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W.P.No.2741 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.2741 of 2019
& WMP No.3004 of 2019

M.Elumalai

... Petitioner

Vs.

Tamil Nadu Forest Uniformed Services
Recruitment Committee
Represented by its Secretary,
Panagal Maligai, Saidapet,
Chennai – 600 015.

.... Respondent

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the respondent TNFUSRC/21740/2018 dated 04.02.2019 and quash the same as illegal and direct the respondent to include the name of the petitioner under MBC category for the Direct Recruitment for the post (s) of Forest Guard and Forest Guard with Driving Licence in the Tamil Nadu Forest Department as per Advertisement No.1/2018 dated 06.10.2018 – Notification No.2 and consider his case for selection and appointment process.

(Prayer amended vide order dated 21.04.2022 made in WMP No.9966 of 2022)



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W.P.No.2741 of 2019



For Petitioner : Ms.AArulmozhi
For Respondents : Mr.S.Ravikumar
Special Government Pleader

ORDER

This Writ Petition has been filed originally in the nature of Mandamus seeking a direction to the respondent Tamil Nadu Forest Uniformed Services Recruitment Committee, Chennai, to include the name of the petitioner M.Elumalai, S/o Muniyappan residing at 236, Pillayar Kovil Street, Sathanur Post & Village, Thandrapattu Taluk, Thiruvannamalai District under MBC PSTM category for the Direct Recruitment for the post of Forest Guard and Forest Guard with Driving Licence in the Tamil Nadu Forest Department (Advertisement No.1/2018 dated 06.10.2018 – Notification No.2) and permit the petitioner to participate in the process of verification of the certificates and in the consequential selection process.

2. The Writ Petition with the aforementioned relief was filed on 29.01.2019. In the affidavit filed in support of the Writ Petition, which naturally had stated the facts as on the date of filing of the Writ Petition, it had been stated that the petitioner, who belonged to Most Backward Class (MBC) community, had applied for the post of Forest Guard and Forest Guard with driving licence by way of direct recruitment as called for in Notification No.1/2018 dated 06.10.2018.



3. Unfortunately, while filling up the application form, he had filled with respect to his community as Backward Class (BC) community. There was an obligation that supporting documents will also have to be simultaneously uploaded and the list of documents will also have to be appended to the application form. Hence, the petitioner has uploaded the certificate relating to his community, which revealed that he belonged to Most Backward community and not Backward Class community.

4. This mistake done by him in filling up the form had led him to approach this Court stating that though he had obtained total marks of 76.73%, unfortunately he was not included when posts were filled up from the reserve list of persons against those who had either not joined or joined and left the post thereafter.

5. The petitioner was not called for, for verification of certificates and was not permitted to participate in the selection process. At that juncture, realising his mistake that he had filled in the application form indicating his community as Backward Class but uploaded the certificate categorising him as Most Backward Class, he had submitted a representation to the respondent on 23.01.2019 seeking to include his name in the MBC Category. This was, at the stage when the Writ Petition was filed in the nature of mandamus.

6. A learned single Judge of this Court, at the time when the Writ



Petition came up for consideration, on examination of the facts, particularly the certificate produced by the petitioner revealing that he belonged to MBC community, had directed the respondents to permit him to participate in the process of certificate verification and also in the further selection process.

7. It must again be reiterated that this was in the second round of selection process. In the first round, the process was completed, but still there were vacancies and therefore candidates were drawn from the reserve list. It was at that stage the petitioner felt aggrieved by not being called for, for verification of certificates. It must also be mentioned that the petitioner also claimed reservation under persons who studied through Tamil Medium (PSTM). Thus, he sought appointment more specifically under MBC (PSTM) category and not under MBC general category.

8. In spite of the directions issued by this Court, the grievance of the petitioner continued and the respondent proceeded further with the appointment process, which led to the petitioner issuing a notice for contempt of Court and also filing an application for contempt committed by the respondent in not complying with the directions of the Court.

9. In the meanwhile, the process were followed up by the respondent and the posts were filled up by rejecting the representation filed by the petitioner vide order dated 04.02.2019. This necessitated the petitioner to file



an application seeking amendment of the prayer in the Writ Petition from one of Mandamus to Certiorarified Mandamus. Accordingly, by order dated 21.04.2022 in WMP No.9966 of 2022, the prayer in the Writ Petition was amended to one of Certiorarified Mandamus to call for the records of the respondent dated 04.02.2019 and quash the same and to direct the respondent to include the name of the petitioner under MBC category for the aforementioned post and also to consider his case for selection and appointment process.

10. A counter affidavit had been filed on behalf of the respondent, which was filed when the relief in the Writ Petition was for a mandamus and before the process of verification of certificates. In the counter affidavit, it had been stated that the said post of Forest Guard and Forest Guard with driving licence was selected after following process of written examination, certificate verification, physical standards measurement, endurance test and medical examination.

