



WEB COPY



W.P.No.27951 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.27951 of 2022

and

W.M.P.Nos.27244, 27247 of 2022 & 18746 of 2023

M.Tamilmani

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Department of School Education,
Secretariat,
Chennai – 600 009.

2.The Commissioner/Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam,
Chennai – 600 006.

3.The Teachers Recruitment Board,
Represented by its Member Secretary,
DPI Campus, College Road,
Nungambakkam,
Chennai – 600 006.

4.N.Rajeswari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned Provisional Selection List, dated 13.10.2022, issued by the



W.P.No.27951 of 2022

3rd respondent in respect of P.G. Assistants in Commerce and quash the same, and to consequently, direct the respondents to select and appoint the petitioner as P.G. Assistant in Commerce in the 2nd respondent School Education Department.

For Petitioner : Mr.M.R.Jothimanian

For R1 and R2 : Mr.P.Baladhandayutham
Additional Government Pleader

For R3 : Mr.R.Neelakandan
Additional Advocate General
assisted by Mr.C.Kathiravan
Special Government Pleader

ORDER

This writ petition has been filed challenging the Provisional Selection List, dated 13.10.2022, issued by the 3rd respondent in respect of P.G. Assistants in Commerce and for a direction to the respondents to select and appoint the petitioner as P.G. Assistant in Commerce in the 2nd respondent School Education Department.

2.The petitioner states that he has completed his Post Graduate Course and he belongs to Scheduled Caste Community and is also physically challenged with 60% permanent disability, which is called Locomotor Disability (Category III). It is the case of the petitioner that he



W.P.No.27951 of 2022

is eligible for the post of P.G.Assistant in Commerce in School Education Department, and therefore, he applied for the said post, pursuant to the notification issued by the 3rd respondent/Teachers Recruitment Board, vide Advertisement No.01 of 2021, dated 09.09.2021, claiming Persons with Disability (PWD) Quota as well. The petitioner secured 87 marks in the examination and his name was placed in Sl.No.987 in the Certificate Verification List and he also participated in the Certificate Verification for the subject of Commerce held on 04.09.2022. While so, on 13.10.2022, the 3rd respondent published the Provisional Selection List for the subject of Commerce, but the petitioner's name was not found in the list.

3.It is the grievance of the petitioner that, one candidate belonging to SC Community, namely Manikandan, who has secured 101 marks, has been fitted in the SC (Category-II) Backlog Vacancy, instead of being fitted in the General Turn. It is the contention of the petitioner that the said meritorious candidate ought to have been fitted in the General Turn as per the dictum of this Court. The petitioner's grievance is that, if the said Manikandan is fitted in the General Category, the petitioner would be automatically entitled to be fitted in the SC Category, however, such exercise has not been done by the 3rd respondent, while issuing the



W.P.No.27951 of 2022

Provisional Selection List. Hence, the same is challenged in the present writ petition.

4.Learned counsel for the petitioner submitted that the 3rd respondent, in an earlier selection process, placed the meritorious candidates in General Turn, however, in the present selection process, the 3rd respondent, has selected the top mark holder in the SC Category-II (Backlog Vacancies) as against the communal reservation instead of General Turn, which has deprived the right of the petitioner of being selected for appointment. In this regard, the learned counsel relied upon a judgment of this Court in ***K.Shobana v. State of Tamil Nadu rep. by its Principal Secretary, Department of School Education and others*** reported in ***2020 SCC Online Mad 9800***. Therefore, the learned counsel prayed for positive directions.

5.*Per contra*, the respondents have filed a counter affidavit, wherein, it is admitted that the petitioner applied for the post of P.G. Assistant in Commerce under SC Category-III (Locomotor Disability) and he appeared for the said examination on 13.02.2022 and secured 87 marks under SC Category. The Board published the list of candidates calling for



W.P.No.27951 of 2022

Certificate Verification on 28.08.2022 and the petitioner's name was

placed in Sl.No.987 in the CV List dated 28.08.2022. The Certificate

Verification for the subject of Commerce was held on 04.09.2022 and the

Provisional Selection List for the subject of Commerce was published on

13.10.2022 and the list was forwarded to various appointing authorities

(User Departments) on 14.10.2022 and appointment orders were issued to

the selected candidates. It is the case of the respondents that the cut-off

mark for SC Category was fixed as 91 marks and for SC (Category-III), it

was fixed as 89 marks, however, the petitioner has secured only 87 marks,

and therefore, the petitioner has not been selected.

