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W.P.No.15779 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.15779 of 2020

M.Padmavathi

/vs/

...

Petitioner

1. The Director of School Education,
Government of Tamil Nadu,
College Road,
Chennai – 600 006.
2. The Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Complex,
College Road,
Chennai – 600 006.
3. S.Sakthi
Music Teacher,
Through the Director of School Education,
Government of Tamil Nadu,
College Road,
Chennai – 600 006.
4. The Director of Government Examination,
Directorate of Government Examination,
DPI Campus, College Road,
Chennai – 600 006.

... Respondents



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(R4 impleaded vide order dated 03.08.2020 made in W.M.P.No.19447/2022 in W.P.No.15779/2020)

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the proceedings dated 20.09.2019 in Rc.No.6894/R3/2019, on the file of the second respondent herein and to quash the same and direct the respondents to consider the name of the petitioner with Roll No.17ST32030147 for the post of Special Teacher (Music) by considering the representation dated 31.10.2019, within a time frame as fixed by this Court.

For Petitioner ... Mr.P.Rajendran

For Respondents ... Mr.T.Chezhiyan,
Additional Government Pleader for R1

Mr.R.Neelakandan
Additional Advocate General VIII
Assisted by Mr.C.Kathiravan
Standing Counsel for TRB for R2

Mr.M.Sudhan for R3

Mr.Stalin Abhimanyu for R4



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ORDER

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2. The petitioner is the applicant to the post of Special Teacher pursuant to the notification of Teacher Recruitment Board (TRB) dated 26.07.2017. In the said notification, only one post has been reserved for Scheduled Tribe category and 20% horizontal reservation has been given for those persons who studied their prescribed qualification in Tamil Medium. The petitioner studied her prescribed qualification in Tamil Medium and got a certificate to that effect. The provisional selection list was issued on 13.08.2018 in which the petitioner's name was included as a person studied in Tamil Medium and she had been provisionally selected for the post. On 28.08.2019 a revised selection list was issued in which the petitioner's name was not found. Instead, the third respondent's name was



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found and she had been appointed to the said post.

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3. Mr.P.Rajendran, the learned counsel for the petitioner, submitted that during the pendency of this writ proceedings, an interim direction has been issued on 11.11.2022 by giving direction to the second respondent to pass final orders on merits and in accordance with law on the representation of the petitioner dated 13.09.2019 and 31.10.2019; after the above representations have been considered, an order has been passed by stating that the petitioner did not submit the required certificate that he had studied in Tamil Medium; but the petitioner had produced the said certificate only after the issuance of provisional selection list.

3.1. According to the learned counsel for the petitioner, the petitioner had submitted the required certificate to show that she had studied in Tamil Medium on 10.09.2019 after the release of the provisional list but before finalization of the results; since the petitioner did not study in regular school and appeared for 10th Standard examination through private mode, she needed to make due application to the Directorate of



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Government Examination and get the certificate only on 10.09.2019; however she had produced the certificate before finalization of selection on 04.11.2019; even though the petitioner produced the certificate before finalization of selection, the third respondent has been appointed to the post from 04.11.2019; since there is a mistake on the part of the department, the respondents may consider the existing or next available vacancy by giving necessary age relaxation.

4. Mr.T.Chezhiyan, the learned Additional Government Pleader, submitted that the petitioner belonged to Scheduled Tribe category and obtained 57 marks in the written examination; the third respondent also belongs to Scheduled Tribe category and has obtained 83 marks; there is only one post reserved and two candidates are competing for one post; based on the application and information furnished by the petitioner she has been listed under specific category; the petitioner was included in the provisional selection list on the belief that she has produced the Persons Studied in Tamil Medium (PSTM) certificate; but on verification she did not produce the certificate; it is not sufficient to produce the PSTM



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certificate only for the 10th standard but for the entire stream of education.

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4.1 It is further submitted by the learned Additional Government Pleader that all those certificates have to be furnished at the time when the candidates apply and not any time later; in the notification itself the above condition has been clearly stated; the cut off date for certificate verification has also been mentioned as 18.08.2017 but the petitioner had chosen to furnish certificate only on 10.09.2019 which is a much later date and hence the same cannot be considered; as the petitioner was not able to produce the certificate in a prescribed format in due time, the petitioner's case was not considered.

5. There is no doubt on the point that only one post was reserved for Scheduled Tribe category and it is also admitted that so far as the persons studied in Tamil Medium, 20% horizontal reservation on preferential basis has also been given. The petitioner claims that he had studied in Tamil Medium but however he did not produce any certificate to that effect at the time when he made his application. However, the notification itself would



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say about the various conditions in respect of reservations and also about the cut off date for producing the certificate for the purpose of verification.

