



W.P.(MD)No.2112 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 2112 of 2016

and

W.M.P.(MD)Nos.1839, 15868,

1837 & 1838 of 2016

V.Ponnuchamy

... Petitioner

Vs.

1. Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai – 600 003.
2. The Agricultural Production Commissioner,
and Secretary to Government,
Agriculture Department,
Secretariat, For Saint George, Chennai -600 009.
3. The Director of Agriculture,
Agriculture Department,
Chepauk, Chennai – 600 005.

.... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Mandamus*, to call for the records pertaining to Impugned Selection List on the file of the respondent No.1 dated 18.01.2016 and quash the same as illegal and consequently for a direction, directing the Respondents to rework the list of selected candidate by following the rule of reservation in the light of the Judgment of the Hon'ble Supreme Court in *Rajesh Kumar Daria Vs Rajasthan Public Service Commission and others reported in (2007) 8 SCC 785* and appoint the Petitioner in the post of Assistant Agricultural Officer.

For Petitioner : Mr.T.Aswin Raja Simman, for
M/s.T.Lajapathi Roy

For R-1 :Mr.C.Panneer Selvam

For R-2 & R-3 : M/s.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed for issuing *Writ of Certiorarified Mandamus*, to quash the Impugned Selection List on the file of the respondent No.1 dated 18.01.2016 and for a consequential direction to the Respondents to rework the list of selected candidate by following the rule of reservation in the light of the Judgment of the Hon'ble Supreme Court in *Rajesh Kumar Daria Vs*



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Rajasthan Public Service Commission and others reported in (2007) 8 SCC 785

and appoint the Petitioner in the post of Assistant Agricultural Officer.

2. Heard Mr.T.Aswin Rajasimman, for M/s.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.C.Panneer Selvam, learned counsel appearing for the 1st respondent and M/s.Farjana Ghoushia, learned Special Government Pleader, learned counsel appearing for the 4th respondent.

3. The petitioner is qualified to be posted as Assistant Agricultural Officer. He has completed SSLC in the year 2006 and Higher Secondary Course in the year 2008 and completed Diploma in Agriculture in the year 2010 and belongs to MBC community. The 1st respondent has called for 417 posts of Assistant Agricultural Officer, vide notification, dated 30.01.2015. The petitioner has participated in the selection process and his total aggregate mark is 286.75. The petitioner was selected and kept in the Reserved List in Serial No.3.



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4. The contention of the petitioner is that the 1st respondent has not adopted proper method of reservation. Originally 84 vacancies were notified for Most Backward Class candidates. Out of those 84 vacancies, 17 were reserved for women, 2 for Destitute Widow and 4 for PSTM Women and 1 for PSTM Women/Destitute Widow. Hence, 24 posts in Most Backward Class were reserved for women. But 33 Women candidates have been selected out of 84 posts which was originally notified for MBC community. This shows that the rule of reservation has not been properly followed in the selection and the 1st respondent has selected 33 women candidates in Most Backward Class, which is more than the reserved posts of 24 for women in MBC. The petitioner relied on the Judgment rendered by the Hon'ble Supreme Court of India, in the case of ***Rajesh Kumar Daria Vs Rajasthan Public Service Commission and others, reported in (2007) 8 SCC 785***, wherein the Hon'ble Supreme Court held that, there are two types of reservations, one is “Vertical Reservations” and the other one is “Horizontal Reservations”. The reservations for Schedule Castes, Scheduled Tribes and other Backward Classes may be called as vertical reservations whereas reservations for physically handicapped can be referred to as horizontal reservations. The respondents ought to be accommodated vertical reservations



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and thereafter, accommodate the horizontal reservation. The method of implementing special reservations is explained in the case of *Anil Kumar Gupta Vs. State of Uttar Pradesh (1995) 5, SCC 173*. In the present case, the respondents without filling the general quota have accommodated women candidates under Tamil Medium reservation quota, which is against the Judgment rendered in the case of *Anil Kumar Gupta*. Hence, the petitioner prays to allow the writ petition and directed the respondents to accommodate the petitioner in the vacant post.

5. The respondents have filed counter and additional counter. The respondents have narrated the method of reservation followed by the Tamil Nadu Public Service Commission. The claim of the respondents is that the women candidate general also be entitled for 30% and the remaining 70% of vacancies along with the male candidates. This is a rule that has been stated under Rule 21 (b) of the General Rule of Tamil Nadu State and Subordinate Service Rules. Hence, 30% reservation for women does not restricted the selection in the particular post. By applying the above rule 30 women candidates were provisionally selected for the post. Therefore, the claim of the respondents is that



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they followed the reservation rules i.e., General Rule of Tamil Nadu State and Subordinate Service Rules and hence, prays to dismiss the writ petition.

