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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21 /01/ 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.23823 OF 2013

AND

MP NO.2 OF 2013

R.Pradeep Kumar

... Petitioner

Vs.

1. Tamilnadu Public Service Commission

Represented by its Secretary

No.3, Frazer Bridge Road,

V.O.C. Nagar, Chennai - 600 003.

2. Government of Tamilnadu

Represented by Secretary to Government

Revenue Department

Fort St. George, Madras.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the proceedings relating to the selection to Group - I Services 2011 (Service Code No.001) initiated by Advertisement No.257 dated 29.12.2010 of the 1st respondent and quash the same and consequently direct the respondents to work out and notify the number of posts for each reservation category and apply the reservation for SC Arunthathiar correctly as per the rules by adjusting the meritorious selected candidates of SCA against general quota or SC general and make appointments without applying horizontal reservation for women at the preliminary stage and consequently appoint the petitioner to any of the Group - I posts.

For Petitioner : Mr.V.Vijay Shankar

For Respondent-1 : Mr.V.Govardhanan
Standing Counsel for TNPSC

For Respondent-2 : Mr.C.Selvaraj
Government Advocate



O R D E R

Aggrieved over the non-selection to the Posts included in Group-I Services, 2011, under the reserved category of Scheduled Caste (Arunthathiar) the petitioner has preferred the above writ petition.

2.The petitioner belong to Scheduled Caste (Arunthathiar) (hereinafter called as SC (A)). He is entitled to reservation under the Tamil Nadu Act 4 of 2009. The Government of Tamil Nadu earmarked 18% of vacancies for Scheduled Caste (SC) and an internal reservation of 3% earmarked for SC (A). Therefore, from the year 2009, every recruitment to the Government service, candidates belonging to SC (A) are entitled to 1/6th of vacancies earmarked for SC.

3.The first respondent / Tamil Nadu Public Service Commission (TNPSC) vide Notification dated 29.12.2010 called for examination to Group-I Services to different posts viz., Deputy Collector, Deputy Superintendent of Police, Assistant Commissioner of Commercial Taxes, District Registrar, Assistant Director of Rural Development and Divisional Fire Officer. The total number of vacancies notified was 108 and in addition to that, 23 vacancies (22 SC backlog and 1 ST backlog vacancies) were also notified.

4.The petitioner passed the preliminary examination held on 22.05.2011 and the main examinations held on 28.07.2012 and 29.07.2012. The exam results were published on 10.01.2013 and he was called to attend the interview on 05.02.2013. The marks for the written examination and oral tests were published in the TNPSC's website on 06.02.2013. The petitioner secured 290 marks in the written exam and 42 marks in the interview (in total 332 marks). However, the break-up details of individuals called for counselling under different communities were not indicated. Even though the petitioner had secured 332 marks and ranked at 8th place, he was not selected and two candidates, who have secured 319 and 316.50 marks were selected and appointed. It was found that there were lot of infirmities and certain candidates belonging to SC (A) who had secured high marks were selected under General Quota and they were accommodated in the Quota meant for SC (General) and to other posts other than for which they applied. The horizontal reservation (reserved for women) was made at every stage illegally depriving the petitioner from securing selection and appointment. The selection, as such, is contrary to the procedure laid down and



contrary to the judgment of the Hon'ble Supreme Court and hence, the writ petition.

5.The first respondent / TNPSC filed a detailed counter affidavit, wherein it is stated that as per the Notification, totally 8 vacancies were announced for SC(A) including four backlog vacancies and two women vacancies. Nine SC(A) candidates were called for counselling as per the particulars given below:-

