



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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W.P (MD) No.8188 of 2017

and

WMP (MD) Nos.6301 and 6302 of 2021

S.Dhavaprakash

.. Petitioner

Vs

1.The Director,
Directorate of School Education,
DPI Complex, College Road,
Chennai.

2.The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents to issue the appointment order appointing the petitioner to the post of Lab Assistant based on the inclusion of the petitioner in selection list for direct recruitment of Lab Assistant for Ramanathapuram District within the stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.C.M.Marichellaiah Prabhu,
Additional Government Pleader

ORDER

The case of the petitioner is that he belongs to the most backward class community and has studied upto 12th standard. He has also registered with the District Employment Office, Ramanathapuram on 26.10.2006.

2.The 1st respondent has issued notification calling for the applications for recruitment for the post of Lab Assistant. As per the notification 10th standard was the educational qualification and minimum age was fixed as 18 years and the maximum age was fixed as 35 years. The selection process was done on the basis of

<https://hcservices.mca.gov.in/hcservices> and priority.



3.The petitioner had applied for the post of School Lab Assistant and appeared in the written examination and obtained 76 marks out of 150 marks and subsequently, he was also called for certificate verification. In the meanwhile, the 1st respondent had issued fresh notification and as per the fresh notification the post would be filled up on 1:5 ratio and the marks will be awarded as follows; 150 marks for written test, 10 marks for employment seniority, 2 marks for 12th standard and 3 marks for degree, 02 marks for experience seniority and totally 167 marks and as such the petitioner has been awarded 91 marks out of 167 marks and he was included in the selection list of Lab Assistant for Ramanathapuram District under MBC/Ex-serviceman category. Subsequently the petitioner was also called for to attend the counselling to be held on 10.04.2017 and accordingly, the petitioner had also attended the counselling, but unfortunately, the petitioner was not provided with any appointment order. He learnt that the petitioner did not fall under the category of Ex-serviceman, and therefore, the appointment order was not provided to him. In this regard, the petitioner has also sent a detailed representation dated 19.04.2017 and since no action was taken by the authorities concerned, the petitioner is before this Court.

4.According to the learned Counsel for the petitioner, though the petitioner falls under the category of Ex-serviceman, his candidature was not considered for the post of Lab Assistant.

5.Per contra the learned Additional Government Pleader appearing for the respondents would submit that the petitioner has obtained 76 marks in written examination and as per the communal roster he was placed in MBC priority and called for the certificate verification held on 10.04.2017. In the certificate verification, the name of the petitioner was found at serial No.372, after certificate verification, the petitioner was totally awarded with 91 marks in the MBC Ex-serviceman. It is admitted fact that the petitioner is son of Ex-serviceman and dependant of Ex-serviceman as per the notification the post allotted for the Ex-serviceman as per the notification the post allotted for the Ex-serviceman is different from son and dependants of Ex-serviceman priority post. As the petitioner being a son and dependant of Ex-serviceman, he cannot claim the benefit under the Ex-serviceman quota.

6.The learned Additional Government Pleader would further submit that the petitioner is entitled to claim priority benefit under the head of dependant of Ex-Serviceman. It is further submitted that regarding order of the priority the Government has passed G.O in G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department, dated 28.12.1976 categorically making rules of reservation by following the priority and non priority



category and the relevant portion of the said G.O. reads as follows :

"PRIORITY FOR EMPLOYMENT THROUGH EMPLOYMENT EXCHANGES:

Group I:

i) Disabled Ex-Servicemen

(Disabled Ex-Servicemen mean Ex-Servicemen who while serving in the Armed Forces of the Union were disabled in operation against enemy or in disturbed areas)

ii) Upto two members of the family (widows/sons/daughters/next of kin) of the enrolled personnel of the Armed Forces who were killed or disabled in action and are totally unfit for re-employment leaving their families in indigent circumstances and upto two members of the family (widows/sons/daughters/next of kin) of Border Security Force Personnel killed in action.

Group II:

i) "Destitute Widows"

(Destitute widow means one who has neither any means by herself to live on nor any dependent to protect her from starvation).