6.Relying on the counter affidavit, Mr.R.Neelakandan, learned Additional Advocate General appearing for the 3rd respondent, submitted that the petitioner, having applied under the Locomotor Disability Category and sought for horizontal reservation, has secured only 87 marks which is less than the cut-off prescribed for the said Category, and therefore, the petitioner has not come within the zone of consideration.



W.P.No.27951 of 2022

7. Heard the learned counsel on either side and perused the entire materials available on record.

8. It is relevant to note that, during the earlier process of selection by the respondent Board in the year 2019, a similar issue arose, wherein, the candidates who scored highest marks were fitted in their respective communal categories instead of General Turn. The said issue was raised before this Court in the case of *K.Shobana v. State of Tamil Nadu (supra)*, and this Court, in the said case, held that the meritorious candidates are to be placed under General Turn. The relevant portion of the said order is extracted hereunder :

“9. In the considered opinion of this Court, the entire confusion has arisen due to the wrong reading of the provision under Section 27 of the Act. The said provision provides for reservation of appointment. Section 27 (f) merely states that if the required number of candidates belonging to the communities which fall under reservation are not available, then, the vacancies, for which selection could not be made in the current year, should be treated as backlog vacancies and, in the subsequent recruitment, the backlog vacancies and the current vacancies for the particular community must be separately announced and that the direct recruitment must first accommodate the



WEB COPY



W.P.No.27951 of 2022

backlog vacancies and, thereafter only, the current vacancies can be accommodated. This is very clear from a plain reading of the abovesaid provision.

10. In this case, the third respondent has read the provision as if the backlog vacancies must be fitted in MBC/DNC Category, irrespective of the merit of the candidate or the rank secured by him/her. This wrong understanding of the provision has resulted in confusion in preparing the Provisional Selection List.

11. Also, in the instant case, the highest mark that was secured was 109 and, up to 90 marks, the candidates were fitted in General Turn. Where the candidates have secured high marks and come within the merit category, the candidates will have to be selected under General Turn, irrespective of their community. While undertaking this process, the community does not play any role and it is only merit that is taken into consideration. The candidates, who fell within the Category of Backward Community and who secured the marks between 109 and 90 have rightly been fitted in General Turn. However, when it came to MBC/DNC Category, instead of fitting the candidates thereof in General Turn, they have been fitted in MBC/DNC Category. This mistake is very apparent on the face of the impugned Provisional Selection List, that has been made



WEB COPY



W.P.No.27951 of 2022

the subject matter of challenge in these Writ Petitions. The third respondent went wrong in understanding the purport of Section 27 of the Act. The said provision merely provides that the backlog vacancies will have to be first accommodated and, thereafter only, the regular vacancies should be accommodated. This does not mean that the backlog vacancies of a particular community will not be considered under General Turn, irrespective of the merits/rank.

12. In view of the above discussion, this Court is of the considered opinion that the Provisional Selection List, prepared by the third respondent, has to be reconsidered and, in lieu thereof, a fresh Provisional Selection List prepared. While preparing the fresh Provisional Selection List, the third respondent is directed to fit in all the candidates under General Turn, only based on their merit and ranks, irrespective of their community, and, when it comes to the selection of candidates belonging to a particular community, who do not fall within the merit/rank, they should be considered under the community quota, based on the marks fixed for that community. While doing so, the backlog vacancies must be first accommodated and, only thereafter, the current vacancies must be filled up. With the said clarity in mind, the third respondent shall proceed to prepare the fresh Provisional



W.P.No.27951 of 2022

Selection List for the posts of P.G. Assistants in Chemistry.

This exercise shall be done within a period of two weeks from the date of receipt of a copy of this order and the fresh Provisional Selection List shall be published in the Board's Website.”

