



W.P.No.5489 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.06.2023

Delivered on: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.5489 of 2016

&

W.M.P.Nos.4834 of 2016& 30868 of 2016

M.Jeyanthi Devi

... Petitioner

Vs.

1.The Chairman
Chennai Port Trust
Rajaji Salai
Chennai-600 001

2.Chief Mechanical Engineer
Mechanical & Electrical Engineering Department
Chennai Port Trust
Rajaji Salai
Chennai-600 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the notification dated 22.11.2015 in so far as the vacancy in the post of Assistant Executive Engineer (Electronics & Communications) has



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been treated as a UR vacancy and to direct the respondents to consider the petitioner for appointment to the said post by treating the said vacancy as a vacancy reserved for Scheduled Caste candidates, with all consequential benefits.

For Petitioner : Mr.P.V.S.Giridhar, Senior Counsel
for
M/s. Giridhar & Sai

For Respondents : Mr.R.Karthikeyan

ORDER

The petitioner challenges the notification dated 22.11.2015 in so far as the vacancy to the post of Assistant Executive Engineer (Electronics and Communications) being treated as a UR vacancy and direct the respondents to consider the petitioner for appointment to the said post by treating the said vacancy as one reserved for Scheduled Caste candidates, together with all consequential benefits.

2. The petitioner, in her affidavit in support of her Writ Petition has stated that she completed her Diploma in Electronics and Communication in the year 1985 and thereafter she joined service as Special Mechanic



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(redesignated as Junior Engineer Grade II) on 23.11.1987 with the respondent Port Trust. While she was in service she was permitted to pursue her degree in Bachelor of Engineering (Electronics and Communication) on a part time basis and she completed the same in 1993. The petitioner was promoted to the post of Junior Engineer Grade I in the year 1999. The petitioner has narrated her various credentials while serving with the respondent for the past 28 years. The impugned notification was issued to fill up one vacancy (UR) for the post of Assistant Executive Engineer under direct recruitment quota. The qualifications prescribed were that the candidate must have degree or equivalent in Electronics and Communication Engineering from a recognised University/Institution and it was desirable to have two years experience in relevant discipline in Executive cadre in an industrial/commercial/Government undertaking. The petitioner being fully eligible submitted her application on 18.12.2015. The petitioner relies on the notification providing for employees already working in the Chennai Port Trust being eligible to apply, provided they possess the prescribed qualification and experience. It is also stated that Clause (4) of the



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notification mentioned that mere eligibility would not entitle a candidate being called for interview which was contrary to the Chennai Port Trust Employees (Recruitment Seniority and Promotion) Regulations 2008. It is the specific case of the petitioner that one Venkatachalapathy was promoted to the post of Executive Engineer in September 2015 belong to Schedule Caste as such the vacancy created by his promotion is only a Schedule Caste vacancy and ought to have been filled up as a reserve vacancy. It is the case of the petitioner that there is no Schedule Caste candidate in the post of Assistant Executive Engineer in direct recruitment quota and therefore the petitioner belonging to Schedule Caste ought to be considered for promotion. On these grounds, the Writ Petitioner challenges the impugned notification.

3. The respondents have filed a counter denying the claims of the petitioner. It is clarified that the vacancy was reserved for unreserved post and not for Scheduled Caste. The petitioner was promoted as supervisor Grade II with effect from 05.02.1997 and thereafter as supervisor Grade I (Class III) on 12.08.1999. The said post was redesignated as Junior Engineer



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Class III with effect from 01.01.1997 and supervisor Grade I was re-designated Junior Engineer Grade I Class III with effect from employee 12.08.1999. In 2010, vacancies arose in the category of Assistant Engineer and hence the petitioner being eligible was called upon to give her willingness to accept the promotion vide memo dated 11.06.2010. However, the petitioner expressed her unwillingness and assured that she would not claim any seniority vide her letter dated 18.06.2010.

4. According to the respondents there is no vacancy existing in the category of AE(E&C) as sanctioned strength of four is fully occupied. The petitioner cannot find fault with the proposal to fill up one vacancy under direct recruitment which was allotted to UR category. It is the specific case of the respondent Port Trust that whenever a vacancy is caused due to promotion or retirement, the resultant vacancy would be filled up by the next eligible candidate from feeder category against the roster point governed by post based roster system for departmental/direct recruitment post and accordingly Assistant Executive Engineer (E&C) that was notified was



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allotted to UR category and the allegations of the petitioner in this regard were stoutly denied.

5. The petitioner cannot dictate as to how the administration has to act for filling up vacancies. It is also stated the departmental candidates cannot be given any preference against direct recruit candidates. It is also stated that ratio maintained between direct recruitment method and promotional method is 2:1 from 21.08.2012 and the sanctioned strength is only 3, which means that first vacancy is filled up by promotional method as per Government Orders and the subsequent two vacancies ear marked for direct recruitment posts. The post earmarked for Scheduled Caste will be filled up by promotional method and this cannot be diverted to the direct recruitment method. The notified vacancy was only for direct recruitment method and therefore the petitioner's claim was untenable. The respondent therefore sought for dismissal of the Writ Petition.

6. The petitioner has filed a rejoinder to which the 2nd respondent has



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also filed a reply. The respective contentions of the petitioner and the 2nd respondent has been reiterated in the said affidavits.

7. Heard Mr.P.V.S.Giridhar, learned Senior Counsel for M/s. Giridhar & Sai, appearing for the petitioner and Mr.R.Karthikeyan for the respondents.

