



W.P.Nos. 5220 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :
23.08.2022

Delivered on :
28.10.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 5220 of 2021
and WMP.No. 5785 of 2021

T.Pothi Madhavan

..Petitioner

Vs.

1.The State of Tamilnadu
Rep.by its Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600009.

2.The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Limited (SIPCOT)
(The Government of Tamil Nadu undertaking)
No.19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai -8.

3.N.Jaiganesh

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring the advertisement No.01/2021, dated 22.01.2021 issued by the 2nd respondent published in Tamil Newspaper Daily Thanthi dated 23.01.2021 changing the reservation category from Scheduled Caste to Backward Class (OBCM) and the appointment made pursuant to the above notification as illegal, arbitrary and unjust and consequently direct the 2nd respondent to proceed with the earlier advertisement No.03/2020 dated 18.11.2020 and complete the selection



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process and appoint the petitioner being the eligible candidate as Assistant General Manager (Finance) within a time frame fixed by this Court and pass such further or other orders.

For Petitioner : Mr.NGR. Prasad
For Mr.K.C.Karl Marx

For Respondent : Mr.S.Rajesh, GA – R1
Mr.M.Karthikeyan – R2
Mr.R.Venkatesh - R3

ORDER

Challenging the advertisement No.01/2021 dated 22.01.2021 issued by the 2nd respondent, the present writ petition has been filed.

2. The case of the petitioner is that the 2nd respondent has invited applications for one post of Assistant General Manager (Finance) reserved for the scheduled caste category preferably Arundhathiyar through advertisement No. 03/2020 dated 18.11.2020 in a Tamil Newspaper Daily Thanthi dated 19.11.2020. As per the advertisement, a candidate who is a Chartered Accountant and registered in ICAI with minimum 10 years experience is eligible to apply. The petitioner having prescribed qualification and belonging to the scheduled caste category applied through online on 21.11.2020. Subsequently, the 2nd respondent has issued a new



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advertisements dated 15.12.2020 and 22.01.2021 for the same post for BC (OBCM) category and appointed the 3rd respondent in the said post on 08.02.2021.

3. According to the petitioner, the 2nd respondent ought not to have changed the category as per whims and fancies from SC to BC (OBCM). The procedure adopted by the 2nd respondent is illegal, arbitrary and against Article 16 of the Constitution of India. Hence the writ petition is filed.

4. The learned counsel appearing for the petitioner has submitted that the petitioner has studied M.Com F.CA., and practicing as a Chartered Accountant for the past 12 years and belongs to Scheduled Caste category. The petitioner is fully eligible to the post of Assistant General Manager (Finance) called for by the 2nd respondent vide advertisement no. 03/2020, dated 18.11.2020 in Tamil Newspaper Daily Thanthi. The 2nd respondent has arbitrarily changed the category from SC to BC (OBCM) and from SC to BC (OBCM) as per rotation and issued advertisements dated 15.12.2020 and 22.01.2021 respectively and appointed the 3rd respondent in the said post by order dated 08.02.2021, which is illegal, arbitrary and liable to be quashed.



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5. Counter affidavit has been filed by the 2nd respondent. The learned counsel for the 2nd respondent in support of the statement made in the counter affidavit, has submitted that the 2nd respondent has adopted the 200 point roster as per Government norms and the methodology adopted for selection process which is well within the ambit of service Rules of SIPCOT. There were four vacancies in the posts of Assistant General Manager in SIPCOT as on 19.10.2020. As per roster, the first rotation of 200 turns i. General Turn – Priority – General, (ii). Scheduled Caste (Arunthathiyars on preferential basis) – Priority, (iii). Most Backward Class & De-notified Community -Priority & (iv) Backward Class (other than Backward class Muslim). Accordingly, the advertisements were published and appointments were made by the respondents.

6. The learned counsel appearing for the respondent has further submitted that the respondent had received only one application through online for the post of Assistant General Manager (Finance) as on 09.12.2020 (last date). The respondent could not process and select the qualified candidate with one applicant, hence the respondent had cancelled the



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notification on 10.12.2020 and pursuant to the advertisement dated 15.12.2020 for the said post called for under the BC (other than Backward Class Muslim) category, the respondent had received three applications, out of which the 3rd respondent was selected for the said post as per prevailing Rules, therefore there is no violation of procedure as contended by the learned learned counsel for the petitioner.

7. The learned Government Advocate appearing for the 1st respondent has relied upon the decision of the *Hon'ble Supreme Court* in the case of *Shakaran Dash Vs. Union of India, dated 30.04.1991 reported in (1991) 3 SCC 47*, wherein the Hon'ble Supreme Court has observed that the candidate included in merit has no indefeasible right to appoint even if a vacancy exists. The relevant portion (para 7 & 11) of the judgment is extracted hereunder;

“ 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State



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has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court.

....

11. So far the decision to adopt a different policy with respect to filling up of the reserved vacancies is concerned the same is justified on account of the special circumstances mentioned in the respondent's affidavits. The decision to depart from the confirmed policy was taken after a consideration by the authorities of the position in regard to unavailability of qualified candidates from year to year adversely affecting the desired strength of the reserved candidates in the services and cannot be condemned on the grounds of arbitrariness and illegal discrimination."

8. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the 1st respondent and the learned counsel for the respondents 2 & 3 and perused the documents available on record.

9. The primordial contention of the learned counsel appearing for the petitioner is that the 2nd respondent has initially issued advertisement dated 18.11.2020 inviting applications for one post of Assistant General Manager (Finance) reserved for Scheduled Caste Category. The 2nd respondent ought to have proceeded with the said notification and appointed the petitioner.



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However, the 2nd respondent has pre-decided to appoint the 3rd respondent and therefore by way second impugned notification has changed the category from SC to BC (OBCM) and appointed the 3rd respondent in the said post.

10. The learned counsel for the petitioner has produced a copy of Schedule -IX of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which prescribes the method of carrying forward of vacancies reserved for the Scheduled Castes and Schedules Tribes candidates by direct recruitment.

Schedule – IX

....

....

While the ban on dereservation comes into effect on the 1st April 1989 in respect of direct recruitment to Group A,B, C & D in case of vacancies in Groups A and B Services, there may be rare and exceptional cases where after the non-availability of suitable candidates belonging to the Scheduled Castes and Scheduled Tribes posts cannot be allowed to remain vacant in public interest, In such situations, the Administrative Department under which the recruitment is being made shall make a proposal for dereservation giving full justification for such action, and consult the Director of Adi Dravidar and Tribal Welfare and the Secretary to Government, Adi Dravidar and Tribal Welfare and obtain the comments on each proposal. After obtaining the comments of the Director of Adi Dravidar and Tribal Welfare and the Secretary, Adi Dravidar and Tribal Welfare Department, the administrative department shall then place the proposal for dereservation along



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with the comments of the Director of Adi Dravidar and Tribal Welfare before a committee comprising the Secretary to Government, Adi Dravidar and Tribal Welfare Department, the Secretary to Government, Personnel and Administrative Reforms Department and the Secretary to Government in charge of the Department to which the recruitment is being made for consideration and recommendation. The recommendation of this Committee shall be placed before the Minister in charge of the Personal and Administrative Reforms Department and the Minister for Adi Dravidar and Tribal Welfare, for a final decision.”

11. In support of the contention, the learned counsel appearing for the petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has discussed the yardstick that would apply to fill in the reserved vacancy and consideration of the dereservation of the reserved post.

In the case of Harish Chandra Ram Vs. Mukh Ram Dubey in Civil Appeal No. 1508 of 1994, datd 18.02.1994 (reported in CDJ 1994 SC 254)

"5. In view of the afore stated resolutions, it is clear that the general candidates will not be considered for promotion to the post for SC, ST or BC reserved candidates. The reserved candidates even if they are not available, it is settled law that unless dereservation is done the vacancy will not be thrown open to the general category....."



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6. Take another illustration. Suppose Public Service Commission advertises for direct recruitment in the year 1980, but actually selects the candidates in 1984. Whether 1980 would be the recruitment year? Answer would be no. Second advertisement was made in 1985 and recruitment was made in 1990. The second recruitment year is 1990 and not 1985. It is thus clear that the recruitment year is the year in which recruitment takes place, but not each three successive years in which the vacancy exists. The same yardstick would apply to fill in the reserved vacancy. Dereservation will be considered only at the end of third recruitment year provided reserved candidates are not available, or considered at the recruitment and found not fit for promotion or carried forward for three successive recruitment years. Then the matter should be placed before the competent authority for consideration for dereservation of the reserved posts and a resolution or order should be made dereserving the posts. Then those alone reserved posts or vacancies will be thrown open for recruitment by the general candidates.

In the case of Mandeep Kumar & Others Vs. U.T. Chandigarh & Others in Civil Appeal No. 1908 of 2022 [reported in CDJ 2022 SC 285].

"20. From the above it is clear that as per Section 7 of 2006 Act, de-reservation for the reserved vacancy by the appointing authority is restricted. The said dereservation may be possibly directed by the Department of Welfare of Scheduled Castes and



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Backward Classes if it is expedient in public interest after recording satisfaction for such de?reservation. In the said contingency the department shall pass an order assigning those reasons. Thus, in the context of 2006 Act also the de?reservation or interchangeability may be possible with a rigour to exercise such power by the department, namely; Department of Scheduled Castes and Backward Classes and not by appointing authority.....”

12. The above proposition would clearly shows that if the department decides to dereserve any particular reserved vacancy, they shall make a proposal to the Government for obtaining recommendation, based on the recommendation, the Minister in charge of the Personnel and Administrative Reforms Department and the Minister for Adi Dravidar and Tribal Welfare will take a final decision.

