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W.P.(MD)No.1830 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1830 of 2014
and
M.P.(MD)Nos.1 and 2 of 2014

A.Ganesan

... Petitioner

vs.

1.Tamilnadu Public Service Commission,
through its Chairman,
Greens Road, Chennai.

2.The Secretary to Government,
Personnel and Administrative
Reforms Department,
Fort St. George, Secretariat,
Chennai-600 006.

... Respondent

***(R2 is suo moto impleaded by this Court,
vide this order, dated 20.02.2023, in
W.P.(MD)No.1830 of 2014)***



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondent herein to consider the petitioner for appointment to the non-interview post in the Combined Subordinate Services Examination-I, 2009-2011 conducted by Tamil Nadu Public Service Commission pursuant to the notice published on 30.12.2010 under the BC (other than Muslim) and Differently Abled persons category and appoint him to the said post.

For Petitioner : Mr.V.R.Shanmuganathan
For R1 : Mr.V.Panneerselvam
For R2 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for writ of Mandamus, to direct the 1st respondent to consider the petitioner for appointment to the non-interview post in the Combined Subordinate Services Examination-I, 2009-2011 conducted by Tamil Nadu Public Service Commission pursuant to the notice published on 30.12.2010 under the BC (other than Muslim) and Differently Abled persons category and appoint him to the said post.



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2. The brief facts as stated in the affidavit are that the petitioner's qualification is M.Sc. (Mathematics), M.Com. M.Phil. B.Ed., and has passed Type Writing Higher in both English and Tamil. He has knowledge in computer and he belong to Backward Class (other than Muslim). He is entitled to the benefits of G.O.Ms.No.602, dated 14.08.1981, which provides for appointment with 3% reservation for the differently abled persons in all Government jobs. The respondent Commission called for application for various posts coming under Group II category, vide Notification published on 30.12.2010. The petitioner applied and obtained 222 marks and his rank is 13395. But the petitioner did not receive any call letter for counselling.

3. The contention of the petitioner is that the candidate who belong to BC (other than Muslim) who has secured 186 marks and rank 86744 was issued call letter for counselling. Similarly, the candidates whose name did not find place in the rank list, figures in the selection list. Therefore, the petitioner submitted a



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representation, dated 26.11.2012, in person requesting the respondent Commission to consider his representation and to grant employment. The 1st respondent has not replied to the said representation.

4. In the meanwhile, by invoking Right to Information Act, the petitioner submitted an application, dated 05.12.2012 and sought several particulars. The 1st respondent has replied that certain records are not maintained by them and hence, the request of the petitioner under Right to Information Act, cannot be granted. The contention of the petitioner is that for the candidates belonging to BC (other than Muslim) and who are differently abled, the cut off marks prescribed in such category is 228 marks and the petitioner has secured 222 marks. Subsequently, under Right to Information Act, the petitioner received information that more than 170 candidates who have secured below 200 were selected and appointed but the petitioner was not called for counselling. Aggrieved over the same, the petitioner has preferred this writ petition.



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5. The petitioner received certain information especially particulars of differently abled candidates selected to the non-interview posts included in CSSE I -2009-2011 and the same was circulated to this Court.

6. The 1st respondent has filed a counter affidavit stating that an Advertisement No.258 dated 30.12.2010 and Supplemental Notification issued in Advertisement No.265 and 280 had invited applications for direct recruitment to the posts including CSSE-1 2009-2011. 3475 vacancies in Oral Test posts and 3171 vacancies in Non-Oral Test posts were announced in the said notifications. About four lakhs applications had been received for the recruitment and the candidates were admitted for the written examination held on 30.07.2011. Oral tests were held from 22.06.2012 to 27.07.2012. After completion of oral test, three phases of counselling were conducted and candidates were allowed to the Oral Test posts based on the marks obtained by them both in written and oral test, Rule of reservation, the number of vacancies and the option exercised by them