Despite the petitioner claims that she studied in Tamil Medium, she did not produce any certificate even before the cut off date i.e. on 18.08.2017. Even at the time when the petitioner applied for the post, she was aware of these conditions.

6. The learned counsel for the petitioner submitted that all the certificates produced by the petitioner was in due form. It is further submitted that the petitioner had studied in Tamil Medium right from her 1st Standard to 10th Standard and she had produced the PSTM certificate to that effect till her 9th Standard, however her 10th Standard PSTM certificate alone was produced at a later point of time.

7. Had the petitioner appeared for the 10th Standard examination through regular mode, it would have been possible for her to produce the required details / certificates at the time when she applied before the deadline prescribed for certificate verification. Since the petitioner



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happened to be a student of private mode and she had attended the exam through private mode, she could not able to produce the PSTM certificate in respect of the 10th Standard alone to show that she studied 10th Standard also in Tamil Medium. However the petitioner had produced the certificates subsequent to the publication of provisional list but before the finalization of the selection list.

8. In this regard the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Dolly Chhanda Vs. Chairman, Jee and others*** reported in ***(2005) 9 SCC 779*** wherein it is held as under:

“ 8. This principle was explained and applied in Charles K. Skaria v. Dr. C. Mathew. The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of



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diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below: (SCC pp. 762 & 763)

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor.... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence....”



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... 9. *The appellant undoubtedly belonged to reserved MI category.*

She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the ZillaSainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.”

9. However it is claimed by Mr.R.Neelakandan, the learned Additional Advocate General, that when particular days are prescribed, the candidates are expected to abide the same; the failure on the part of the petitioner to produce necessary certificate had resulted in the third respondent's appointment and hence the petitioner's application should be dismissed.

10. No doubt there are conditions in the exam notification that the certificates have to be produced for verification at a particular point of time. The petitioner who was able to produce the PSTM certificates from 1st Standard to 9th Standard was not able to produce 10th Standard PSTM



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certificate in view of her private mode of study of 10th Standard. As rightly pointed out in the above judgment, the petitioner was not able to produce proof to show that she had done her 10th Standard in Tamil Medium, the fact that she had studied in Tamil Medium cannot be denied. As the petitioner had studied through private mode, she needed to wait for two years for the purpose of obtaining PSTM certificate from the Directorate of Government Examination.

11. The petitioner is struggling to claim that she falls under the PSTM category and she belongs to Scheduled Tribe category also. According to the petitioner she had double protection; one by way of lateral reservation for Scheduled Tribe quota and Horizontal Reservation for those who studied in Tamil Medium.

12. The delay on the part of Directorate of Government Examination in providing the petitioner the required certificate cannot be held against the petitioner that she did not produce the certificate in time. If initial screening of the application is done to allow the persons qualified in Tamil



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Medium to write the examination in Tamil language, it might be understood that the petitioner is liable for the delay in producing the PSTM certificate.

13. The one and only criteria contemplated by the Government is that who ever claims 20% Horizontal Reservation for having studied in Tamil Medium, it is their lookout to produce the same before the authorities to take any decision as to their consideration under appointment. The petitioner tried her level best and was even able to acquire the 10th Standard certificate to show that she had done her course in Tamil Medium, but before the final selection list is released.

14. For the petitioner who had done her 10th Standard through private mode cannot have the control of getting the certificates within a prescribed time limit. A certificate is given to the petitioner by the Director of Examination after a delay of two years, fortunately before the release of final list. In fact, the petitioner has been included in the provisional selection list even though she obtained a lesser mark than the third



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respondent only because she claims that she had done her course in Tamil medium.

15. As of now the third respondent has been given appointment and she has been working from the year 2019 to till date and the petitioner's case is also pathetic that she could not secure employment though she fulfilled the required condition of producing the certificate to prove that she had studied in Tamil Medium at least at a later stage but before the release of final list. In such condition, the only remedy that can be given to the petitioner is that the respondents shall consider the petitioner for future appointment or vacancy by giving her age relaxation, if that might not be an impediment at any point of selection, within a period of three years from the date of receipt of a copy of this order.

16. With the above observations, this Writ Petition is disposed. No costs.

18.12.2023

Index: Yes / No
Speaking order / Non-speaking order
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R.N.MANJULA ,J.

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To:

1. The Director of School Education,
Government of Tamil Nadu,
College Road,
Chennai – 600 006.
2. The Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
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