



WEB COPY



W.P.No.28900 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28900 of 2019
and WMP.No.28645 of 2019

S.Chinnasamy,
S/o.Samyappan

..Petitioner

Vs.

1. The Controller of Examination,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai – 600 003.

2. Tamil Nadu Public Service Commission,
Rep. By the Secretary,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai – 600 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for Writ of Certiorarified Mandamus, calling for entire records pertaining to the Notification No.15/2019 dated 12.04.2019 of the respondents herein and quash the same and consequently directing the respondents to publish the mark of the candidates in the written test and to call the petitioner for certificate verification based on the marks obtained by him in the written examination conducted on 23.06.2019 and thereafter conduct certificate verification for direct recruitment of 40 candidates to



W.P.No.28900 of 2019

the post of Drugs Inspector in the Tamil Nadu Medical Service, pursuant to the Notification No.15/2019 issued by the 2nd respondent.

For Petitioner : Mr.A.Arumugam
for Mr.E.D.Sethupathi
For Respondents : Mr.V.Vaithiyalingam
Standing Counsel for TNPSC

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, to quash the impugned notification No.15/2019 dated 12.04.2019 of the respondents herein and consequently directing the respondents to publish the mark of the candidates in the written test and to call the petitioner for certificate verification based on the marks obtained by him in the written examination conducted on 23.06.2019 and thereafter conduct certificate verification for direct recruitment of 40 candidates to the post of Drugs Inspector in the Tamil Nadu Medical Service, pursuant to the Notification No.15/2019 issued by the 2nd respondent.

2. The respondents Tamil Nadu Public Service Commission [in short, the TNPSC] had issued a notification in Advertisement No.544 in



W.P.No.28900 of 2019

notification No.15/2019 dated 12.04.2019, under which, applications were invited from eligible candidates for direct recruitment to the post of Drugs Inspector in the Tamil Nadu Medical Service and Junior Analyst in the Tamil Nadu Medical Subordinate Service.

3. 40 posts were identified for the post of Drugs Inspector. According to the distribution of the vacancies, apart from the vertical communal reservation, 4% horizontal reservation for differently abled persons under the provisions of the Rights of persons with Disabilities Act, 2016 [in short, the Disabilities Act] have already been made, where one post in the Backward Class i.e., other than the B.C. Muslim has been earmarked for differently abled persons with low vision category.

4. In this context, it is the case and the grievance of the petitioner that the petitioner completed P.G. Degree in M.Pharm, pursuant to the notification No.15/2019 as referred to above for direct recruitment to the post of Drugs Inspector, the petitioner applied online. Since the petitioner is physically challenged person with 45% disability, he had also made an application under the quota of disabled person or differently abled



W.P.No.28900 of 2019

person, he appeared for the written examination on 23.06.2019 and he waited for results to be published.

5. While that being so, the petitioner claimed that he was shocked to see a copy of the proceedings dated 21.08.2019 of the first respondent giving the list of candidates with registration numbers, who have been provisionally called for the certificate verification, in which, the registration number of the petitioner was not found.

6. Thereafter, when the petitioner has enquired about the missing of his registration number in the said list, he was informed that since the petitioner applied for the said post under the differently abled person category (BC), where one post reserved for differently abled person category(BC) was for low vision disabled person, as the petitioner is locomotor disabled person, therefore, that post cannot be given to the petitioner. Since the petitioner has not come into the zone of consideration in any other category, his name was not included.



W.P.No.28900 of 2019

7. Aggrieved over the said action on the part of the respondents

TNPSC, the petitioner has chosen to challenge the very notification issued by the TNPSC dated 12.04.2019.

8. Heard Mr.A.Arumugam, learned counsel appearing for the petitioner, who would submit that, under the provisions of the Disabilities Act, especially, under Section 2(r), the term "persons with benchmark disability" has been defined, which means "a person with not less than forty per cent of a specified disability, where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms as certified by the certifying Authority. Accordingly, the petitioner having 40% of the disability, he comes under the category of persons with benchmark disability and insofar as the benchmark disability is concerned, since the petitioner is having the locomotor disability and the one post under BC category since was reserved for low vision person, such a reservation, according to the learned counsel for the petitioner, could not have been made by the TNPSC in the impugned notification.