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during counselling. After the conduct of three phase counselling to Oral Test post, a rank list was prepared for the 1st phase of counselling for Non-Oral Test posts based on the marks obtained by the candidates in the Written Examination. The candidates who had attended the oral test, but were not selected to any of the oral test post were also included in the Ranking List. As the counselling to the Oral Test Post last for more than one month, the Commission had decided to summon the candidates in the ratio of 1:1.5 (i.e., for every 100 vacancies 150 candidates were summoned) to fill 3171 vacancies in non-oral test posts in time. The cut off marks for admission to various phases of counselling conducted for Non-Oral Test post under BC(G) Differently abled persons are stated in the tabulation below:

Phase 1	BC (G) Ortho 2	BC (G) Blind 3	BC (G) Deaf 4
1 st Phase	228.0	185.00	198.00
2 nd Phase	No Vacancy	198.00	207.00
3 rd Phase	No Vacancy	198.00	198.00
4 th Phase	No Vacancy	189.00	No Vacancy
5 th Phase	No Vacancy	No Vacancy	No Vacancy



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All the vacancies earmarked for BC(G) Ortho category had been filled during the 1st Phase of Counselling conducted for Non-Oral Test post. For the differently abled person for BC General, the cut off mark is 228 but the petitioner has obtained only 222. Hence, the petitioner was not included in the list. As far as the differently abled BC General Blind is concerned, the cut off mark is 185. Since the petitioner is not coming under the BC General Blind, the petitioner's name was not considered. The petitioner ought to contest only in BC General Ortho category. Since the cut of mark is 228 for this category, the petitioner's candidature cannot be considered because of his less marks.

7. The petitioner has filed a reply affidavit stating that the 1st respondent has included the women category of Ortho thereby, 7 persons were included in the list and the said 7 persons are as under:



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Sl.No.	Name of Candidate	Roll	DOB	Mark
17.	Selvi.S	11915190	05-05-82	232.5
20.	Radha.S	01220127	05-06-85	231
22.	Rajeshwari.K	00921101	16-03-85	226.5
26.	Deepa.R	02011112	25-05-79	222
27.	Sivaranjani V	01725112	25-05-80	222
28.	Jeya Geetha J.T.	13206095	21-05-82	222
30.	Dheepalakshmi J	02214135	21-04-84	220.5

As far as the Dheepalakshmi is concerned, she has secured 220.5 marks whereas the petitioner has secured 222 marks. Therefore, the contention of the petitioner is that the petitioner should be included first and then the women quota ought to be considered. Hence, the petitioner prayed to allow this writ petition.

8. Heard Mr.V.R.Shanmuganathan, learned Counsel appearing for the petitioner, Mr.V.Panneerselvam, learned Counsel appearing for the 1st respondent and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the 2nd respondent (suo moto impleaded) and perused the records.



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9. When this writ petition was pending before this Court, the Hon'ble Division Bench (First Bench) of this Court in the case of ***M.Satheesh Kumar Vs. State of Tamil Nadu and others*** in W.P.Nos.6201 of 2913 batch vide judgment dated 07.09.2022 reported in 2022 0 Supreme (Mad) 878 has considered the issue whether the women candidates should be filled up first in the open category for which the Hon'ble Division Bench of this Court has answered as under:

“39. The respondents would first arrange the merit, rather the vertical reservation would be from the candidates next in the queue in the order of merit of their own social reservation category, ignoring those candidates finding place in the first list of Open category. After arranging the second list for giving social reservation, the respondents would then provide horizontal reservation, which may be to female candidates, disabled person, etc. The horizontal reservation would be arranged after counting the women candidates finding place in the vertical list of her own category, for illustration a Scheduled Caste female candidate. For arranging horizontal reservation for Scheduled Caste women, a female candidate finding place in the list of Scheduled Caste would be counted towards their reservation and only in case of shortfall, they would be given benefit of female reservation in the manner illustrated by the Apex Court.”



