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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11291 of 2017

S.Jerina Begam

...Petitioner

Vs

1.The Director of School Education
College Road, Chennai - 600 006.

2.The Chief Educational Officer
Ariyalur.

3.J.Ameer John

4.The District Educational Officer
Udayarpalayam, Ariyalur District.

...Respondents

(R4 has been impleaded as per order dated 11.10.2017 by this Court in W.M.P.No.19960 to19962 of 2017 in W.P.No.11291 of 2017.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the 4th respondents proceedings made in Na.Ka.No.2315/A1/2014 dated 17.04.2017 to quash the same and to consequently direct the respondents to consider the claim of the petitioner for appointment to the post of Lab Assistant in the said vacancy i.e., under BCM-PWD (Person With Disability)/BCM-PR(Priority) forthwith thereto and to extend all benefits, both service and monetary.

(Prayer has been amended as per the order dated 11.10.2017 by this Court in W.M.P.No.19960 to 19962 of 2017 in W.P.No.11291 of 2017)

For Petitioner : Mr.N.R.Jasmine Padma

For Respondents: Mr.K.V.Sajeev Kumar

Government Counsel for R1, R2 and R4

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2.The petitioner is before this Court with a prayer to call for the records relating to the 4th respondents proceedings made



in Na.Ka.No.2315/A1/2014 dated 17.04.2017, quash the same and consequently direct the respondents to consider the claim of the petitioner for appointment to the post of Lab Assistant in the said vacancy i.e., under BCM-PWD (Person With Disability)/BCM-PR (Priority) forthwith thereto and to extend all benefits, both service and monetary.

3.The petitioner herein, is a Differently Abled Person, who has registered herself in the employment exchange on 23.06.2006. She belongs to Backward Class (Muslims) community. Pursuant to her application in the recruitment for the post of Lab Assistant, as per the notification dated 22.04.2015, she had participated in the written examination and was thereafter called for Certificate Verification.

4.The petitioner's candidature was rejected on the ground that she belong to Backward Class (Muslims) and that she had not claimed Priority as a Backward Class (Muslims) - Differently Abled Person. On the other hand, the candidature of the 3rd respondent herein, viz., J.Ameer John, who belongs to Backward Class (Muslims) community has been considered under the turn of Priority - Person With Disability.

5.While the petitioner had scored 64 marks in the selection process, the 3rd respondent had scored only 49 marks.

6.Aggrieved against her non-selection and treating her under non-Priority category, the petitioner herein has filed the present Writ Petition, challenging the appointment of the 3rd respondent and also claims for appointment for herself to the post of Lab Assistant.

7.The only ground on which the petitioner's candidature has been rejected is that, according to the Department of School Education, she had not registered herself as a Backward Class (Muslims) community with Differently Abled Priority, but had registered herself only as a Backward Class (Muslims) community only. This ground of rejection seems to be an error.

8.The learned counsel for the petitioner produced copy of the application dated 05.05.2015 made by the petitioner for the post of Lab Assistant before this Court. Perusal of the application clearly indicates that in the column, wherein the claim of Priority is sought for, the petitioner had mentioned that she claims "Priority" under "Differently Abled Person" category. The application also evidences that the petitioner's community was referred by her as "Backward Class (Muslims)". The application produced by the learned counsel for the petitioner is a copy obtained by her from the Public Information Officer of the Education Department under the provisions of the Right to Information Act. Apart from this, the petitioner had also



produced a copy of the employment exchange registration dated 23.06.2006, issued by the Professional and Executive Employment Office, Chennai, which evidences that the petitioner's employment registration was done with the Priority as "Differently Abled Person" and the Priority type as "Ortho".

9.It is on this misconception that the petitioner herein had neither registered herself as "Backward Class (Muslims)" and "Differently Abled Person" nor that she had claimed Priority in her application, that her candidature has been rejected. The copy of the employment registration, as well as the application dated 05.05.2015 made by the petitioner for the post of Lab Assistant proves otherwise. In other words, the petitioner herein, who had scored 64 marks, belongs to Backward Class (Muslims) community and her application as well as employment registration evidences that she did claim Priority under the Differently Abled Person - "Ortho" category.

10.Though notice has been served on the 3rd respondent and his name also printed in the cause list, none appeared on behalf of him. In view of the misconception that the petitioner herein had not claimed Priority under Backward Class (Muslims) - Differently Abled Person (Ortho) category, the Official respondents have chosen to select the 3rd respondent herein under Backward Class (Muslims) - Person With Disability category, though he had secured only 49 marks as against the 64 marks scored by the petitioner. Apparently the petitioner herein is eligible to be selected under this category, when compared to the 3rd respondent herein.

11.The learned Government Counsel appearing for the respondents 1, 2 and 4 placed reliance on the copy of the computer generated application dated 25.05.2015, claimed to have been made by the petitioner herein. A perusal of the said document reveals that the same cannot be considered as an application. In the said document produced by the learned counsel, the Priority category has been shown as 'Not Applicable'. Further, the document reveals that the document is not an application made by the petitioner. As a matter of fact, this document seems to be downloaded from the computer with regard to the details of the petitioner. Date of the document is 25.05.2015, whereas the petitioner had actually applied on 05.05.2015. Hence the document relied upon by the learned Government Counsel, cannot be any stretch of imagination, be considered as the application for the post of Lab Assistant made by the petitioner. On the other hand this Court does not find any reason to disbelieve the application produced by the petitioner, which is a document furnished by the Public Information Officer of the Education Department under the RTI Act.



12. Now that, the 3rd respondent has already been selected and appointed to the post of Lab Assistant, this Court does not intend to disturb the selection already made in favour of the 3rd respondent herein on 17.04.2017.

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13. Hence, the 1st respondent shall endeavor to accommodate the petitioner by selecting and appointing her to the post of Lab Assistant, by creating a super numeracy post and place the petitioner's seniority, above that of the 3rd respondent herein. However, in case there is any difficulty faced by the 1st respondent in retaining the 3rd respondent in the post of Lab Assistant, preference of appointment shall be made to the petitioner herein in the place of the 3rd respondent.

14. In the light of the above observations, there shall be a direction to the 1st respondent herein to select and appoint the petitioner to the post of Lab Assistant under the category of "Backward Class (Muslims)" - "Person With Disability" - "Ortho" Priority, with effect from the date on which the 3rd respondent was appointed and place the petitioner's seniority above that of the 3rd respondent. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. This Writ Petition stands thus allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of School Education
College Road, Chennai - 600 006.

2. The Chief Educational Officer
Ariyalur.

3. The District Educational Officer
Udayarpalayam, Ariyalur District.

+1cc to Mr.L.Chandra Kumar, Advocate SR.No. 33163

W.P.No.11291 of 2017

PMK(CO)
B.VC(10.08.2021)