11. It had been contended that under the information brochure, it had been very specifically stated that the candidates who furnish false particulars with respect to, among other aspects, community, shall not be considered for selection. It was also stated that mere admission to write the examination would not confer any candidature the right to seek appointment. It was also



stated that the candidates had also declared that all the information furnished were correct and that if any information was found incorrect, action may be taken against them.

12. It was stated that thereafter, the written examination was conducted on 10.12.2018 and 11.12.2018 in four batches and that certificate verification and other aspects were also conducted between 20.02.2019 and 25.02.2019, except 23.02.2019. It had also been stated that the list of candidates selected for the post of Forest Guard, Forest Guard with driving licence and Forester had been published. It was also stated that appointment orders were also issued for the aforementioned posts. This counter affidavit was presented in Court on 19.06.2019.

13. On examination of the said counter affidavit, a learned single Judge of this Court by order dated 02.09.2022, had once again reduced the facts and had thereafter stated as follows:

'(4) In this context, it is the contention of the learned counsel for the petitioner that though the cut off mark for the MBC category was 77.48 and 77.05 and the petitioner obtained only 76.73 marks, suppose another person who got the same marks like petitioner or lesser marks than the petitioner, has been included in the wait list and subsequently on request, if the wait list is operated and from among the wait list candidates if the candidates who got lesser marks than the petitioner has been appointed, then in that case, the petitioner also shall be appointed. Therefore, in order to verify the same, the relevant particulars as to whether any wait list was prepared and if so, the list of candidates and their respective marks they obtained



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and out of which if any of the person who got lesser marks than the petitioner, has been subsequently appointed from the wait list also to be ascertained by the respondents and to be reported before this Court.

(5) In view of the said contention raised by the learned counsel for the petitioner, this Court feels that the aforestated particulars can be ascertained and reported before this Court by the learned Additional Government Pleader. Hence, two weeks time is granted to ascertain the said particulars about the wait list candidates and their subsequent movement from the wait list if any appointed and if any of such candidates have been appointed from the wait list, who have got lesser marks than the petitioner, that shall also be ascertained and reported before this Court.

(6) For the aforestated purpose, post the matter after two weeks.'

14. It is after this particular direction that the respondent had actually produced the list of candidates who were placed in the reserve list. The petitioner was also one of them. A perusal of the reserve list shows that the candidates who belonged to MBC/DC were from serial Nos.54 to 61 and had been appointed.

15. The candidate in Serial No.61 was Logeshwaran and belonged to MBC/DC and his normalised score was 115.10 and percentage normalised score was 76.73%. The petitioner has also obtained the same mark. It was therefore contended by the learned counsel for the petitioner that the petitioner should have been considered for appointment, since Logeshwaran did not categorise himself as one who studied under Tamil Medium and had therefore not opted for PSTM quota. Candidate in Serial No.60, Babiyan.R was also MBC/DC who was selected in PSTM quota.



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16. A written instruction dated 05.09.2023 addressed by the Chairman/Principal Chief Conservator of Forests to the learned Special Government Pleader was produced before this Court, wherein it had been specifically stated that candidates scoring upto 76.73% were selected under MBC General from the reserve list. The selection of Lokeswaran under MBC General category over and above the petitioner was justified by the Chairman on the ground that there were no candidates available under MBC PSTM category.

17. An additional counter affidavit had also been filed on behalf of the respondent, wherein, once again the same facts were reiterated and again the issue of declaration in the application form was also stated. It was stated that the cut off marks for the final merit list under the MBC PSTM category was 77.05%.

18. On a perusal of this particular fact alone, my learned predecessor had called for the reserve list of candidates, as the petitioner had obtained 76.73% marks, quite very close to 77.05%. A perusal of the candidates selected from the reserve list shows that a candidate with the very same mark, viz., 76.73% had been selected and the petitioner had not been so done, though he belonged to MBC PSTM category.

19. In this connection, the respondent had placed reliance on the



declaration given by the petitioner in the application form. That particular aspect had been examined by my learned predecessor on the earlier occasion and the petitioner had been permitted to participate in the process of verification of certificates and further selection process.

20. Any application form has to be looked into as a whole along with the supporting documents and not in parts. When the application form includes an annexure containing supporting documents, then it has to be looked into as a whole, i.e., application form and the supporting documents and not the application form alone. If the respondent has found out any variation between the application form and the supporting documents, then a reasonable explanation can be called for from the applicant for such variation.

21. It was specifically contended by the learned counsel for the petitioner that the petitioner himself had detected this variation as between the application form, wherein he had stated his community as Backward Class, whereas the certificate that he had uploaded categorised him as Most Backward Class and also the fact that he opted in the reservation for PSTM category. Immediately, he had given representation prior to the process of verification of certificates.