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10. The Hon'ble Division Bench of this Court has categorically held that in the open category there cannot be any priority fixation at all and it is purely based on merit. After filling the open category, the other reservations and priorities shall be filled up based on the available priority category candidates. In the present selection process, the 1st respondent has included women category which will come under priority category wherein 33% reservation was allotted to women. The 1st respondent has filed an additional counter affidavit stating that the persons namely Jeya Geetha and Dheepalakshmi were selected in the category of GT Woman Ortho. This statement is totally against the dictum laid down by the Hon'ble Division Bench of this Court. The 1st respondent has filled up the said post with women candidates first which is totally against the dictum laid down by the Hon'ble Division Bench of this Court.

11. The method of allotting woman category is elaborately discussed by the Hon'ble Supreme Court in the case of *Anil Kumar Gupta Vs. State of Uttar*



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Pradesh. Following the said judgment, the Hon'ble Division Bench of this Court has held as under:

“29.The issue in regard to horizontal and vertical reservation in public employment was elaborately discussed and clarified by the Apex Court in the case of Rajesh Kumar Daria, supra Paragraphs 7, 9, 10 and 11 of the said judgment are quoted hereunder for ready reference:

7.A provision for women made under Article 15(3) respect of employment is a special reservation as contacted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta v State of U.P. (1995) 5 SCC [73] thus: (SCC p. 185, para 18)

The proper and correct course is to first fill up the OC quota (50%) on the basis of merit, then fill up each of the social reservation quotas i.e. SC, ST and BC, the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied-in case it is an overall horizontal reservation to further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (1, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of



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fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied)"

The 1st respondent has followed the just opposite to the method that has been prescribed thereunder.

12. The respondents relied on the judgment rendered by the Hon'ble Supreme Court in ***Saurav Yadav and others Vs. State of Uttar Pradesh and others*** reported in ***2021 4 SCC 542***. This Court is of the considered opinion that the issue dealt in the ***Saurav Yadav's*** case is different and the same cannot be relied on for the issue raised in this writ petition. The Hon'ble First Bench has also dealt with the judgment of ***Saurav Yadav's*** and has held that the respondents should not confuse by the said judgment. The relevant portion is extracted hereunder:

"Therefore, the respondents should not get confused by the said judgment and otherwise we have further clarified that the that the judgments in the case of P.B.



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Vijayakumar and Saurav Yadav and others supra referring to Article 15(3) of the Constitution would be read along with the Constitution Bench judgment in the case of Indra Sawhney supra where it has been held that reservation in favour of female candidates is not saved by Article 15(3) of the Constitution. It may be that the judgment of Indra Sawhney in reference to the relevant paragraph quoted above was not cited before the Apex Court by Learned Counsel for the respective parties in those cases and in any case what will prevail on this Court is the judgment of the Constitution Bench, if there exists conflict between judgments of the Constitution Bench and the subsequent judgments of a Bench of lesser quorum.”

Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered.

13. The learned Standing Counsel appearing for the 2nd respondent vehemently opposed for granting any relief to the petitioner, since the selection process was in the year 2010 and the writ petition is filed in the year 2014. However, the learned Counsel for the petitioner submitted that even though the



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selection process was over in 2010, the present writ petition is filed based on the particulars obtained through Right to Information Act. Hence the petitioner could challenge the same in the year 2014 only. Therefore, this Court is of the considered opinion that there is no delay in filing this writ petition.

14. The Government is not a party in this writ petition. Hence, this Court is *suo motu* impleading the Secretary to Government, Personnel and Administrative Reforms, Fort St. George, Secretariat, Chennai-600006, as 2nd respondent in this writ petition. The 2nd respondent is directed to appoint the petitioner in appropriate post. The 1st respondent shall submit the selected list by including the name of the petitioner within a period of two weeks from the date of receipt of a copy of this order. The 2nd respondent in turn shall appoint the petitioner within a period of two weeks thereafter.

15. The respondents are following this incorrect method for all these years.



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To

The Secretary to Government,
Personnel and Administrative
Reforms Department,
Fort St.George, Secretariat,
Chennai-600 006.



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S.SRIMATHY, J

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