9. The above judgment was challenged before the Hon'ble Supreme Court. The Hon'ble Apex Court, in ***State of Tamil Nadu and others v. K.Shobana and others*** reported in **(2021) 4 SCC 686**, confirmed the orders of this Court referred above and held as follows :

“22.First, we would like to turn to the judgment of the learned Single Judge which, in our view, is absolutely lucid and clear to the controversy and the conclusion. Learned Single Judge set forth the controversy in the first paragraph itself, i.e., whether the candidates who secured high marks should have been fitted in the General Turn but have been fitted in MBC/DNC Quota for the last year, which in turn has deprived certain candidates of selection. It has been rightly noted that the entire confusion has arisen due to the wrong reading of provisions of Section 27 of the Act, which provides for reservation for appointment. Section 27(f) merely states that if the required number of candidates belonging to the community which fall under reservation are not available, then, the vacancies, for which selection could not be made in the current year, should be



WEB COPY



W.P.No.27951 of 2022

treated as backlog vacancies. In the subsequent recruitment, the backlog vacancies and the current vacancies for the particular community must be separately announced, and the direct recruitment must first accommodate the backlog vacancies and thereafter only, the current vacancies have to be accommodated. The provision had been read by the appellants as if the backlog vacancies must be filled in by MBC/DNC category candidates, irrespective of the merit of the candidate or the rank secured by him/her. The highest mark that was secured was 109 and, up to 90 marks, the candidates were fitted in General Turn and thus those candidates will have to be selected under the General Turn, irrespective of their community. It is these candidates who had been fitted in the backlog vacancy which has caused the problem.

...

27. We may also note that the manner of filling up the seats has been well enunciated in the judgment in K.R. Shanthi's case (supra) by the Madras High Court itself and appears to have been consistently followed. May be the peculiarity of the situation arising in Chemistry subject (which is in question) gives rise to this problem in the current year and such a problem had not apparently arisen earlier. In fact, there is no manner of doubt after the latest judgment of this Court in Saurav Yadav & Ors. case (supra) which again refers to the steps which have to be taken to fill



W.P.No.27951 of 2022

in those vacancies. The steps are clear in their terms : in the given facts of the case, application of those principles or steps would imply:

- (a) the general merit list to be first filled in;*
- (b) the backlog vacancies of the particular reserved category to be thereafter filled in “first”; and*
- (c) the remaining reserved vacancies for the current year to be filled thereafter.”*

10. Learned Additional Advocate General has fairly submitted that the Hon'ble Apex Court, in ***Saurav Yadav and others v. State of Uttar Pradesh and others*** reported in ***(2021) 4 SCC 542***, has held that, even if the candidates, who have applied for either horizontal or vertical reservation, secure highest marks, they should be fitted in the General Category. In the said case, the Hon'ble Supreme Court has further held as follows :

“66.I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is



WEB COPY



W.P.No.27951 of 2022

confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

11.In the given case, the petitioner has applied under SC Community, particularly, claiming Disability Quota and has admittedly, secured 87 marks. One candidate, namely Manikandan, who has secured 101 marks, has been fitted in the SC Category. If the said Manikandan is fitted under the General Category, the petitioner would automatically become eligible for selection under SC Category. Therefore, considering the facts of the given case in the light of the judgments cited *supra*, this Court is of the view that the said Manikandan ought to have been selected under the General Turn, instead of being selected under his communal category. Moreover, it is stated that, pursuant to the interim orders passed by this Court on 19.10.2022, one post of P.G.Assistant in Commerce is still kept vacant under SC Category.

12.Therefore, the 3rd respondent Board is directed to re-consider the impugned Provisional Selection List, dated 13.10.2022, and treat the



W.P.No.27951 of 2022

selection of the said Manikandan as one made under “General Turn” instead of “SC (Category-II) Backlog Vacancy” and consequently, the petitioner shall be selected by fitting him in the SC Category and a fresh Provisional Selection List shall be published by the 3rd respondent Board. Such exercise shall be done by the 3rd respondent Board within a period of two months from the date of receipt of a copy of this order.

13. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14. This Court appreciates Mr. R. Neelakandan, learned Additional Advocate General, for his assistance rendered to the Court, by fairly placing the law on this subject before this Court.

01.08.2023

mkn

Internet : Yes

Index : Yes / No

Neutral citation : Yes / No

Speaking order / Nonspeaking order



WEB COPY



W.P.No.27951 of 2022

N. SATHISH KUMAR, J.
mkn

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Department of School Education,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner/Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam,
Chennai – 600 006.
- 3.The Member Secretary,
Teachers Recruitment Board,
DPI Campus, College Road,
Nungambakkam,
Chennai – 600 006.

W.P.No.27951 of 2022



WEB COPY



W.P.No.27951 of 2022

01.08.2023