to the Notification dated 16.12.2020, is declared as illegal. Consequently, there shall be a direction to the respondents to select and include the petitioner's name in the selection list of candidates to the posts of Archaeological Officer in the aforesaid services, based on the marks secured by her and the respondents shall take further course of action for appointing the petitioner to the said post of Archaeological Officer, within a period of two weeks from the date of receipt of a copy of this order.

9. In the result, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

-s/d-

Assistant Registrar (CS-IX)
dt.10.08.2021

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Sub-Assistant Registrar

DP



To

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1. The Commissioner cum Secretary,
Government of Tamil Nadu
Archaeology Department,
Fort St. George,
Chennai-600 009.

2. The Controller of Examinations cum
Secretary-in-Charge, TNPSC,
Poonga Nagar, Chennai-600 003.

- 1 cc to M/s. Karthik Rajan, Advocate Sr.39355
- + 1 cc to Government Advocate SR.39479

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&

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RR(CO)
EU 10/08/2021