



W.P.(MD)Nos.1988 of 2020 and 7562 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)Nos.1988 of 2020 and 7562 of 2021
W.M.P(MD).Nos.1657, 1658 and 1661 of 2020,
5735, 5736 and 5738 of 2021**

P.Ramasamy

... Petitioner in both petitions

Vs.

1. The State of Tamil Nadu
rep.by its Principal Secretary,
Department of School Education,
Secretariat,
Chennai-09.

2.The Chairman,
Tamil Nadu Teachers Recruitment Board,
College Road,
Chennai-06.

3.The Member Secretary,
Tamil Nadu Teachers Recruitment Board,
College Road,
Chennai-06.

... Respondents in both petitions

PRAYER in W.P(MD).No.1988 of 2020: Petition filed under Article 226 of



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the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.10329/R5/2019 dated 10.01.2020 on the file of the respondent No.3 and quash the same as illegal and consequently direct the respondents to appoint the petitioner as Post Graduate Assistant, the Department of Commerce in the Direct Recruitment for the post of Post Graduate Assistant/Physical Education Director Grade-I in School Education and other departments for the year 2018-2019 with all consequential benefits within the time period stipulated by this Court.

PRAYER in W.P(MD).No.7562 of 2021: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Notification/Advertisement No.01/2021 dated 11.02.2021 on the file of the respondent No.2 and quash the same as illegal and consequently direct the respondents to appoint the petitioner as Post Graduate Assistant, the Department of Commerce in the Direct Recruitment for the post of Post Graduate Assistant/Physical Education Director Grade-I in School Education and other departments for the year 2020-2021 with all consequential benefits within the time period stipulated by this Court.



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In both petitions

For Petitioner : Mr.T.Lajapathi Roy
for Mr.T.Thirumurugan

For Respondents : Mr.J.Ashok
Additional Government Pleader
for R1
Mr.V.R.Shanmuganathan
Standing Counsel for R2 and R3

C O M M O N O R D E R

The issue arising in the present writ petitions is one and the same and they are disposed of by way of this common order.

2. The petitioner has filed a writ petition in W.P(MD).No.1988 of 2020 challenging the impugned order, dated 10.01.2020 on the ground that the petitioner was not selected in the general turn and the said post is treated as backlog vacancy for the persons with disability Grade-II, namely, Deaf and hard of hearing preferential status in the subsequent notification.



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3. The case of the petitioner is that the petitioner belongs to Schedule Caste-Sakkiliyan (SC-A) Community and he has completed M.Com., M.Ed., While so, on 12.06.2019, the second respondent has issued a Notification for direct recruitment to the post of Post Graduate Assistant/Physical Education Director Grade-I in School Education and other Departments for the year 2018-2019 and they have called for applications to fill up three vacancies in Kallar Reclamation Department, 134 vacancies with regard to the persons with disabilities, 336 vacancies for backlog vacancies and 1657 vacancies as current vacancies. In the Department of Commerce, there were 83 vacancies and among them, two posts were reserved for Schedule Case Arunthathiyar Community i.e., SCA-1 and SCAT (Tamil Medium)-1. The petitioner had applied for the said post and had attended the computer based examination. On 08.11.2019, he attended for certificate verification and secured 73 marks. Thereafter, the respondents Board have published the provisionally selected candidates list. However, the petitioner was not selected and one Saravanan, who secured 71 marks, was selected in the category of SCA-T. Another vacancy which was reserved for SCA-1 has not been filled up. Though the petitioner has



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secured more marks than that of the said Saravanan, he was not selected.

Hence, on 27.11.2019, he had sent a representation to the first respondent.

However, on 10.01.2020, the third respondent has issued the impugned order stating that the Schedule Caste Arunthathiyar SCA-1 vacancy is reserved to the persons with disability Grade-II, namely, Deaf and hard of hearing and issued a fresh notification for the very same post. Challenging the same, the writ petition in W.P(MD).No.1988 of 2021 has been filed.

4. The learned counsel appearing for the petitioner would submit that the earlier notification did not disclose that the Schedule Caste Arunthathiyar (SCA-1) vacancy in the Department of Commerce is allotted to priority category and without disclosing the priority category, they simply notified in the earlier notification that the Schedule Caste Arunthathiyar (SCA-1) vacancy is for the general turn. Believing the said notification, the petitioner participated in the selection process and secured 73 marks and he attended the certificate verification. In the case of ***State of Punjab vs. Davinder Singh*** reported in ***2020(8) SCC 1***, the Hon'ble Apex Court has clearly held that “*the very purpose of providing reservation is to take care*



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of disparities. The Constitution takes care of inequalities. There are unequals within the list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes”.

