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W.P.No.17964 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17964 of 2013
and M.P.Nos.1 and 2 of 2015

1.R.Rajesh
2.V.Sankar Ram

... Petitioners

-Vs-

1. Member Secretary,
Teacher Recruitment Board,
Government of Tamil Nadu,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai - 600 006.
2. The Principal Secretary to Government,
Secretariat, Higher Education, Fort, St.George,
Chennai.
(Cause Title amended as per order dated 30.01.2020
made in W.M.P.No.1875 of 2020
in W.P.No.17964 of 2013)
3. The Director,
Directorate of Collegiate Education,
EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai - 600 006.
(R3 impleaded as per order
dated 02.02.2015 in M.P.No.3 of 2013
in W.P.No.17964 of 2013)

... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for records relating to Impugned portion of the notification/Advertisement No.04/2013, dated 28.05.2013 calling one post reservation for women category in GT(General Turn) and one post reservation for women category in SCA (Schedule Caste Arunthathiyar) for faculty in Tourism and Travel management vide Faculty Code D- 18 in Annexure - I and Annexure - III vide Faculty Code D-18 details of Backlog vacancies in the notification/advertisement No.04/2013, dated 28.05.2013 and quash the same as highly illegal and consequentially direct the respondents to correct the Backlog vacancies in annexure - III D-18 as GT-G-1, MBC-G-1 and SCAW - 1 and thereby give appointment to the petitioners under general category in GT (General Turn) and general category in MBC (Most Backward Class) for in Tourism and Travel management vide faculty Code D-18 in the notification/advertisement No.04/2013, dated 28.05.2013.

(Prayer amended as per order dated 11.03.2016 in W.M.P.No.6451 of 2016 in W.P.No.17964 of 2013)

For Petitioners : Mr.V.Karthick, Senior Counsel
for M/s.Achari and Antoni Associates

For R1 : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.C.Kathiravan, Standing Counsel

For R2 and R3 : Mr.L.S.M.Hasan Faizal
Additional Government Pleader



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ORDER

This Writ Petition has been filed challenging the portion of the notification/Advertisement No.04/2013, dated 28.05.2013 calling one post reservation for women category in GT(General Turn) and one post reservation for women category in SCA (Schedule Caste Arunthathiyar) for faculty in Tourism and Travel management.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioners have completed Master of Business Administration (Tourism) in Pondicherry University and they had also cleared National Eligibility Test. In the year 2010, the respondents issued notification dated 29.03.2010 calling for applications for direct recruitment to the post of Assistant Professor in Tamil Nadu Collegiate Education Service. The post of Assistant Professors were called for in many subjects, including the subjects of Faculty Code B13-History and Tourism and Faculty Code B14-Tourism.

4. As per the notification, one A.Saravanan had applied simultaneously for two posts i.e., B13-History and Tourism and B14-Tourism under MBC



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quota. Though he was selected for both the posts, he had joined only as B14-

Tourism faculty under MBC quota. Therefore, reservation for the post of History and Tourism under MBC quota for General remained unfilled and kept as vacant in the year 2010.

5. Likewise, one R.Sujitha Kumari had applied for B13-History and Tourism and also for B12-History under General Turn under BCW category. Though she was selected in both the subjects under GT category for B13-History and Tourism and under BCW category for B12-History, she had joined in B12-History in BCW category. Therefore, reservation for the post of History and Tourism under General category for GT was kept vacant.

6. The post in History and Tourism, after selection was re-designated as “Tourism and Travel Management” and General Turn and MBC-General in the Government Arts Colleges are still vacant as per the earlier recruitment. However, the respondent, while releasing the list of provisionally selected candidates, had wrongly stated that out of 4 vacancies 3 vacancies is filled and one candidate is not available for SCA (Scheduled Caste Arundadiyar). In fact, only one person had joined in History and Tourism under BC category. The other two categories namely GT and MBC for General remained vacant in view



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of the non joining of selected candidates. Even then, the respondents issued another notification dated 28.05.2013, which is impugned in this writ petition, calling for applications for direct recruitment of Assistant Professor in Tamil Nadu Collegiate Education Service for Government Arts and Science Colleges without showing the above backlog vacancies.

7. The posts in particular category can be taken into consideration as filled up only after the selected candidates have joined in that category. Unless the selected candidates join in that particular category, the said posts remain vacant.

8. Mr.V.Karthick, the learned Senior Counsel appearing for the petitioners submitted that the respondents ought to have reserved one post for General category in GT and one post for General category in MBC for faculty in Tourism and Travel Management in the advertisement dated 28.05.2013.