W.P.No.28900 of 2019

WEB COPY

9. The reason for making such a challenge against such reservations, according to the learned counsel appearing for the petitioner is that, insofar as the persuasion of the course called B.Pharm degree is a basic educational qualification for the purpose of appointment to the post of Drugs Inspector. The minimum eligibility for differently abled person is less than 40% of low vision, therefore, a person with more than 40% cannot be considered to be a eligible candidate even to pursue the course of B.Pharm degree. When that being so, a person with benchmark disability i.e., more than 40% or 45% as per the mandatory provision, if he is made eligible to be considered for appointment to the post of Drugs Inspector, for which, the basic qualification is B.Pharm degree that would go against the very purpose of having the Drugs Inspector with the qualification of B.Pharm degree and therefore, it is not in consonance with the requirement of the maximum of disability of a person especially the low vision disability person to complete the course of B.Pharm degree. Therefore, on that ground, the learned counsel would contend that the reserved one post in BC category for low vision person for the post of Drugs Inspector as per the notification, which is impugned herein could



W.P.No.28900 of 2019

not have been made and therefore, on that ground, he wants to challenge the said reservation.

10. The learned counsel would further submit that, if the said post is not reserved for low vision disabled person, automatically, it would be transferred to other disability persons like the petitioner, who is having the locomotor disability and in that case, the petitioner could have been in a position to be considered for selection and appointment to the post of Drugs Inspector.

11. The learned counsel would also submit that, such kind of interchange among the differently abled persons in five categories is possible, which is mandated under Section 34 of the Disabilities Act and such an exercise since has not been undertaken by the TNPSC, even on that ground also, the petitioner's challenge made against the impugned notification is to be sustained, he contended.

12. By making these submissions, learned counsel appearing for the petitioner would contend that, insofar as the said reservation made for



W.P.No.28900 of 2019

one post of Drugs Inspector, out of the 46 vacancies, as 40 vacancies initially earmarked, subsequently 46 vacancies were earmarked by the TNPSC for appointment to the post of Drugs Inspector, one vacancy earmarked for BC(OBCM) differently abled person with low vision is not in consonance with the aforesaid position of law, where the person cannot even pursue the basic degree of B.Pharm cannot be expected to be a suitable candidate to be appointed in the post of Drugs Inspector and therefore, on that ground also the petitioner challenged the said reservation. And one reservation would be automatically earmarked for other differently abled persons by way of interchange or even by way of reservation under Section 34 of the Disabilities Act and in that case, since the petitioner, according to him, is the only eligible candidate under the locomotor disability, would be entitled to claim the selection and appointment to the post of Drugs Inspector.

13. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned notification in respect of the challenges as indicated above.



W.P.No.28900 of 2019

14. However, Mr.V.Vaithiyalingam, learned Standing Counsel appearing for the respondents TNPSC has submitted that, insofar as the earmarking of post by way of one post reserved for differently abled person is concerned, it is based on fitments, which has already been allotted in the 200 point roster as per schedule VI of Tamil Nadu Government Servants Conditions of Services Act, 2016 [in short, 2016 Act]. Accordingly, 124th turn of the first rotation falls for disabled persons with low vision and accordingly the said turn i.e., 124th turn in the first rotation as per schedule-VI to the 2016 Act has been earmarked and reserved for differently abled person for backward class with low vision disability.

15. Like that, the next turn will be 136th turn that would be for a SC candidate with LD, CP, LC, DF, AC disability and accordingly that was also reserved.

16. However since there was no eligible candidate to fill up the 124th turn i.e, BC Low Vision disability category, the said vacancy has been carried forward as per the provisions of the Disabilities Act



W.P.No.28900 of 2019

especially under Section 34 of the Disabilities Act. Accordingly, the said vacancy has been carried forward and in the next recruitment once again the Service Commission would try to fill up the said post and still there is no eligible candidate in that category available, then only the question of interchange among the five categories would come, therefore, at this juncture, the plea raised by the petitioner to interchange among five categories of the reservation does not arise, he contended.