5. In the present case, in violation of the principles laid down by the Hon'ble Apex Court, the post in the Department of Commerce earmarked as Schedule Caste Arunthathiyar (SCA-1) was not filled up as per the earlier notification. However, the same was filled up by issuing the subsequent notification/impugned order and in the subsequent notification, it has been stated that the Scheduled Caste Arunthathiyar (SCA-1) is reserved for the disabled persons. The subsequent notification issued by the third respondent is not sustainable one without filling up the vacancy as per the earlier notification and it is contrary to the decision of the Hon'ble Apex Court.

6. The learned counsel appearing for the respondents would submit that admittedly, the Board Resolution has issued a Notification on 12.06.2019 inviting the applications for direct Recruitment to fill up the



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Post Graduate Assistants in various subjects and Physical Education Directors Grade-I for the year 2018-2019. The Board has received applications through online mode till 15.07.2019. The Computer Based Test was conducted from 27.09.2019 to 29.09.2019 and the petitioner has attended the test for the post of Post Graduate Assistants in Commerce. The marks obtained by all the candidates were released on 21.10.2019 and the petitioner has secured 73 marks. Thereafter, the list of candidates shortlisted for certificate verification for the subject of commerce was released on 25.10.2019. Since the petitioner has secured the eligible Cut off marks, his name has been included in the certificate verification list. Thereafter, the Board conducted certificate verification for the shortlisted candidates in the ratio of 1:2 on 08.11.2019 and 09.11.2019. On 20.11.2019, the Board released the Provisional Selection list for 12 subjects including Commerce, based on the marks and as per the Rules in vogue and the Board has notified two vacancies in SCA-1 and SCA-T. Under SCA-T category, one Saravanan was selected and the other SCA-1 seat was not filled up, since there was no candidate available.



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7. He would further submit that as per Tamil Nadu Government Servants (conditions of Service) Amendment Act, 2017, reservation of appointments shall be applicable and as per G.O(Ms).No.10, Welfare of Differently Abled Persons (DAP 3.2) Department, dated 20.06.2018, the Benchmark disabilities are applicable with respect to the notified posts. Hence, in the SCA vacancy, 1% reservation has been allotted to Category II-6 Deaf and Hard of hearing as per the existing Roster point. The provisions have been made in the Tamil Nadu Government (Conditions of Service) Act, 2016, in which, amendment to Section 27 Rule (bbb) clearly states that “ *where in any recruitment year any vacancy cannot be filled up due to non-availability of a suit person with benchmark disability or for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year*”. Hence, as per the said Provision, since there is no suitable person available to fill up the vacancy earmarked for SCA-HH category in 2019 recruitment, the said post has been carried forward and has been earmarked as backlog vacancy in the subsequent notification. Hence, the subsequent notification issued by the third respondent cannot be interfered with by this Court.



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8. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent and Mr.V.R.Shanmuganathan, learned Standing Counsel appearing for the respondents 2 and 3.

9. The facts in the present case are not in dispute. Admittedly, the petitioner belongs to Schedule Caste Sakkiliyan (SC-A) Community and he participated in the selection process for the post of Post Graduate Assistant in the Department of Commerce for the year 2018-2019. He secured 73 marks and also attended certificate verification. However, his name was not included in the selected candidates list.

10. The issue arising in the present writ petition is that whether the respondents had disclosed the priority category in the earlier notification with regard to the Schedule Caste Arunthathiyar (SCA-1) vacancy. In order to ascertain the very fact, this Court has perused the entire notification. On perusal of the entire notification, it reveals that two posts were earmarked



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for SCA-1 and SCA-T and nowhere in the earlier notification, it has been disclosed that the said SCA-1 post is allotted to priority category. In the absence of any disclosure in the notification, the petitioner believed that the said post is earmarked for SCA (general) and he participated in the selection process. However, without any intimation, the respondents had unilaterally converted the said post as priority category and reserved the said post for backlog vacancy by issuing another notification which is not sustainable one. Even as per the amendment to Section 27 Rule (bbb), if there is no eligible candidate to the priority category, the priority category can be filled up by way of interchange. However, in the present case, the respondent in the earlier notification makes it clear that the said post is for SCA(general) and without filling up the said post as per the earlier notification, issuance of the subsequent notification by stating that the post is reserved for backlog vacancy, is not sustainable one. Hence, the impugned order of the third respondent passed in Na.Ka.No.10329/R5/2019 on 10.01.2020 is set aside insofar as the petitioner is concerned and the respondents are directed to fill up the post of Post Graduate Assistant under SCA (General), as per the marks secured by the participants.



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11. Accordingly, W.P(MD).No.1988 of 2020 is allowed.

12. In view of the order passed in W.P(MD).No.1988 of 2020, nothing survives for further adjudication in the subsequent writ petition filed by the petitioner in W.P(MD).No.7562 of 2021. Accordingly, the same is closed. No costs. Connected miscellaneous petitions are closed.

20.12.2022

Index : Yes / No

Speaking Order : Yes / No

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To

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M.DHANDAPANI,J.

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