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Writ Appeal No.25 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No. 25 of 2023

and

CMP. No. 321 of 2023

Dr. K.Anbarasu

... Appellant

Versus

1. The Secretary the Government
Animal Husbandry, Dairying and Fisheries Department
Secreariat, Fort St. George,
Chennai-600 009.
2. The Director
Department of Animal Husbandry & Veterinary Services,
No.571, Anna Salai,
Nandanam, Chennai-600 035.
3. The Chairman,
Tamil Nadu Public Service Commission ,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai-600 003.

... Respondents

Writ Appeal filed under Clause 15 of the Letter Patents Act against the order dated 12.07.2022 passed in W.P. No. 17542 of 2022 on the file of this Court.



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For Appellant : Mr. C.Veera Raghavan

For Respondents : Mr. C.Kathiravan
Special Government Pleader (R1 & R2)

Mr. I.Abrar Md. Abdullah (R3)

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Aggrieved by the order dated 12.07.2022 passed by the learned Judge in W.P. No.17542 of 2022, the writ petitioner has come up with this intra court appeal.

2.Originally, the appellant / writ petitioner preferred the aforesaid writ petition, seeking a direction to the respondents to consider his representation dated 17.06.2022, wherein, he requested to revise the quota reserved under deaf and dumb and convert it to the general quota as per the reservation system and to appoint him in the post of veterinary Assistant Surgeon (VAS).

3.However, the learned Judge disposed of the aforesaid writ petition, recording the submissions made by the learned Additional Government Pleader appearing for the respondents herein, by the order impugned herein, the relevant passage of which is extracted below for ready reference:



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"4. The learned Additional Government Pleader appearing for the 1st and 2nd respondents submitted that there is no reservation quota under deaf and dumb and convert it to the General Quota as per the reservation system.

5. Inviting the attention of this Court, the learned Additional Government Pleader appearing for the 1st and 2nd respondents relied upon Section 34(2) of the Rights of Persons with Disabilities Act, 2016, wherein it has been stated as follows:-

“34 (2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.”

6. He further submitted that the said provision has given the mode of filling up the vacancy and the candidates not suitable for the said post, cannot be considered for the said post. After exhausting all the categories under Section 34(2) of the Act and if there is no eligible candidates are available, then petitioner's request will be considered for appointment other than a person with disability in accordance with Rules.

7. Therefore, in the light of the above submissions made by the learned Additional Government Pleader appearing for the 1st and 2nd respondents, this Court cannot pass such a direction to the respondents to consider the petitioner's request without following the said provisions under the Rights of Persons with Disabilities Act, 2016. Therefore, this Court is not inclined to grant any relief to the writ petitioner.”

The aforesaid order of the learned Judge is impugned in this appeal.



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4. The learned counsel for the appellant submitted that without considering the fact that the representation of the petitioner is pending with the respondent authorities and the appellant sought a mandamus only to the limited extent of disposing of the said representation, the learned Judge has erred in passing the order impugned herein, which is arbitrary and in violation of the principles of natural justice. It is further submitted that the learned Judge, without giving any finding on the merits of the case, has disposed of the writ petition, merely recording the submissions made on the side of the respondents and hence, the order passed by him is liable to be set aside. Ultimately, the learned counsel submitted that the appellant would be satisfied, if a direction is issued to the respondent authorities to dispose of the representation submitted by the appellant, in the light of the material documents produced by him.

5. It is fairly submitted on the side of the respondents that the representation of the appellant / writ petitioner will be considered and appropriate orders be passed on merits and in accordance with law, within a time frame to be stipulated by this court.



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6.Heard both sides and perused the materials available on record.

7.It is seen in the order impugned in this writ appeal that before the writ court, the learned Additional Government Pleader appearing for the respondents categorically submitted that after exhausting all the categories under section 34(2) of the Act and if there is no eligible candidates are available, then the petitioner's request will be considered for appointment other than a person with disability in accordance with Rules. While recording the same, the learned Judge, instead of directing the respondent authorities to consider the representation of the petitioner and pass appropriate orders, has erroneously dismissed the writ petition. To that extent, the order of the learned Judge is liable to be interfered with.

8.In view of the above and also taking note of the limited relief now sought by the learned counsel for the appellant, which has been agreed by the learned counsel appearing for the respondent authorities, this court modifies the order of the learned Judge, which is impugned herein, by directing the respondent authorities to consider the representation of the appellant / writ petitioner, on merits and also in the light of the Tamil Nadu Government



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Servants (Conditions of Service) Act, 2016 and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. Accordingly, this writ appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

[R.M.D., J.] [J.S.N.P., J.]
10.01.2023

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Index : Yes / No

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R.MAHADEVAN, J.
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To

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