(Authority: G.O.Ms.No. 229, Personnel and Administrative Reforms (Personnel-R) Department, Dated 7.4.1988.

ii) "Intercaste Married Couple"

(Where one of the spouses belongs to SC/ST)

(Authority: G.O.Ms.No. 939, Personnel and Administrative Reforms (Personnel-R) Department, Dated 24.9.86.

iii) Ex-Servicemen and wives, sons and unmarried daughters of serving military personnel. (Ex-Servicemen means a person, who after having served for any period of time in the Defence Service (Indian Army, Indian Air Force, Indian Navy, the Auxiliary Forces of India and the Boy's Companies) has been discharged (except that one who has been dismissed by a competent authority or one who has been discharged on account of mis-conduct or inefficiency before completing six months' service shall not be treated as Ex-Servicemen)

iv) Indian Nationals retiring from Burma/Sri Lanka and East African Countries of Kenya, Uganda and Tanzania due to repatriation.

v) Members of family including members of Scheduled Castes/Scheduled Tribe, whose lands have been acquired for Government purposes as well as for the project of the Public Sector Undertakings subject to the condition that preference should be given to those who are dependant for their livelihoods primarily or wholly on the lands acquired and from among them to members of the Scheduled Castes and Scheduled Tribes who may be eligible for

employment."



As per the said G.O. the case of the petitioner can be treated under Group-II. Further in respect of the order of priority of Ex-Serviceman and wife, sons and unmarried daughters of servicing military personnel can claim priority, only after the candidates of destitute widows and inter-caste married couple are exhausted. Hence the claim of the petitioner itself is based on the wrong notion.

7. The learned Additional Government Pleader also submitted that the petitioner further claims that he should be given employment under category of Ex-service man but as per the said G.O. Order of priority, the petitioner can be considered only under the Ex-serviceman priority post. It is submitted that out of 106 posts 5 posts have been earmarked as priority post under MBC caste out of 5 posts as per G.O.Ms.No.188, when the destitute widow candidates are available, the question of giving priority to third category, viz., dependant of Ex-serviceman will not at all arise. As per rule of reservation and order of priority, priority should be given to destitute widows after exhausting the said category. Secondly the category of inter-caste marriage will come into the zone of considerations. Hence, the claim of the petitioner is not maintainable and is against the provisions of law. There is no illegality in non selection of the petitioner in the post of Lab Assistant as per the rules. The grounds raised by the petitioner are not available to him and the petitioner is not entitled for the relief he claims and therefore, prayed for dismissal of the writ petition.

8. Heard the learned Counsel appearing on either side and perused the materials placed on record.

9. The issue to be decided in this case is whether the petitioner falls under the category of Ex-serviceman or under the category of dependant of Ex-serviceman.

10. It is not in dispute that the petitioner is a son of the Ex-service and he himself is not an Ex-serviceman and therefore, the petitioner cannot be brought under the category of Ex-serviceman. Admittedly, the petitioner being the son of an Ex-serviceman can be treated as the dependant of the Ex-serviceman. As per the said Government Order, he being the dependant of an Ex-serviceman, falls under Group II - category iii of the said Government Order and as such the petitioner cannot be brought under the category of the Ex-serviceman, since he is only a dependant of Ex-serviceman. Therefore, the petitioner cannot claim reservation under the Ex-serviceman category. According to the respondents, even though the petitioner falls under the dependant of Ex-serviceman, his candidature for the selection to the post of



Lab Assistant would be considered only after selecting the candidates falling under the categories of destitute widows and inter-caste marriage. It is seen from records that out of 106 posts, 5 posts have been earmarked for Ex-serviceman priority post and all the 5 seats had been filled up in that category, only when there is no candidate under the Ex-serviceman priority post, the candidates from the dependant of Ex-serviceman category can be considered for selection to the said post. Therefore, the claim of the petitioner is not sustainable in law and therefore, the writ petition is liable to be dismissed.

11.At this stage, the learned Counsel for the petitioner submitted that the 5 posts, which have been earmarked for Ex-serviceman category have not been filled up and there are vacancies and therefore, the petitioner's candidature can be considered for the selection to the post of Lab Assistant due to non availability of the candidates in Ex-serviceman category. However, this court cannot go into the claim of the petitioner after several years of the selection process.

12.In view of the above discussion, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar (CS)

To

- 1.The Director, Directorate of School Education,
DPI Complex, College Road, Chennai.
- 2.The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram, Ramanathapuram District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-10962[F] dated 15/03/2021
+1 CC to M/s.SPL GP (SR-10935[F] dated 12/03/2021)

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<https://hcservices.ecourts.gov.in/hcservices/>