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W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.26895 of 2023
and W.M.P.No.26311 of 2023

Anbarasi

... Petitioner

Vs.

1. The Teachers Recruitment Board
rep. By its Member Secretary,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai – 600 006
2. State of Tamilnadu
rep. By its Secretary,
Law Department,
Fort St. George, Chennai – 600 009
3. Director of Legal Studies,
Purasawalkam High Road,
Kilpauk, Chennai – 600 010
4. The Tamilnadu Dr.Ambedkar Law Univesity,
rep. By its Registrar,
Poompozhi No.5, Dr.DGS Dinakaran Salai,
R.A.Puram, Chennai – 600 028

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to appoint the petitioner as Assistant Professor in Criminal Law against the two unfilled vacancies pursuant to the Notification No.2/2018 dated 18.07.2018 issued



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

WEB COPY

by the 1st respondent with all consequential service benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.R.Neelakandan – AAG assisted by
Mr.C.Kathiravan for R1
Mr.L.S.M.Hasan Fizal for R2 and R3
Additional Government Pleader

ORDER

The present Writ Petition has been filed issuance of a Writ of Mandamus to direct the respondents to appoint the petitioner as Assistant Professor in Criminal Law against the two unfilled vacancies pursuant to the Notification No.2/2018 dated 18.07.2018 issued by the 1st respondent with all consequential service benefits.

2. The brief facts of the case are as follows:-

(i) The petitioner has completed post graduation in Criminal Law and Criminal Justice Administration and has also published and presented several research papers on topic of criminal law. A notification was issued by the Teachers Recruitment Board, [in short hereinafter referred to as TRB] on 18.07.2018 calling applications for filling up the post of Assistant Professor in Government Law colleges for different subjects / disciplines. About 86 vacancies were notified, in total, out of which, 11 vacancies pertain to criminal law. The petitioner fully satisfy the requirements set out



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

in the notification, thereby the petitioner submitted the application and a written examination was held on 14.10.2018, in which the petitioner secured 121 marks out of 175 and for interview, the maximum marks are 25 and the cut off marks are determined out of a total of 200. The petitioner was called for the interview on 27.02.2019 and performed well in the said interview. On 14.05.2019, provisional list was published and the petitioner's name does not find place. In Criminal Law, the subject for which the petitioner applied, though eleven vacancies were notified, only nine were filled up and two vacancies were not filled up, out of which one fall under the General Turn and another under the Backward Class and the petitioner comes under the Backward class category and ought to have secured appointment against the said vacancy intended for Backward Class category.

(ii) This Court vide order dated 10.04.2019 in W.P.Nos.20734 and 18841 of 2018 had set aside the subject notification insofar as recruitment to the post of Assistant Professor in International Law (10 vacancies) Labour Law (12 vacancies), Constitutional Law (15 vacancies) and Administrative Law (10 vacancies) and insofar as other subjects are concerned, this Court directed to revise the selection list by ensuring the vertical and horizontal reservations with 200 Point roster system. The said order was challenged before the Hon'ble Division Bench in W.A.No.1150 of 2019, the Hon'ble Division Bench of this Court vide interim order dated



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

08.05.2019 permitted the respondents herein to proceed with the selection process by filling up the vacancies and keep points number 50, 100 and 150 in each discipline to be filled up by Scheduled Tribes, keeping in mind the reservation point earmarked for ST as per the 200 point roster system. In accordance with the same, the respondents have published the provisional select list in July, 2019 and filled up the vacancies and subjects / discipline. As far as Criminal law is concerned, 11 vacancies were notified and 9 alone were fillup leaving the other 2 vacancies unfilled, 1 is for GT and 1 for BC.

(iii) In the meanwhile, the petitioner had filed a W.P.No.19052 of 2019 to quash the provisional list and to appoint the petitioner as Assistant Professor either in Criminal Law or in Crimes and Torts subjects. The said petition is admitted and pending before this Court. As of now, 4 years have elapsed and the petitioner has secured 138.53 marks and the candidate above the petitioner secured 139 marks. Further, the two vacancies are kept unfilled for apparently no reason and the vacancies are not intended for ST. The petitioner has also submitted a representation on 14.08.2023, left with no other option, the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that when two



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

vacancies are available out of which one vacancy is intended for BC category, the petitioner, who belongs to BC category, that too next meritorious candidate and secured 138.53 marks, is entitled to get appointment.

4. The learned counsel for the petitioner also submits that the notification was issued in July, 2019 and thereafter, no fresh notification has been issued. However, the respondents are arranging to issue notification shortly, in which event the petitioner's rights of appointment will be jeopardised, therefore, seeks to accommodate the petitioner against the two vacancies under the criminal subject.