22. It was therefore contended that this particular fact was pointed out by the petitioner himself and not by the respondent and therefore the



respondent should not fall back on the declaration and place it as against the petitioner herein. It is only a curable defect as the application form will be naturally verified along with the certificates enclosed. If the certificate speaks for itself that the petitioner belonged to Most Backward Class, then the petitioner should be included in the said category, i.e., MBC.

23. This Court had repeatedly asked the counsel for the petitioner about the veracity of the certificate produced by the petitioner and it is asserted that no doubt should be entertained on the veracity of the said certificate. Therefore, if both the application form and the certificates are examined conjointly, then it should be evident even to the naked eye that he belonged to Most Backward Class, though he had stated in the application form as Backward Class. It is only a curable mistake, since the certificate would override such mistake as the certificate enclosed by him reveals that he belonged to Most Backward Class community.

24. Had the issue been otherwise, viz., if the petitioner had declared in the application form that he belonged to Most Backward Class, but enclosed a certificate categorising him as Backward Class, then the respondent could have taken umbrage at his act and proceeded against him, apparently trying to deceive the respondent by making them believe that he belonged to Most Backward Class. That is not the issue in the instant case.



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25. Therefore, the contention of the respondent with respect to the issue of declaration which has been repeatedly pointed out in the counter and the additional counter stands rejected and I would hold that it is a curable defect. Further the petitioner had himself detected this mistake and given a representation to that effect. It is not as if the respondent who had detected this mistake.

26. It must also be kept in mind that a mistake should be differentiated from deliberate mistakes with malafide intention. I hold that there was no malafide intention on the part of the petitioner. The respondent should have applied his mind to the entire issue and conjointly read the application form and the annexures enclosed, otherwise the annexures would have no meaning at all, if they were examined independently.

27. In view of the particular fact, since the respondent had placed on record that Logeshwaran was selected on the ground that there were no candidates belonging to MBC PSTM category, when actually the petitioner was available under the said category, I hold that much disadvantage had accrued to the petitioner by rejection of his application.

28. Learned Special Government Pleader had stated that the recruitment process to the post of Forest Guard and Forest Guard with driving licence has now been handed over to the Tamil Nadu Public Service



Commission and therefore raised an issue as to whether the said Tamil Nadu Public Service Commission should be impleaded as party to this Writ Petition.

29. Neither in the additional counter affidavit filed nor in the instructions forwarded by the Chairman/Principal Chief Conservator of Forests, has there has been any indication that the recruitment process had been handed over to the Tamil Nadu Public Service Commission. Hence, there is no need to implead the Tamil Nadu Public Service Commission.

30. As a matter of fact, in the written instructions dated 05.09.2023, it had been stated that Logeshwaran was selected only because there was no candidate under MBC PSTM category, when actually the petitioner was available and had the very same mark as of Logeshwaran. Had the respondent been vigilant and had taken care to examine the application form in its proper light, the petitioner would not have been made to suffer by approaching this Court and waiting for the past four years.

31. To a query posed to the learned Special Government Pleader as to whether the petitioner could be fitted in the vacancy now available, he had submitted that the selection process had been completed and there are no vacancies as of today. However, learned counsel for the petitioner submitted that there are instances where supernumerary posts have been created and the



petitioner can always be accommodated in the said post.

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32. The records are very clear indicating that the petitioner certainly belongs to MBC and the application form is very clear that he had opted for PSTM quota. However his candidature was overlooked only because the respondent was of the opinion that there was no such candidate available under the MBC PSTM category, when the petitioner was actually available. The last mark of the candidate, who was selected, was 76.73% which the petitioner had also obtained. Thereafter, he was fully qualified on merit.

33. I therefore hold that the issue raised by the respondent that the declaration in the application form had been given wrongly would no longer exist as the said issue had been put to rest by my learned predecessor vide order dated 02.09.2022, the relevant portion of which had been extracted above, wherein he had very specifically observed with respect to the marks obtained by the candidates that *'if the candidates who got lesser marks than the petitioner has been appointed, then in that case, the petitioner also shall be appointed'*.

34. In the instant case, the person with the same mark had been considered, though he belonged to MBC General on the ground there was no candidate available under the MBC PSTM category, when the petitioner was actually available.



35. The facts are very clear that the petitioner was unjustly overlooked by the respondent in not examining the application form and the annexures enclosed in their proper light. The petitioner should not be made to suffer owing to the particular mistake committed by the respondent in not adhering to the order passed by this Court.

36. In light of the above, the respondent is directed to create a supernumerary post and appoint the petitioner in the post of Forest Guard/Forest Guard with driving licence within a period of twelve (12) weeks from the date of receipt of a copy of this order.

37. The Writ Petition stands allowed. No costs. Connected Miscellaneous Petition is closed.

Sl

21.09.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

To

Tamil Nadu Forest Uniformed Services
Recruitment Committee
Represented by its Secretary,
Panagal Maligai, Saidapet,
Chennai – 600 015.



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C.V.KARTHIKEYAN,J.

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