9. The first respondent filed counter and Mr.R.Neelakandan, learned Additional Advocate General submitted that the Board notified 4 vacancies for the Subject Code B-13 History and Tourism in the following communal turn:



GT (G)	1
SCA (W)	1
MBC/DNC	1
BC	1

10. Out of the said four posts, candidates who were selected in GT and MBC categories have not joined duty. Both the vacancies were not filled up due to non availability of candidates. Therefore, the communal turns are already exhausted and the process is over. The not joined vacancies cannot be considered as backlog vacancies. Only the vacancies which could not be filled up due to non-availability of candidates shall be considered as backlog vacancies.

11. He further submitted that after completion of the recruitment process for the year 2010-2011, the subject History and Tourism was re-designated as Tourism and Travel Management. Therefore, the Teachers Recruitment Board started with the continued communal roster point with Turn No.5 for the subject Tourism and Travel Management for the year 2012. Therefore, the current vacancy was notified in GT (W) turn and SCA (W) vacancy as backlog vacancy which was not filled up in 2010-2011 due to non-availability. Therefore, the notification issued by the Teachers Recruitment Board is within



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the norms.

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12. On instructions, he further submitted that the vacancies notified in the present notification belong only to Women category GT(W) and SCA (W). Therefore, the petitioners, who are Male candidates and belong to MBC and OC categories, cannot be placed under the available vacancies. Further due to the pendency of the Court case, the Provisional Selection List for the subject (Tourism and Travel Management) was not released. Further, since the Directorate of Collegiate Education is the competent authority regarding vacancies of the Government Arts and Science Colleges, the said details of college vacancies can be obtained only from the User Department concerned i.e, Directorate of Collegiate Education and not by Teachers Recruitment Board.

13. As per G.O.Ms.No.248, Higher Education (F2) Department, dated 08.11.2022, the subject wise vacancies among 4000 total vacancies for the post of Assistant Professor can be made known to Teachers Recruitment Board only after Directorate of Collegiate Education furnishes the said information. That apart, the said vacancies will be filled up through competitive examination conducted by the Teachers Recruitment Board.



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14. Thus, it is clear that the said A.Saravanan was selected to the post of Assistant Professor of B13-History and Tourism as well as B14-Tourism under MBC category and the said R.Sujitha Kumari was selected to the post of Assistant Professor B13- History and Tourism as well as B12-History, under BCW category. However, the said A.Saravanan had joined only in B14-Tourism and the post of History and Tourism remained unfilled and kept vacant. Insofar as the said R.Sujitha Kumari is concerned, she had joined in B-12 History under BCW category. Hence, the post of Assistant Professor for History and Tourism under General (G) category for GT was kept vacant. Therefore, both the posts were vacant due to non-availability of candidates.

15. Though two persons were selected under two categories, they had joined in one category and remaining one be treated as non availability of candidates. It cannot be said that the said posts were not filled. The persons who were selected had failed to join in the said post. Therefore, the said vacancies have to be treated as backlog vacancies.



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16. Section 27(f) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 and its limitations speaks about the backlog vacancies.

Accordingly, the vacancies allotted for direct recruitment and reserved for BC, MBC, DNC, SC and ST left unfilled for want of qualified candidates are to be carried forward to the next year as backlog vacancies. However, the respondents failed to carry forward the said vacancies as backlog vacancies.

17. That apart, the current vacancies for the post of Assistant Professor-Tourism and Travel Management in the State of Tamil Nadu are as follows:-

<i>SL.No</i>	<i>College</i>	<i>No.Vacancy</i>
1.	Coimbatore Govt. Arts College	3
2.	Udumalaipet Govt.Arts College	2
3.	Ooty Govt. Arts College	3
4.	Mettupalayam Govt. Arts College	4
5.	Pudukottai Raja's Govt. College	4
6.	Kalaingar Karunanithi Arts College Pudukottai (out of 3 post 2 was left unfilled in the Notification of the year 2010)	3



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18. Hence, the portion of the notification/Advertisement No.04/2013, dated 28.05.2013 in respect of one post reservation for women category in GT(General Turn) and one post reservation for women category in SCA (Schedule Caste Arunthathiyar) for faculty in Tourism and Travel management vide Faculty Code D- 18 in Annexure - I and Annexure – III are hereby quashed.

19. The respondents are directed to correct the backlog vacancies in Annexure - III D-18 as GT-G-1, MBC-G-1 and SCAW - 1 and consider the petitioners under General Category in General Turn and General Category in MBC for faculty in Tourism and Travel Management, within a period of twelve weeks from the date of receipt of a copy of this order.

20. In view of the above, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

18.08.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

Note:- Issue order copy on or before 15.09.2023

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To

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Government of Tamil Nadu,
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G.K.ILANTHIRAIYAN, J.

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