5. On the other hand, learned Additional Advocate General appearing for the 1st respondent would contend that the petitioner has obtained 138.53 marks and falls under BC category. Apart from this petitioner, G.Sasikala, V.Sivasankari, N.Sudalaimuthu and G.Swathipriya have preferred Writ Petition Nos.5075 of 2019; 25218 of 2019; 27088 & 27090 of 2018 and 20734 of 2018, who belong to MBC, BC and ST categories respectively. Out of them, V.Sivasankari and N.Sudalaimuthu belong to BC category and obtained 130.23 and 135.16 marks, less than the petitioner.



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

WEB COPY

6. Further, learned AAG would also contend that on the petition preferred by G.Sasikala, in W.P.No.5075 of 2019, an order was passed on 28.06.2023 and as against the same, the 1st respondent has preferred Writ Appeal and the Hon'ble Division Bench of this Court had stayed the appointment under GT category and nothing has been stated with regard to BC category.

7. Per contra, a detailed counter affidavit has been filed by the 1st respondent, wherein it is stated that as far as the 2017 recruitment is concerned, the Expert Committee was constituted to oversee the Recruitment process and the committee had given consent for final selection and based on the consent of the committee, the Board had issued final selection list for the post of Assistant Professor (Pre law/Law) 2017.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. At this juncture, it is pertinent to point out that on the petition preferred by G.Sasikala, GC Category in W.P.No.5075 of 2019, an order was passed on 28.06.2023 and as against the same, the 1st respondent has preferred Writ Appeal and the Hon'ble Division Bench of this Court had



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

stayed the appointment in respect of GT category. In the present case, the petitioner has obtained 138.53 marks and falls under BC category. Apart from this petitioner, V.Sivasankari and N.Sudalaimuthu, who belong to BC category, have preferred Writ Petition Nos.25218 of 2019 and 27088 & 27090 of 2018 and the said V.Sivasankari and N.Sudalaimuthu had obtained 130.23 and 135.16 marks respectively, which are less than the marks obtained petitioner.

10. It is relevant to note that Indira.K, Merija Rose.J, Jenifer Dyana, C., who belong to BC Categories had secured 160.4; 146.13 and 139 marks respectively and they were given temporary appointment orders. The next highest mark has been obtained by the petitioner [138.53] and other persons, who belong to BC category have secured marks less than the petitioner.

11. It is also relevant to point out that G.Sasikala, who belong to MBC category, preferred W.P.No.5075 of 2019 and as against the order passed in the said petition, the 1st respondent has preferred Writ Appeal before the Hon'ble Division Bench of this Court and the same is pending. Further, one V.Sivasankari, who belong to BC category has clubbed the three subjects (Criminal Law, Crime and Torts and Criminal Law and Criminal Justice



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

Administration) had preferred W.P.No.25218 of 2019. Besides the same, one N.Sudalaimuthu, who belong to BC Category has preferred W.P.Nos.27088 and 27090 of 2018 to permit him to write the exam (Criminal Law and Crime and Torts) and the same was closed on 26.10.2018. Apart from the above, G.Swathipriya, who belong to ST category has filed W.P.No.20734 of 2018 seeking reservation for ST community and the same was closed on 11.04.2019.

12. Considering the facts and circumstances of the case and taking note of the fact that the petitioner, who belong to BC Category has secured higher mark, viz., 138.53 than the persons, viz., N.Sudalaimuthu and V.Sivasankari, who also fall under the BC Category, but secured 135.16 and 130.23 marks respectively and the fact that the petitioner is the immediate senior for the said post and the immediate senior to the petitioner, viz., Jenifer Dyana, who belong to BC Category and secured 139 marks was awarded appointment, this Court is of the view that the petitioner's case shall be considered for appointment of the subject post, if it is otherwise in order.

In the result, the present petition is disposed of with a direction to the respondents / Committee to pass appropriate orders within a period of eight weeks from the date of receipt of copy of a order. Consequently, connected miscellaneous petition is closed. No costs.



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

23.11.2023

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

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4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai – 600 006
2. State of Tamilnadu
rep. By its Secretary,
Law Department,
Fort St. George, Chennai – 600 009
3. Director of Legal Studies,
Purasawalkam High Road,
Kilpauk, Chennai – 600 010
4. The Tamilnadu Dr.Ambedkar Law Univesity,
rep. By its Registrar,
Poompozhi No.5, Dr.DGS Dinakaran Salai,
R.A.Puram, Chennai – 600 028



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W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023

V.BHAVANI SUBBAROYAN J.

ssd

W.P.No.26895 of 2023
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29.11.2023



WEB COPY



W.P.No.26895 of 2023 &
W.M.P.No.26311 of 2023