

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10582 of 2021
and
W.M.P.(MD)No.8239 of 2021

S.Nandhini

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
School Education Department,
Secretariate, Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.
- 3.The Director,
Most Backward Classes & De-notified Communities,
Chepauk, Chennai – 600 005.
- 4.The Chairman,
Teacher Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Complex, College Road,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the

records pertaining to the impugned order passed by the 4th respondent vide his proceedings in Rc.No.4235/E3/2018, dated 29.04.2021 and quash the same as illegal and consequently direct the Respondents No.1 and 4 to transfer the Petitioner to the Tamil Nadu Higher Secondary Educational Services of the 2nd Respondent School Education Department as P.G. Assistant (Tamil) in the vacancies available in the Government Higher Secondary Schools based on her 76 marks under MBC/DNCG Category and pursuant to the Notification of the 4th respondent in Notification No.3/2017, dated 09.05.2017 with all attendant benefits like Seniority within a time fixed by this Court.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.S.Shaji Bino,
Spl. Government Pleader for R1 to R3.
Mr.V.R.Shanmuganathan for R4.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner applied in response to the recruitment notification issued by the fourth respondent for the year 2016-2017. The writ petitioner belongs to MBC/DNCG category. Before the selection process could be finalized, Tamilnadu Association for the Rights of All Types of Differently Abled and Caregivers filed W.P.No.13350 of 2017. A direction was passed on 07.08.2017 in the following terms:-

“Pending categorization of posts and determination of suitability of differently abled persons with different degrees of disabilities in reserved posts, which would only be 4% of the total number of posts i.e., approximately 140 posts out of 3456 posts advertised, the respondent authorities may fill up the posts of the “General” Category and posts reserved for categories other than the differently abled. The reserved posts shall not be filled up for the time being to avoid exclusion of persons with higher degrees of disabilities, who might on reconsideration be considered eligible.”

3.Purporting to implement the said interim direction, the writ petitioner herein was not selected. The writ petition itself came to be disposed on 15.12.2017 and thereafter, the case of the writ petitioner was taken up. By then, the selection process had been substantially completed. It is well settled that the persons who scored higher marks are offered employment in the School Education Department. The persons who comparatively scored lesser marks are appointed in Kallar Reclamation Schools. The petitioner was selected on 06.07.2018 and she joined service in the Government Kallar Higher Secondary School, Anaipatti, Dindigul District. Now the petitioner seeks transfer to School Education Department. Since her request was rejected, the present writ petition came to be filed.

4.It is not disputed that the petitioner scored marks higher than the cut off marks for MBC/DNCG category. Therefore, the petitioner ought to have been considered only as against the said category vacancies. It is also beyond dispute that the persons who scored lower than the petitioner had been appointed in the School Education Department. This mistake had occurred during the selection process and it has to be necessarily undone.

5.My attention is drawn to the order dated 23.12.2020 made in W.A.No.3019 of 2019. That was also a case where on account of error that had taken place during selection process, the writ petitioner was appointed in Kallar Reclamation School. When the writ petitioner was willing to forego her seniority, the Hon'ble Division Bench directed that the writ petitioner shall be posted in any one of the vacancy available in the Government Higher Secondary School in Cuddalore District. Before me also, the writ petitioner states that she will not insist on seniority. Recording the said undertaking, I direct the first respondent to post the writ petitioner in any one of the vacancies available in any of the Government Higher Secondary Schools in Tamilnadu.

6.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

13.09.2022

Index : Yes / No

Internet : Yes/ No

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G.R.SWAMINATHAN, J.

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