



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2021

CORAM:

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**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

W.P. (MD) No.18208 of 2020

and

W.M.P(MD) Nos.15193 and 15194 of 2020

Dr.T.Saravanan

...Petitioner

Vs

- 1.State of Tamil Nadu,  
Rep by its Principal Secretary,  
Department of Higher Education,  
Secretariat,  
Chennai-9.
- 2.The Teachers Recruitment Board,  
rep by its Secretary,  
4<sup>th</sup> Floor, E.V.K.Sampath Maligai,  
DPI Compound,  
College Road,  
Chennai-600 006.
- 3.The Teachers Recruitment Board,  
rep by its Member(School Education),  
4<sup>th</sup> Floor, E.V.K.Sampath Maligai,  
DPI Compound,  
College Road,  
Chennai-600 006.
- 4.The Director of Collegiate Education,  
9<sup>th</sup> Floor, EVK Sampath Buildings,  
College Road, Chennai-6.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Na.Ka.No.3673/R2/2015 dated 07.08.2020 on the file of the third respondent and quash the same as illegal and consequently for a direction, directing the respondents 2 to 4 to appoint the petitioner in the post of Assistant Professor, Department of History in pursuance to the Government Order in G.O.(3D) No.13, Higher Education (F2) Department, dated 17.09.2019 within the time period stipulated by this Court.



For Petitioner : Mr.T.Lajapathi Roy  
For R-1 and R-4 : Mr.S.Dhayalan  
Government Advocate  
For R-2 and R-3 : Mr.V.R.Shanmuganathan  
Standing Counsel

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**O R D E R**

This Writ Petition has been filed to quash the Impugned Order in Na.Ka.No.3673/R2/2015 dated 07.08.2020 on the file of the third respondent and consequently, directing the respondents 2 to 4 to appoint the petitioner in the post of Assistant Professor, Department of History in pursuance to the Government Order in G.O. (3D) No.13, Higher Education (F2) Department, dated 17.09.2019 within the time period stipulated by this Court.

2.The petitioner herein is a physically challenged person (Ortho), who belongs to Schedule Caste community and seeks for appointment to the post of Assistant Professor in the Department of History, by interchanging the backlog vacancy reserved for General Turn(General -Deaf) or Scheduled Caste (General-Deaf) in accordance with Section 36 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3.When an identically placed physically challenged candidates had earlier challenged the selection list, pursuant to the recruitment notification dated 28.05.2013, this Court in the case of **J.Ashokkumar Vs. Union of India and others** in W.P(MD) No.2257 of 2015 dated 12.04.2018 had observed that the appointment for such physically challenged persons, under other categories of disabilities, are interchangeable. The relevant portion of the order reads thus:-

16. When that being the position, the interpretation sought to be given to Section 36, especially, the word **"it may be first filled up interchanging among the three categories"** by the learned counsel for the 4<sup>th</sup> respondent that in the second year if the vacancies still are not able to be filled up, the same shall be interchanged and thereafter be carried over to the next succeeding year, is beyond the scope of Section 36, because, the words, **"it may be first be filled by interchange among the three categories"** Clearly envisages that, the post shall be filled in that year by making any interchange among three categories of disabilities. Even after making the exercise of interchange among the three categories of disabilities, still, the employer finds no suitable candidate, then only the employer can fill up the same by appointing a person other than a person with disability. Since the words **"employer shall fill up the**



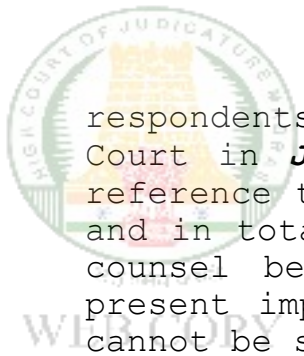
**vacancy by appointment of a person other than a person with disability"** clearly says that in that year ie., the second year, the vacancy, at any case, should be filled up. Therefore, there is no scope for carry forward the vacancy, which is already a carried forward vacancy, from the previous recruitment year, to the next recruitment year. Therefore, the interpretation sought to be given by the learned counsel for the 4th respondent is liable to be rejected and accordingly, it is rejected.