S. No.	Ran k No.	Reg.No.	Name	Marks	Community	Post selected	Called for counselling under which category
1	2	00617033	Saravanamurthy, G	435.00	SC (A)	Deputy Collector	GR (G) - 2/22
2	32	99905263	Suresh, N.	376.00	SC (A)	Deputy Collector	SC (A) (G) - 1/6
3	49	99937134	Vijay Babu, C.	369.00	SC (A)	Deputy Collector	SC (A) (G) - 2/6
4	114	01505110	Murugesan, P.	354.00	SC (A)	Deputy Collector	SC (A) (G) - 3/6
5	159	99966027	Vimal Raj, G.	347.00	SC (A)	Deputy Collector	SC (A) (G) - 4/6
6	196	01213068	Kavitha, R.	336.50	SC (A)	Deputy Collector	SC (A) (G) - 5/6
7	215	99823103	Jaya, S.	332.50	SC (A)	A.C. Commercial Taxes	SC (A) (G) - 6/6
8	239	99999048	Maheswari, K.	319.00	SC (A)	D.S.P.	SC (A) (W) - 1/2
9	242	99938189	Devaki, M.	316.50	SC (A)	District Registrar	SC (A) (W) - 2/2

6.The marks secured by the last candidate who have been called for counselling in the following categories are as follows:-

GT (G)	-	22/22	-	384.50
SC (G)	-	29/29	-	346.50
SC (W)	-	4/4	-	340.00



SC (A) (G)	-	6/6	-	332.50
SC (A) (W)	-	2/2	-	316.50

7.The first candidate among the SC(A) category, who had secured 435.00 marks got selected for counselling under GT (G) category and not against vacancies meant for SC(A). The cut-off marks for SC(A) (G) category is 332.50. The petitioner has secured 332.00 marks and fall short by 0.50 marks. Further, since SC(A) female candidates also compete against the vacancies meant for SC(A) male candidates, the selection and appointment of the candidates shown as against Serial Nos.6 and 7 are in order.

8.In G.O.Ms.No.65, Personnel and Administrative Reforms (K) Department, dated 27.05.2009, it has been stated as follows: -

"Now the Government of Tamil Nadu has enacted Act No.4 of 2009, thereby offering reservation to Arunthathiyars on preferential basis within the reservation available for Schedules Castes and the said Act came, roster prescribed in the Government Order third read above is revised as in the Annexure to the order. The Government directed that even after filling up of the required appointments or posts reserved for Arunthathiyars on preferential basis, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the Scheduled Castes other than Arunthathiyars in the inter-se merit among them and if any appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars."

9.The selection was made as per merit and all the vacancies reserved for SC (A) Category are filled up. Roster has been strictly followed as per Tamil Nadu Act 4 of 2009. The women candidates were selected against the vacancies reserved for them and the posts were duly filled up. Further, the candidates placed against Serial Nos.8 and 9 were selected and appointed against SC(A) (W) category as women candidates and the petitioner could not be called for counselling against those



vacancies. Therefore, all the vacancies meant for the post of Deputy Collector were filled up and the petitioner is not entitled to the relief sought for. He lost the race by just 0.05 marks and hence, the writ petition is liable to be dismissed.

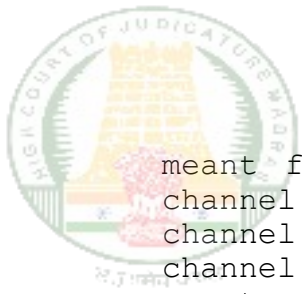
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10. Heard the submissions made on either side and perused the materials available on record.

11. The learned counsel for the petitioner would produce the reply sent by the first respondent under Right to Information Act, 2005 dated 10.02.2014 for the application made on 14.09.2013 and the information reveals the fact that two posts were reserved under SC(A)(W) in Group - I Services examination for 2007-2008, 2009-2010 and 2010-2011 as notified in Advertisement No.257 dated 29.12.2012, out of 131 vacancies in the posts included in Group - I Services. The first post was Assistant Commissioner (CT) (Women) and the second post was District Registrar. It was replied to the second question that for the purpose of admitting the candidates under SC(A)(G) category to the main examination for the posts included in Group-I Services was 183 in the preliminary examination held on 05.06.2011. Therefore, it is clear that the persons who have secured 183 marks alone are entitled to participate in the main examination under SC(A)(G). In reply to question No.3, it is stated that the cut off marks for SC(A)(W) category to write the main examination for Group-I Services was fixed as 159. As admitted by the first respondent in the counter affidavit, the sixth candidate viz., Kavitha, R., has secured 159 marks. But, she was selected under SC(A)(G) category based on the marks obtained in the main written examination.

