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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3472 of 2022 &
WMP.No.3590 and 3592 of 2022

V.Varatharajan

.. Petitioner

vs

1. The Registrar (Recruitment)
High Court, Madras-104.
2. The Principal Secretary,
Government of Tamil Nadu
Cooperation, Food and Consumer
Protection Department, Chennai.

.. Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Notification No.03/2021 dated 19.12.2021 issued by the 2nd respondent and quash the same as illegal and further direct the 2nd respondent to issue fresh Notification to fill the posts of the District Consumer Disputes Redressal Commission by complying the due reservation provided under The Constitution of India, the Rights of Persons with Disabilities Act, 2016 and the Consumer Protection Act, 2019.

For Petitioner

: Mr.R.Sankarasubbu

For Respondents

: Mr.V.Ayyadurai,
Senior Counsel for
Mr.Durai Eshwar for R1

Mr.P.Muthukumar,
State Government Pleader
for R2



ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

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We have heard the learned counsel appearing for the respective parties.

2. The writ petition has been filed challenging a Notification dated 19.12.2021 issued by the second respondent and thereby to direct the second respondent to issue a fresh Notification to fill up the posts in the District Consumer Disputes Redressal Commission, after complying the provisions of the Rights of Persons with Disabilities Act, 2016 (for short, the Act of 2016).

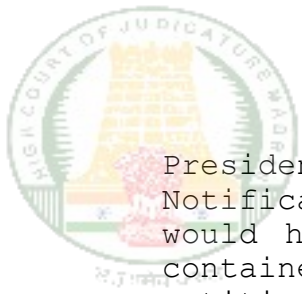
3. Learned counsel for the petitioner submits that while issuing the advertisement to the posts of President and Member of the District Consumer Disputes Redressal Forum, the respondents failed to provide reservation to persons suffering from disability and therefore, a challenge to the Notification has been made.

4. While making arguments, the learned counsel for the petitioner has drawn the attention of this Court to paragraph 3 of the Notification under challenge to show that reservation has been provided as given in the Proviso to Rule 10 of the Tamil Nadu State Judicial (Cadre and Recruitment) Rules, 2007 (for brevity, the Rules).

5. Referring to Rule 10 of the Rules, it is submitted that reservation should have been provided to the disabled persons to the extent it is provided under Rule 10 of the Rules. Since the respondents failed to do so, the mandate of the Act of 2016 has not been followed, whereas it is a Constitutional obligation on the part of the respondents to provide reservation in favour of the disabled persons while filling up the posts of President and Member in the District Consumer Disputes Redressal Commission. Accordingly, the learned counsel for the petitioner has prayed either to set aside the Notification or to comply paragraph 3 of the Notification by providing reservation in favour of persons suffering from disabilities.

6. We have carefully considered the submissions made by the learned counsel for the petitioner and perused the records.

7. The writ petition has been filed alleging that no reservation has been provided in favour of the disabled persons while inviting applications for the posts of Member and



President in the District Consumer Disputes Redressal Forum by Notification dated 19.12.2021 and therefore, the respondents would have to re-notify the posts by complying the mandate as contained in the Act of 2016. However, while arguing the writ petition, instead of maintaining the challenge to the notification, a prayer was made for compliance of paragraph 3 of the impugned Notification so as to provide reservation as per the Proviso to Rule 10 of the Rules. Thus, the petitioner has modified the prayer orally. In any case, we would be considering both the issues.

8. To find out as to whether reservation has to be provided for every post or it is only to the post identified under Section 33 of the Act of 2016, for ready reference, Section 33 of the Act of 2016 is quoted as hereunder :

"33. Identification of posts for reservation.—The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34; (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years."

9. As per Section 33 of the Act of 2016, the appropriate Government needs to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies. Therefore, reservation in reference to the respective category of persons with disabilities is required to be identified by the appropriate Government.

10. When the learned counsel for the petitioner was asked as to whether any Notification has been issued by the appropriate Government to identify the posts of Member and President in the District Consumer Disputes Redressal Forum and to provide reservation under Section 34 of the Act of 2016, he could not produce any document, except to refer paragraph 3 of



the Notification under challenge. It is to show that not only the post has been identified, but even the reservation has been provided in reference to Rule 10 of the Rules.

11. To find out as to whether reservation has been provided in the Notification or posts were ever identified for any category of reservation, in reference to Section 33 of the Act of 2016, paragraph 3(d) of the Notification under challenge is quoted as hereunder :

"3. Minimum Eligibility:

(a) ...

(b) ...

(c) ...

(d) Physically Handicapped candidates who can perform the physical activities mentioned in Proviso to Rule 10 of the Tamil Nadu State Judicial (Cadre and Recruitment) Rules, 2007, alone are eligible to apply."

12. The above quoted portion only clarifies that physically handicapped candidates who can perform the physical activities mentioned in Proviso to Rule 10 of the Rules alone would be eligible to apply. The provision aforesaid is not for reservation, but regarding minimum eligibility and that too, not in reference to Rule 10 of the Rules, but Proviso to Rule 10 of the Rules. The Proviso does not provide for reservation. It mandates that a candidate who suffers from disability and who can perform physical activities mentioned in the Proviso alone would be eligible to apply. Therefore, the Proviso aforesaid was required to be read in the context it is given. In fact, the petitioner had initially challenged the Notification in reference to the reservation. Thereafter, he took a 'U' turn and instead of maintaining challenge to the Notification, he made a prayer to give effect to paragraph 3 of the Notification under challenge to provide reservation.

13. The challenge to the notification has been made without showing identification of posts as per Section 33 of the Act of 2016. It is otherwise for the reason that they are tenure posts and therefore, it may not have been identified. The scheme of reservation for persons with disabilities can apply only when the posts are identified under Section 33 of the Act of 2016. We do not find any material to show that the posts in question have been identified for the persons suffering from disabilities so as to issue a direction for reservation. In the absence of it, the prayer made by the petitioner cannot be granted.

14. In the light of the above discussions, we do not find



any merit in the writ petition. Accordingly, the writ petition is dismissed. Consequently, the connected WMPs are also dismissed. There will be no order as to costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To:

1. The Registrar (Recruitment)
High Court, Madras-104.
2. The Principal Secretary,
Government of Tamil Nadu
Cooperation, Food and Consumer
Protection Department, Chennai.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.16097

W.P.No.3472 of 2022 &
WMP.No.3590 and 3592 of 2022

VBM(CO)
SU(16/03/2022)