17. The learned counsel appearing for the respondents in this regard has relied upon the following averments made in the counter affidavit:

“4. Further, it is submitted that, the post of Drugs Inspector has been identified as suitable for differently abled persons belonging to the following categories – LV, HH, LD, CP, LC, DF, AC in G.O.(Ms).No.20, Welfare of Differently Abled Persons (DAP 3.2) Department, dated 20.06.2018; and among the turns to be utilized for this recruitment (115th to 160th turn of 1st Rotation) as per Schedule VI to the said Act the turns allotted for Differently Abled Persons are 124th turn [BC (Low Vision)] and 136th turn [SC (LD, CP, LC, DF, AC)].



W.P.No.28900 of 2019

WEB COPY

18. I have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials before this Court.

19. First of all, the challenge made by the petitioner against the notification issued by the TNPSC dated 12.04.2019 in notification No.15/2019 is unjustifiable and legally not permissible on two reasons.

20. First reason is that either the vertical reservation for communal categories or horizontal reservation for persons like the differently abled persons has not been done by the TNPSC as it is only a recruiting agency, such kind of reservation flow from the legislation, where the State has legislated for 69% for communal reservation and therefore the vertical reservation for communal categories has been done by the State Government through the legislation, which is being implemented by the TNPSC. Like that, for the 4% horizontal reservation for the differently abled persons also flow from the right conferred on these kind of people under the Disabilities Act. Therefore, such kind of 4% reservation has not



W.P.No.28900 of 2019

been done by the TNPSC, they only execute the mandate issued by the parliamentary legislation viz., Disabilities Act.

21. That apart, the fitments of such horizontal as well as the vertical reservation with reconciliation is to be undertaken only based on the 200 point roster provided in this regard by the State Government as provided under schedule - VI supported by the provisions of the 2016 Act.

22. If we look at the provisions viz., Section 27 of the 2016 Act, which reads thus:

"(b) Out of total number of appointments referred to in clause (a), in the case of appointment made by direct recruitment, one per cent each shall be reserved for persons with benchmark disabilities under categories (i), (ii) and (iii) and one per cent for persons with benchmark disabilities under categories (iv) and (v) both taken together namely:-

(i) blindness and low vision;

(ii) deaf and hard of hearing;

(iii) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and



W.P.No.28900 of 2019

muscular dystrophy;

(iv) autism, intellectual disability, specific learning disability and mental illness;

(v) multiple disabilities from amongst persons under categories (i) to (iv) including deaf-blindness in the posts identified for each disabilities;

and the appointment shall be made in the turn and in the order of rotation specified in Schedule -VI;

(bb) Reservation for persons with benchmark disabilities shall be made in respect of posts identified by the Government in each department, under Section 33 of the Rights of Persons with Disabilities Act, 2016;

(bbb) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, such vacancy shall be filled up by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in a department is such that a given category of person



WEB COPY



W.P.No.28900 of 2019

cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the Government.]

23. Therefore, under Section 27(b) of the 2016 Act, out of total number of appointments referred to in clause (a), in the case of appointment made by direct recruitment, one per cent each shall be reserved for persons with benchmark disabilities under various categories.

24. The provisions further states that reservation for persons with benchmark disabilities shall be made in respect of posts identified by the Government in each Department under Section 33 of the Disabilities Act, 2016. Therefore such a identification of the post for the purpose of reservation for differently abled persons has to be undertaken only by the State Government within the meaning of Section 33 of the Disabilities Act, which has already been done by the State Government, where they have identified the post of Drugs Inspector as one of the post, for which, reservation could be made for differently abled persons. Therefore, such a challenge could be made by the petitioner only against the decision making process on the part of the State Government, who exercised their



W.P.No.28900 of 2019

power under Section 33 of the Disabilities Act and not the notification issued by the TNPSC, which is only a recruiting agency executing the decision already been made by the State Government.