8. The moot point in issue in the present case is as to whether any distinction or preference can be shown between persons who are promoted and persons who are directly recruited. Even in the notification, it is clearly mentioned that applications are invited for filling up the post of Assistant Executive Engineer (Electronics and Communication)- 1 Number under direct recruitment and in the community it is mentioned as UR-1 which means it was unreserved category which was sought to be filled up, that too by way of direct recruitment. The petitioner's case is that when the vacancy had arose because of the retirement of a person belonging to Scheduled Caste community, the respondents are bound to appoint only a Scheduled Caste by filling up the said post and not from any other community. Arguments were



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heard in this regard and documents and pleadings filed by both sides are also considered.

9. Learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in ***R.K.Sabharwal and Ors Vs. State of Punjab and Ors***, reported in ***1995 2 SCC 745***, wherein the Hon'ble Supreme Court held that whenever a percentage is fixed in respect of a particular cadre and required to be filled from a reserved category, then it has to be filled only from amongst the members of such reserved category and candidates belonging to General category are not entitled to be considered for such reserved posts. The Hon'ble Supreme Court also gave an illustration where the Scheduled Caste persons holding posts at roster points 1,7 and 15 retire then such slots have to be filled up only from amongst persons belonging to Scheduled Caste and where persons holding the post at points 8 to 14 or 23 to 29 retire then such slots have to be filled up from amongst General category which alone would ensure that there is neither shortfall nor excess in percentage of reservation. The Supreme Court also held that the concept of



vacancy has no relevance in operating the percentage of reservation.

10. This Court finds considerable force in the arguments of the learned counsel for the petitioner placing reliance on the ratio laid down by the Hon'ble Supreme Court. The case on hand, admittedly the vacancy arose only as a result of the promotion of one Mr.S.Venkatachalapathy as Executive Engineer and further one Venkatraman superannuated in January 2015. Despite two vacancies being available, only one vacancy was advertised and consequently a notification was issued. The case of the petitioner that vacancy should be taken as one having arisen in the Scheduled Caste vacancy and not in (UR) vacancy is justified, especially, when the notification clearly indicated that existing in service candidates were also eligible to apply. As the Apex Court has also held, if the reservations are not considered and respected for promotion, then it would result in inequality.

11. It is the specific case of the petitioner that there are no other Scheduled Caste candidates eligible for the post of Assistant Executive



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Engineer even in the direct recruitment quota. Under such circumstances, the petitioner belonging to Scheduled Caste ought to have been considered for promotion to fill up the post that had become vacant consequent to another Scheduled Caste having been promoted instead of opening up the notification to be filled up under unreserved quota. The other grievance of the petitioner is that the notification mentions mode of selection to be by way of interview and more weightage has been given to interview which is against well settled propositions laid down by the Hon'ble Supreme Court holding that weightage of marks allotted to interview should not exceed 10% and that contrary to the settled position of law the respondents are attempting to allot more than 50% of marks to the interview which is not only unreasonable but also against settled position of law laid down by the Hon'ble Supreme Court.

12. On a perusal of the impugned notification, it is seen that Scheduled Caste, Scheduled Tribe and OBC candidates were also invited for applying and infact it was also mentioned that candidates belonging to Scheduled Caste, Scheduled Tribe if called for interview, would be even paid travel



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allowance. Ofcourse it may be contended that there was no bar for Scheduled Caste or Scheduled Tribe candidates also to apply for direct recruitment under the General or open category. However, in terms of the dictum of the Hon'ble Supreme Court, no distinction can be made to persons applying for the post from the feeder category and persons who are being directly recruited. However, the contentious issue is as to whether the vacancy should be filled up only from the Scheduled Caste reserved post of thrown open to the General category. The Hon'ble Supreme Court has clearly discussed this aspect in ***R.K.Sabharwal's*** case referred herein supra, where the Hon'ble Supreme Court has held that the right to be considered for appointment can only be claimed in respect of a post in a cadre and when all the roster points in a cadre are filled and the required percentage of reservation is achieved and only after the total cadre had full representation of Scheduled Caste/Tribes and Backward classes in accordance with reservation policy, the vacancies arising thereafter in the cadre are to be filled amongst the category of persons to whom the respective vacancies belong.



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13. In view of the above, the petitioner is justified in challenging the impugned notification seeking to fill up the vacancy that has arisen consequent to promotion of a Scheduled Caste candidate by inviting persons from unreserved category or open category instead of filling up the said vacant post from the available and eligible Scheduled Caste candidates. The counsel for the respondents would also contend that the petitioner, having participated and knowing fully well about the notification, he was estopped from challenging the same thereafter. In this regard, this Court finds that the petitioner cannot be prevented from challenging the notification which affects her fundamental rights enshrined under the Constitution of India. The respondents, throwing open the vacant post to be filled up from the unreserved category, is clearly in violation of the reservation policy and in absence of any other Scheduled Caste candidate in the fray, then the petitioner alone should have been considered for the post. The respondents are therefore in error in filling up the post from the General category, i.e., from amongst persons not belonging to the Scheduled Caste/Scheduled Tribe community.



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14. In fine, the Writ Petition is allowed and the Writ of Certiorarified Mandamus quashing the impugned notification dated 22.11.2015 is issued in so far as treating the vacancy as UR vacancy and the respondents are directed to consider the petitioner for appointment treating the same as from amongst the reserved Scheduled Caste candidates. The respondents shall carry out this exercise within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order
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To

1.The Director
Directorate of Technical Education
Chennai-600 025

2.The Chairman
Krishnasamy Memorial Polytechnic College
Cuddalore District
Cuddalore-607 109

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P.B.BALAJI, J.,
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Pre-delivery order in
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