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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	01.04.2021
Pronounced on	07.07.2021

CORAM:
THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD) Nos.19702, 19703 & 19705 of 2020
and
W.M.P.(MD) Nos.16429 to 16434, 16436, 16438, 16439, 16441 to 16443 of 2020

D.Ananthy ...Petitioner in WP.(MD).No.19702 of 2020

M.Shanmugavalli ...Petitioner in WP.(MD).No.19703 of 2020

S.Anitha ...Petitioner in WP.(MD).No.19705 of 2020

Vs.

1.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Park Town, VOC Nagar,
Chennai - 600 003.

2.The Principal Secretary/
Commissioner of Archaeology,
Department of Archaeology,
Tamil Valarchi Valaagam,
Tamizh Salai, Egmore,
Chennai - 8. ...Respondents in all cases

PRAYER in W.P.No.19702 of 2020: Writ Petition filed under Article 226 of Constitution of India praying to issued a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned provisional list of candidates admitted to original certificate verification and counselling to the post of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-20 issued by the respondent No.1 dated 16.12.2020 and quash the same as illegal insofar as not including the petitioner and consequently for a direction, directing the respondents to select and appoint the petitioner in the post of Archaeological Officer under BC(General) Category based on the marks secured by the petitioner within the time period stipulated by this Court.

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PRAYER in W.P.No.19703 of 2020: Writ Petition filed under Article 226 of Constitution of India praying to issued a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned provisional list of candidates admitted to original certificate verification and counselling to the post of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-20 issued by the respondent No.1 dated 16.12.2020 and quash the same as illegal insofar as not including the petitioner and consequently for a direction, directing the respondents to select and appoint the petitioner in the post of Archaeological Officer under SC(General) Category or SC(Woman) or SC (A)(Woman) Category based on the marks secured by the petitioner within the time period stipulated by this Court.

PRAYER in W.P.No.19705 of 2020: Writ Petition filed under Article 226 of Constitution of India praying to issued a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned provisional list of candidates admitted to original certificate verification and counselling to the post of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-20 issued by the respondent No.1 dated 16.12.2020 and quash the same as illegal insofar as not including the petitioner and consequently for a direction, directing the respondents to select and appoint the petitioner in the post of Archaeological Officer under BC(Woman) Category based on the marks secured by the petitioner within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy
(in all cases)
For Respondent-1 : Mr.D.Sivaraman
Standing counsel for TNPSC
For Respondent-2 : Mr.P.H.Arvindh Pandian, AAG
assisted by Ms.J.Padmavathi Ravi, SGP
assisted by Mr.Karthigai Balan, GA

C O M M O N O R D E R

All the three petitioners herein, had submitted their On-line applications to the Tamil Nadu Public Service Commission (TNPSC), pursuant to the Notification No.33 of 2019 dated 28.11.2019, inviting applications for filling up of 18 vacancies for the posts of Archaeological Officer in the Tamil Nadu General Subordinate Services in Archaeological Department for the year 2019-2020. The petitioners herein were provisionally admitted to On-line verification on 19.10.2020. Thereafter, their applications were rejected for not having uploaded the "Persons Studied in Tamil Medium" PSTM Certificates of PG Diploma in Epigraphy and Archeology. Aggrieved over the same, the present Writ Petitions have been filed.

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2. Heard the learned counsel for the parties.

3. It is the case of the petitioners that they had not claimed any reservation under the PSTM category and therefore, rejection of their application on the ground that they have not uploaded the PSTM Certificates, is illegal. It is further stated that, but for non up-loading of the PSTM Certificates, the petitioners are eligible for selection based on the marks obtained by them.

4. Per contra, the learned Standing counsel for the TNPSC submitted that, as per the instructions furnished to the candidates who have been provisionally admitted, such loading of the PSTM Certificates is necessary for persons who had taken Tamil as their medium of instructions in their curriculum.

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 07.07.202,*** 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 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*

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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."

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. Accordingly, the action of the respondents in omitting the names of the petitioners herein in the provisional list of selected candidates to the posts of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-20, pursuant to the Notification No.33 of 2019 dated 28.11.2019, is declared as illegal. Consequently, there shall be a direction to the respondents to select and include the petitioners' names in the selection list of candidates to the posts of Archaeological Officer

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in the aforesaid services, based on the marks secured by them and the respondents shall take further course of action for appointing the petitioners to the said posts of Archaeological Officer, within a period of two weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

DP

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Park Town, VOC Nagar,
Chennai - 600 003.

2.The Principal Secretary/
Commissioner of Archeology,
Department of Archeology,
Tamil Valarchi Valaagam,
Tamizh Salai, Egmore,
Chennai – 8.

+3 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-21648[F],21647,21646 dated 08/07/2021)

+1 CC to M/s.SPL GP (SR-21924[F] dated 09/07/2021)

W.P.(MD) Nos.19702, 19703 & 19705 of 2020
07.07.2021

DKS(CO)
KB(22.07.2021) 5P 7C

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