6. The issue for reservation for women was considered by the Principal Bench of this Court, in ***W.P.No.6201 and its Batch., dated 07.09.2022 in the case of Satheesh Kumar Vs. the State of Tamil Nadu and others***, wherein, this Court held as under:

....

“35. It is unfortunate that the TNPSC and the State Government have not applied the proposition of law laid down by the Apex Court in all the cases clarifying the vertical and horizontal reservations. It is despite a clear illustration given by the Apex Court for arrangement of the merit list for filling up the posts by applying vertical and horizontal reservations in the case of Anil Kumar Gupta, supra. The action of the TNSPC and the State Government to first arrange the list of female candidates to the extent of 30% of the posts in compliance of Section 26 of the Act of 2016 and then to proceed further to arrange social reservation is opposed to the judgments of the Apex Court and even the constitutional framework. If the interpretation of Section



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26 of the Act of 2016 is to en bloc reserve 30% of posts for the female candidates at the first stance and thereafter to proceed further, then the said provision is not constitutionally valid and thus needs to be struck down. It can be saved only when it is given interpretation to arrange reservation for women in the manner required and explained by the Apex Court in the judgments referred above and not in the manner interpreted by the respondents.

36. The procedure adopted by the respondents in arranging the reservation for female candidates is even ignoring the illustration given by the Apex Court which requires accounting for the female candidates even who find place in the Open Category to address the list of Open Category. It is, however, with a clarification that if a female candidate of reserved category finds place in the order of merit, while arranging the list of Open Category, it would not be counted towards her reservation for social reservation, but if a female candidate finds place in the list arranged while giving social reservation, then she would be counted towards the reservation meant for the female candidates in her own category of social reservation, as it is now arranged for each category, i.e., Open Category, Scheduled Castes and Scheduled Tribes, Backward Class Muslims,



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Backward Classes, Most Backward Classes, etc.

...

42.The exercise aforesaid would be undertaken after further taking care of the position that assuming if the scheduled caste category of the candidates arranged in the vertical reservation are all male, then to give reservation to females of that category, the male candidates from the list arranged vertically would be removed from the bottom to give place to the female candidate of scheduled caste category to the extent of their reserved post. The same proposition would apply even for the Open Category female candidates. If in the Open Category List, the female candidates of Open category could not find representation to the extent of their quota of reservation, then the elimination of the appropriate number of male open category candidates would be made to make room for the female candidates of Open Category to make good the shortfall of posts of their reservation. However, if open category female candidates find place appropriate to the extent of reservation meant for them while arranging the Open Category list, then no further reservation would be provided to them.”



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7. Since the respondents have admitted that they had first granted 30% women candidate general and then the remaining 70% to the male candidates by following Rule 21 (b) of the General Rule of Tamil Nadu State and Subordinate Service Rules and has selected 30 women candidates, which is against the decision of the Hon'ble Supreme Court in Anil Kumar Gupta. Hence this Court is of the considered opinion that the respondents have followed a reservation which is against the decision of the Hon'ble Supreme Court and against the reservation policy and the selection list ought to be cancelled.

8. This petitioner is in the reserved list and hence the petitioner ought to be accommodated. In view of the foregoing reasons, this Court is not inclined to set aside the entire selection process, since, the selected candidates are already working for the past five years. Since the petitioner is reserved list in Serial No.3, already Serial No.1 & 2 were already accommodated and they are also working and the petitioner is the next person to be accommodated from the reserved list. Hence the 1st respondent is directed to forward the petitioner name to the other respondents, within a period of three weeks from the date of receipt of a copy of the order. Thereafter, on receipt of the same, the respondent Nos.2 & 3 are



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directed to grant appointment order to the petitioner, within a period of three weeks thereafter. It is made clear that the petitioner is entitled to all the service and monetary benefits, from the date of appointment order.

9. With the above observation, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Agricultural Production Commissioner,
and Secretary to Government,
Agriculture Department,
Secretariat, For Saint George, Chennai -600 009.
2. The Director of Agriculture,
Agriculture Department,
Chepauk, Chennai – 600 005.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.2112 of 2016**

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