25. That apart, once the candidate participated in the selection process by making an application pursuant to the notification or verification of Certificates called for by the recruiting agency and at the middle of the game i.e., middle of the selection process such candidate cannot challenge the provisions of the notification since it is a settled proposition that the prospects issued by the recruiting agency is a law to be enforced between the recruiting agency as well as the candidate, who participated in the selection process by accepting the conditions of notification issued in this regard by making the application. This position has been well settled in catena of decisions by the Hon'ble Supreme Court as well as by this Court.

26. For these two prime reasons, the petitioner cannot have a successful challenge against the notification issued by the TNPSC.

27. That apart, on merits also, the claim made by the petitioner that



W.P.No.28900 of 2019

such a reservation could not have been made for more than 40% differently abled person in the low vision category is concerned, even such kind of ground cannot be urged for taking the challenge against the TNPSC notification, where they earmarked the vacancies only on the basis of 69% reservation as well as 4% reservation for differently abled persons.

28. The criteria fixed by the Educational Institutions or the Authorities to fix such criteria for admission in the Education Department or Institutions are entirely different from the criteria fixed or eligibility fixed by the employer for getting appointment in public employment, which is also a settled proposition of law that the eligibility conditions to be fixed by the employer cannot be questioned, if it does not suit to a particular candidate or a group of candidates.

29. Insofar as the reservation of one post of Drugs Inspector under BC category for differently abled person to a low vision differently abled person is concerned, the justification given by the TNPSC as has been stated in paragraph 4 of the counter affidavit is to be accepted because in



W.P.No.28900 of 2019

the 200 point roster, in the earlier recruitment upto 114 turn, if already exhausted, in the present recruitment, they started from 115th turn and end at the 160th turn, between 115th turn and 160th turn, there are two vacancies earmarked for differently abled persons i.e., 124th and 136th turn, 124th turn is meant for BC, Low vision and 136th turn is meant for SC(LD, CP, LC, DF, AC). This is available in Schedule VI of the said 2016 Act in consonance with Section 27 of the said Act. Therefore, the 124th turn falls under the present recruitment, since it has to be reserved for BC Low Vision and that has been accordingly reserved by the TNPSC as reflected in the notification itself. Therefore, such a reservation notified by the TNPSC cannot be found fault with, as it is strictly in consonance with the aforesaid legislation especially under Schedule VI of the 2016 Act.

30. Insofar as the interchange plea raised by the petitioner's counsel is concerned, such interchange would not come in the first recruitment and this has been clearly mentioned in Section 34 of the Disabilities Act itself, where they have stated that in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable persons with



W.P.No.28900 of 2019

benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, such vacancy shall be filled up by appointment of a person, other than a person with disability.

31. Therefore, it has become very clear that, in the first recruitment if such suitable candidate with such benchmark disability is not available for filling up the post earmarked for disabled persons, the recruiting agency has to carry forward to the next recruitment and even in the next recruitment, if there is no suitable candidate specifically earmarked for a particular disability, for which the post was reserved, then only the interchange would be possible and even after such interchange, if there is no person available, then the post can be filled by another person. This is the mandate given under the Disabilities Act, against which, the petitioner cannot seek for any interchange of the post earmarked for low vision persons. Hence, that ground also raised by the learned counsel appearing



W.P.No.28900 of 2019

for the petitioner is liable to be rejected and accordingly it is rejected.

WEB COPY

32. For all these reasons stated above, this Court finds no plausible reason to interfere with the notification as has been challenged in the present writ petition. Hence it fails and accordingly, this writ petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.

23.08.2022

Index : Yes
Internet: Yes
mp



WEB COPY



W.P.No.28900 of 2019

R.SURESH KUMAR.J,
mp

To

1. The Principal Secretary to Government,
Transport Department,
Fort. St. George, Chennai – 600 009.
2. The Managing Director,
State Express Transport Corporation (TN) Ltd.,
Pallavan Salai, Chennai – 600 002.

W.P.No.28900 of 2019

23.08.2022