12. It is relevant to note the judgment of the Hon'ble Supreme Court in NIRAVKUMAR DILIPBHAI MAKWANA VS. GUJARAT PUBLIC SERVICE COMMISSION AND OTHERS [2019 (7) SCC 383] wherein the Hon'ble Supreme Court had categorically declared that a person who avails of an age relaxation at the initial stage will necessarily avail of the same relaxation even at the final stage. In that case, age relaxation was the issue. In the present case, relaxation in the cut off marks in respect of Women category is under issue.

13. From the list produced by the first respondent, it is noted that Serial No.6 - Kavitha, R., was admitted to the main examination after availing the concession of cut off marks under SC (A)(W) category. Therefore, she can contest for the post available under Women category and cannot avail the post



meant for SC (A)(G) category. Once she has taken a particular channel availing some concession, she can pursue the same channel till the final stage and she cannot jump to other channel depriving a candidate, who had secured the cut off marks meant for the other category i.e., SC(A)(G) category, by securing cut off marks above 183. The petitioner was admitted to the main written examination again under SC(A)(G) category after securing more than 183 marks. He is entitled to compete with others under SC(A)(G). If no candidates are available, then the meritorious candidates available in the very same category namely SC can be considered for filling up of the vacancies as per the Government Order issued. But, the candidates mentioned at Serial Nos.6 and 7 who have secured lesser than cut off marks meant for SC(A)(G) category cannot claim selection and appointment to the posts, to which they have applied and admitted to examination.

14.For example, in Post Graduate Medical admission, the students are supposed to exercise an option to a particular speciality. Sometimes, even a more meritorious candidate could not get admission due to scarcity or non-availability of the seats in that particular speciality. Thereby, they would not secure admission to Post Graduate course. Whereas, the students who have secured lesser marks than those who have opted for some other speciality would secure the seats because there are no takers. It does not mean that the meritorious students who have applied for some other speciality should be permitted to take up the course not opted by them.

15.Likewise, in this case, the candidate mentioned at Serial No.6 has opted for a vacancy available under SC(A)(W) category. Having secured 0.05 marks more than the SC (G) category, she cannot usurp the vacancy under SC(A)(G) category. She will be entitled only when no candidates were available for filling up the post under that category. When a candidate like the petitioner is waiting in the queue, he should have been provided with a post and not the candidate mentioned at Serial No.6 - Kavitha, R. Therefore, the selection made by the first respondent is contrary to the rule of reservation and roster maintained by them. The petitioner should have been selected and appointed to the post fell under S.No.6. Thus for, the non-selection of the petitioner is found illegal. The Writ Petition stands allowed.

16.This Court, at the time of admission on 29.08.2013, has directed the respondents to keep one post of Deputy Collector in Group - I Services vacant, subject to the result of



this writ petition. Now that, all the posts were filled up in the selection held in 2007-2008, 2009-2010 and 2010-2011. The petitioner is deprived of his valuable service for the past 15 years.

17. Considering the circumstances, a direction is given to the respondents to create one supernumerary post in the post of Deputy Collector or any other post in Group- I Services to the petitioner on notional basis with effect from the date of appointment given to the candidate mentioned at Serial No.6 - Kavitha, R., and adjust the same in future vacancies. It is made clear that the petitioner will not be entitled to any monetary benefits, but will be entitled to all other attendant benefits. The respondents are further directed to complete the above said process within a period of three months from the date of receipt of a copy of this order.

18. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary
Tamilnadu Public Service Commission
No.3, Frazer Bridge Road, V.O.C. Nagar,
Chennai - 600 003.
2. The Secretary to Government
Government of Tamilnadu
Revenue Department
Fort St. George, Chennai - 600 009.

+1cc to M/s.V.Govardhanan, Advocate, S.R.No.3730
+1cc to M/s.V.Vijay Shankar, Advocate, S.R.No.3891
+1cc to the Government Pleader, S.R.No.4272

WP NO.23823 OF 2013

PL (CO)
SU (01/03/2022)