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W.P. No. 25765 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 25765 of 2015

and

W.M.P. No. 34331 of 2016

and

M.P. No. 1 of 2015

M.J.R.Sivanesan

... Petitioner

-VS-

1. The State of Tamil Nadu rep. by
The Chief Secretary to the Government,
Fort St. George, Chennai 600 009.
2. The Directorate for the Rehabilitation
of the Differently Abled Persons
Rep. by the Principal Secretary to the Government,
Fort St. George, Chennai - 600 009.
3. The Deputy Director/ Principal,
Government Industrial Training Institute,
Labour and Employment Department,
Alandur Road, Guindy, Chennai – 600 032.
4. M.Venkatesan,
Workshop Assistant,
Government Industrial Training Institute,
Ambattur, Chennai – 600 098.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Third Respondent to appoint the Petitioner to the post of Workshop Assistant in the Government Industrial Training Institute, Ambattur, Chennai – 98 or in any other Institute as per the Petitioner's representation dated 16.12.2014.



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For Petitioner : Mrs. S.R.Meenal
For Respondents : Mr. V.Ravi,
Special Government Pleader
(for R1 to R3)
Mr. C.P.Sivamohan (for R4)

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ORDER

Heard Mrs. S.R.Meenal, Learned Counsel for the Petitioner, Mr. V.Ravi, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. C.P.Sivamohan, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a differently abled person and who holds National Trade Certificate dated 01.07.1998 from the National Council for Vocational Training and has been registered with the employment exchange, had not been selected in the interview conducted on 17.02.2014 for the post of Workshop Assistant in the Government Industrial Training Institute, Ambattur. In that backdrop, he has filed this Writ Petition for directing the Third Respondent to appoint him to the said post as per his representation dated 16.12.2014 in that regard.



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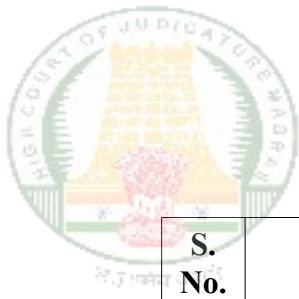
3. In response to the various contentions raised by the Petitioner in the Writ Petition, the explanation of the Third Respondent for the same has been stated in the Counter-Affidavit dated 28.01.2016, which are extracted in the tabular statement below:-

S. No.	Contentions of the Petitioner	Explanation of the Third Respondent
(i)	The action of the Third Respondent in selecting the Fourth Respondent for the post of Workshop Assistant overlooking the claim of the Petitioner is arbitrary and against the mandates of Persons With Disabilities (Equal Opportunities, Protection Rights And Full Participation) Act, 1995.	The rights and claims of the Petitioner were never overlooked by the Committee as falsely alleged by him.
(ii)	The Third Respondent has failed to see that the Petitioner is handicapped and that he ought to have been appointed especially since he is better qualified than the Fourth Respondent.	As this post of Workshop Assistant was not reserved for persons with different abilities, the claim of the Petitioner that in-spite of being differently-abled, he was overlooked for appointment is baseless and misleading.
(iii)	The Third Respondent had erred in stating that the Fourth Respondent had obtained more marks than the Petitioner in the interview and the skill test when the Petitioner was not called for the skill test at all and no test was conducted for him.	The Petitioner avows that he was not called for skill test and no test was conducted for him. But, in his representation under RTI Act, he had demanded the marks obtained by him and the Fourth Respondent. Hence, without attending the interview, he



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S. No.	Contentions of the Petitioner	Explanation of the Third Respondent
		could not demand for the marks of himself and the contesting Respondent. Therefore, the Petitioner is trying to mislead the Court by making false allegation that no test was conducted for him. The Petitioner had scored 51 marks in total in the interview.
(iv)	The Third Respondent had omitted to note that the Petitioner is entitled to age relaxation as a physically handicapped person and that if he misses this opportunity, he would not be called for any other post and would also become age barred.	The Petitioner had failed to understand that the Fourth Respondent, who performed better in the interview held on 27.02.2014 was selected and he was within the qualifying age norms as fixed for the post of Workshop Assistant. The need to apply the provision of age relaxation for appointment applies to over aged candidates if they are selected in the interview. As the Petitioner is not selected, these provisions shall not apply. The Petitioner fails to understand that he is still eligible for age relaxation since he comes under differently-abled category.
(v)	The Third Respondent ought to have seen that reservation for handicapped persons is mandatory and that it cannot be said that	The Petitioner fails to understand that under 200 point roster system, there are specific reservations for every category



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S. No.	Contentions of the Petitioner	Explanation of the Third Respondent
	there is no reservation of this post.	of differently-abled candidates. As this vacancy was not falling under such category, the sponsored candidates will be treated equal as it is done so by this Respondent. Only the candidate who performed better in the skill test and interview has been selected by the Committee.
(vi)	The Third Respondent ought to have seen that the Petitioner belongs to a backward class and that he is very much senior in Employment Exchange Registration.	It is submitted that there are no provisions for award of weightage for employment exchange seniority in recruitment for the post of Workshop Assistant.
(vii)	The Third Respondent had grievously erred in giving a go by the mandatory provisions of various statutes.	It is also submitted that recruitment of Workshop Assistant in Government ITI, Ambattur was done by applying statutory provisions and related rules. They were followed strictly so that right candidate is selected.
(viii)	The Third Respondent himself being the member of High Level Committee for monitoring the employment of handicapped persons ought to have placed the Petitioner in the vacant post.	The Petitioner fails to understand that he cannot be appointed as Workshop Assistant in the trade of Mechanic Motor Vehicle reserved for BC Non Priority Category unless he performs well in the interview. Being a differently-abled will not debar a



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S. No.	Contentions of the Petitioner	Explanation of the Third Respondent
		candidate to be appointed as Workshop Assistant. As the Petitioner had not performed well in the interview, he was not selected by the Committee.

As the submissions of the Third Respondent deserve acceptance, there does not appear to be any infirmity in the selection of the Fourth Respondent to the post of Workshop Assistant in the Government Industrial Training Institute, Ambattur.

4. Learned Counsel for the Petitioner lastly made a fervent plea that the directions issued by the Hon'ble Supreme Court of India in ***Union of India -vs- National Federation of the Blind*** [(2013) 10 SCC 772] relating to the reservation of posts for persons with disabilities had not been followed while making the selection in this case. The relevant passages from that authoritative pronouncement is extracted below:

“55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:



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55.1. *We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.*

55.2. *We hereby direct the “appropriate Government” to compute the number of vacancies available in all the “establishments” and further identify the posts for disabled persons within a period of three months from today and implement the same without default.*

55.3. *The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in department/public sector undertakings/government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.”*

The Government of Tamil Nadu has to necessarily carry out the statutory obligation of identifying the posts for differently abled persons while making



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appointments. Though the appointment of the Fourth Respondent has not been disturbed in this Writ Petition, it is made clear that if the Petitioner has any grievance relating to non-implementation of the provisions of the Rights of Persons with Disabilities Act, 2016, and the directions issued by the Hon'ble Supreme Court of India in that regard, he is not precluded from working out his rights in that regard before the proper forum in the manner recognized by law.

In the result, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

16.09.2022

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Index: Yes/No

Note: Issue order copy by 14.10.2022.

To

1. The Chief Secretary to Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
2. The Principal Secretary to Government of Tamil Nadu,
The Directorate for the Rehabilitation
of the Differently Abled Persons
Fort St. George, Chennai - 600 009.



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P.D. AUDIKESAVALU, J.

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