13. In the present case, at the first instance, the 2nd respondent had published the notification dated 18.11.2020 for the post of Assistant General Manager(Finance) under the category of Scheduled Caste (Arunthathiyars on preferential basis). The petitioner had applied for post, thereafter the 2nd respondent had cancelled the said notification and issued a fresh notification, changing the category from Scheduled Caste (Arunthathiyars on preferential



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basis) to Backward Class (other than Backward Class Muslim). Whether the 2nd respondent had de-reserved the reserved vacancy of Scheduled Caste (Arunthathiyar) to Backward Class (Other than Backward Class Muslim) as contended by the learned counsel for the petitioner is in question in the instant writ petition.

14. On careful reading of the counter affidavit filed by the 2nd respondent, it is stated that totally there were four vacancies sought to be filled in the AGM category in the manner (i). AGM (Legal) – 1 post, (ii). AGM (Finance) - 1 post and (iii). AGM (Projects) – 2 posts. It is further stated that by following 200 roster point system, one post of AGM (Legal) was called for and filled up under the General turn vide notification dated 19.10.2020. Thereafter, applications were called for the post of AGM (Finance) under SC (Arunthathiyars on preferential basis) vide notification No. 18.11.2020. Pursuant to the said notification, only one applicant who is the petitioner herein has applied for the said post. The 2nd respondent had cancelled the said notification on 10.12.2020 in SIPCOT website as they could not process with one application. Thereafter, as per the roster point system, two posts in AGM (Projects) were sought to be filled each under SC



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(Arunthathiyars on preferential basis) and MBC and De-notified community.

Accordingly, the applications were called for vide notification dated 11.12.2020, out of 119 applications, one person under each category were selected and they joined duty on 08.02.2021.

15. It is the statement of the respondent that out of the four posts of AGM, one post of AGM (Legal) and two posts of AGM (Projects) were filled up by following the 200 point roster system and only one AGM (Finance) was not filled. Therefore, based on the roster system, the remaining post of AGM (Finance) has to be filled under the category of Backward Class (other than Backward Class Muslim). Hence the respondent had issued notification dated 15.12.2020 calling for application to the post of AGM (Finance) under Backward class category, the said notification was cancelled by the respondent for the reason that they received only one application and they cannot proceed with the selection process with one application. Again, the 2nd respondent had issued the impugned notification dated 22.01.2021 calling for application to the said post. Out of two eligible applications received, one person namely N.Jaiganesh, who is the 3rd respondent herein, was selected and appointed in the post of AGM (Finance).



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WEB COPY 16. In view of the above statement made in the counter affidavit, it is clear that the 2nd respondent had followed the 200 roster point system to fill up the then existing four AGM posts by direct recruitment. Insofar as the impugned notification is concerned, the 2nd respondent had cancelled the notification and reissued the fresh notification calling for the application for the post of AGM (Finance) from the Backward Class category, since the Scheduled Caste (Arunthathiyar) category has been allotted to AGM (Projects) as per 200 point roster system. Therefore, the procedure followed by the 2nd respondent to fill up the post of AGM(Finance) cannot be considered as dereservation as contented by the learned counsel for the petitioner.

17. However, the submissions made by the learned counsel for the respondent that since the 2nd respondent could not proceed with the selection process with only one application received for the post of AGM (Finance), the 2nd respondent had cancelled the same as per the rules and issued the revised notification changing the category from Schedule Caste (Arunthathiyars on preferential basis) to Backward Class (Other than Backward Class Muslim) cannot be accepted by this Court as the 2nd



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respondent has not given any valid reason for cancellation of the selection process in respect of the post of AGM (Finance) and further the respondent has failed to produce the Rules which they relied upon to substantiate their arguments.

18. On a overall consideration of the submissions made by the learned counsels appearing for the parties concerned and the statement made in the counter affidavit filed by the 2nd respondent, though this Court is in partial acceptance with the method followed by the 2nd respondent in the said recruitment under 200 point roster system, which is meant for direct recruitment, as discussed above, since the respondent has not given any valid reason for cancellation of earlier notification dated 18.11.2020 and in the absence of rules for changing the reserved category of Scheduled Caste (Arunthathiyars) to Backward Class (Other than Backward Class Muslim), which they strongly relied on, this Court is of the view that the change of reserved category in the selection process without any valid and bonafide reason is totally unacceptable and the same requires interference by this Court as it is arbitrary, illegal and in clear violation of Article 14,16, & 19 of Constitution of India. This Court finds some force on the contentions made by the learned counsel for the petitioner.



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19. In view of discussions made in the foregoing paragraphs, the impugned Notification No.01/2021 dated 22.01.2021 issued by the 2nd respondent is quashed and consequently, the 2nd respondent is directed to proceed with the earlier Notification No. 03/2020 dated 18.11.2020 and consider the petitioner for appointment to the post of Assistant General Manager (Finance), if he is otherwise eligible and pass necessary orders as expeditiously as possible, within a period of twelve weeks from the date of receipt of a copy of this order.

20. In the result, the writ petition is allowed. No costs. Connected Miscellaneous Petition is closed.

28.10.2022

Index: Yes/No
Internet : Yes
Speaking Order/Non Speaking Order.
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To
1.The Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600009.
2.The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Limited (SIPCOT)
No.19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai -8.



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D.KRISHNAKUMAR. J

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