



WEB COPY



WA Nos. 229, 231 & 237 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 229, 231 and 237 of 2023

and

C.M.P. Nos. 2417, 2437 and 2470 of 2023

Dr. D. Lokesh kumar

.. Appellant in W.A. No. 229

Dr. C.Jothi

.. Appellant in W.A. No. 231

Dr. Alwin Nishanth

.. Appellant in W.A. No. 237

Versus

1. The Secretary to the Government

Animal Husbandry, Dairying and Fisheries Department

Secretariat, 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

Tamilnadu Public Service Commission

TNPSC Road, V.O.C. Nagar

Park Town, Chennai - 600 003.

.. Respondents in all the
Writ appeals

Writ Appeals filed under Clause XV of the Letter Patents Act against the Orders dated 12.07.2022 passed in W.P. Nos. 17531, 17543 and 17548 of 2022 on the file of this Court.

For Appellants

: Mr. C. Veera Raghavan



WA Nos. 229, 231 & 237 / 2023

in all the Writ Appeals

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For Respondents : Mr. C. Kathiravan
Special Government Pleader for RR1 & 2
in all the Writ Appeals

COMMON JUDGMENT

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

Aggrieved by the separate orders dated 12.07.2022 passed by the learned Judge in W.P. Nos. 17531, 17543 and 17548 of 2022, the writ petitioners have come up with these intra court appeals.

2. Originally, the appellants / writ petitioners preferred the aforesaid writ petitions, seeking a direction to the respondents to consider their representations dated 17.06.2022, wherein, they 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 them in the post of veterinary Assistant Surgeon (VAS). However, the learned Judge disposed of the aforesaid writ petitions, by recording the submissions made by the learned Additional Government Pleader appearing for the respondents herein, by the orders impugned herein, the relevant passage of which is extracted below for ready reference:



"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."

3. The aforesaid orders of the learned Judge are impugned in these intra-court appeals.



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4. The learned counsel for the appellants submitted that without considering the fact that the representations of the petitioners are pending with the respondent authorities and the appellants sought a mandamus only to the limited extent of disposing the said representations, the learned Judge has erred in passing the orders impugned herein, which are 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 petitions, merely recording the submissions made on the side of the respondents and hence, the orders impugned in these appeals are liable to be set aside. Ultimately, the learned counsel submitted that the appellants would be satisfied, if a direction is issued to the respondent authorities to dispose of the representations submitted by the appellants, in the light of the material documents produced by them.

5. It is fairly submitted on the side of the respondents that the representations of the appellants/writ petitioners 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 orders impugned in these writ appeals 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, if there is no eligible candidates available, then the petitioners' request will be considered for appointment, who belong to a different category 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 representations of the petitioners and pass appropriate orders, has erroneously dismissed the writ petitions. To that extent, the orders of the learned Judge are 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 appellants, which has been agreed by the learned counsel appearing for the respondents 1 and 2, this court modifies the orders of the learned Judge, which are impugned herein, by directing the respondents 1 and 2 to consider the representations of the appellants/writ petitioners, 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, all these writ appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

[R.M.D., J] [M.S.Q., J]
23.02.2023

ay/rsh

Index : Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

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Animal Husbandry, Dairying and Fisheries Department
Secretariat, Fort St. George
Chennai - 600 009.
2. The Director
Department of Animal Husbandry & Veterinary Services
No.571, Anna Salai
Nandanam, Chennai - 600 035.
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