17. If this is the legal position, where the exercise of interchange among the three categories of disability was admittedly has not been undertaken by the 4th respondent, there is every force in the submission made by the learned counsel for the petitioner and therefore, the petitioner's case can be accepted prima facie for the purpose of considering the candidature for the said recruitment.

18. In view of the said legal position, what shall be the benefit now can be extended to the petitioner is the next issue. The petitioner claims that he is a physically challenged having all qualification and he further claims that he is the only person claiming such exercise of interchanging among the three categories of disabilities, under Section 36 of the Act and therefore, he shall be considered for selection and appointment.

4. Subsequently, when the writ petitioner had approached this Court seeking for selection and appointment, this Court in the case of **T.Saravanan Vs The Union of India and others** in W.P(MD) No.8692 of 2015 had recorded the submission of the respondents' counsel therein that they would abide by the earlier order of this Court in **J.Ashokkumar's case** in W.P(MD) No.2257 of 2015 dated 12.04.2018 and would pass appropriate order, if the petitioner is otherwise found eligible. Recording such a submission, this Court had allowed the writ petition by directing the respondents to consider the petitioner's claim, if he is otherwise found eligible. In this background, the first respondent herein has now passed the impugned order dated 07.08.2020, stating that interchangeability among different categories of disabled person is impermissible. This Court is not in agreement with such reasoning adopted by the third respondent herein.

5. Section 3 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as well as the Government order in G.O (3D) No.13, Higher Education Department, dated 17.09.2019, prescribe that interchangeability among the disabled categories is permissible. Furthermore, this Court had also reiterated such a proposition in **J.Ashokkumar's case** which was adopted and followed in the case in W.P(MD) No.8692 of 2015, wherein the



respondents had also agreed to abide by the order passed by this Court in **J.Ashokkumar's case**. While that being so, without any reference to Section 36 of the Act, as well as the Government Order and in total deviation to the undertaking given by the respondents' counsel before this Court in the petitioner's earlier case, the present impugned order has been passed. As such the order itself cannot be sustained.

6.It is not disputed by the respondents that the petitioner herein is not otherwise unqualified or ineligible for selection and appointment. When the interchangeability between the physically challenged person Ortho, who belongs to the Scheduled Caste Community, with Schedule Caste General Deaf are legally permissible, the respondents herein are bound to select and appoint the petitioner for the post of Assistant Professor (History).

7.Accordingly, the impugned Order in Na.Ka.No.3673/R2/2015 dated 07.08.2020 on the file of the third respondent is quashed and the third respondent herein shall select the petitioner herein for the post of Assistant Professor (History) and place the selection list before the first respondent herein, who in turn, shall issue necessary appointment order to the petitioner herein. The entire process of selection and appointment shall be made at the earliest, in any event, within a period of six weeks from the date of receipt of a copy of this order.

8.The Writ Petition stands thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-II)

//True copy//

/ /2021  
Sub Assistant Registrar

**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 Principal Secretary,  
State of Tamil Nadu,  
Department of Higher Education,  
Secretariat, Chennai-9.



2.The Teachers Recruitment Board,  
Rep by its Secretary,  
4<sup>th</sup> Floor, E.V.K.Sampath Maligai,  
DPI Compound,  
College Road, Chennai-600 006.

3.The Member,  
The Teachers Recruitment Board,  
4<sup>th</sup> Floor, E.V.K.Sampath Maligai,  
DPI Compound, College Road,  
Chennai-600 006.

4.The Director of Collegiate Education,  
9<sup>th</sup> Floor, EVK Sampath Buildings,  
College Road, Chennai-6.

+1CC to THE SPECIAL GOVERNMENT PLEADER (SR-426[F] dated 07/01/2021)

+1CC to M/s.T.LAJAPATHI ROY, Advocate (SR-515[F] dated 07/01/2021)

**Order made in**  
**WP (MD) No.18208 of 2020 and**  
**WMP (MD) Nos.15193 & 15194 of 2020**  
**06.01.2021**

SRS/02.02.2021/5P/7C