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W.P.No.33644 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE MUMMINENI SUDHEER KUMAR

W.P No.33644 of 2012

and

MP.Nos. 1 & 2 of 2024

G.Dhayalan

...

Petitioner

Vs.

1. THE STATE OF TAMILNADU,
represented by the Secretary to Government,
Social Welfare and Nutritious Meal Programme
Department, Fort St. George,
Chennai-600009.
2. THE DIRECTOR OF SOCIAL DEFENCE,
Old No. 153, New No 300,
Purasawlkam High Road,
Kellys, Chennai-600010.
3. THE TAMILNADU PUBLIC SERVICE COMMISSION,
Represented by the Secretary,
Frazer Bridge Road,
V.O.C. Nagar, (Near Dental College &
Chennai Fort Railway Station)
Chennai-600003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of DECLARATION, declaring the action of the 3rd respondent in provisionally selecting for appointment, the women candidate with registration



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No. 00110075 for the post of School Assistant (Science) in the Tamilnadu Social Defence subordinate Service 2007-08/2011-12 as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the 3rd respondent herein to select and appoint the petitioner with Registration No. 00110255 in the post of School Assistant (Science) in the Tamilnadu Social Defence subordinate Service 2007-08/2011-12.

For Petitioner : Mr.A.R.Suresh

For Respondents : Ms.R.L.Karthika,
Government Advocate for RR1 & 2
: Ms.G.Hema for R3

ORDER

In response to the notification issued by the 3rd respondent/TNPSC for filling up of one post of School Assistant (Science) along with certain other posts vide Notification No.04/2012 dated 02.04.2012, the petitioner has participated in the recruitment process, and on being successful in the written test, the petitioner was also called for an oral test along with two other candidates for the post of School Assistant (Science). Out of three candidates who appeared for the oral test, the petitioner emerged as the one who secured the highest marks; however, the person who secured the least mark among the three, who happens to be a women candidate, was selected and appointed to the said post of School Assistant (Science). It is aggrieved by the said selection and appointment of the women



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candidate, the petitioner approached this Court by filing the present Writ Petition.

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The learned counsel for the petitioner mainly contended that the petitioner, being the meritorious candidate, is entitled to appointment to the post of School Assistant (Science) and also contended that the solitary post that was notified in the notification cannot be reserved for any class or category and the same would amount to 100% reservation. The learned counsel for the petitioner also placed reliance on a decision of the Hon'ble Apex Court in the case of ***State of Karnataka and Others Vs. K. Govindappa and another*** reported in ***(2009) 1 SCC 1***.

3. In response to the notice issued by this Court, respondent No. 3 filed a detailed counter affidavit and the learned counsel Ms.G.Hema appearing for R-3 contended that the notification furnishes the general information at Paragraph No. 4 of the notification about the Rule of reservation to be followed by the respondent-TNPSC while filling up the post notified in the notification. In terms of the same and considering the roster provided under Section 27 of the Tamil Nadu Government Servants (Conditions and Service) Act 2016, which is in parry material with the earlier Rule 22 of the State and Subordinate Service Rules, the roster is being followed while filling up the post of School Assistant (Science) and



in terms of the said roster, the post of School Assistant (Science) is required to be filed up by a women candidate, and accordingly the women candidate was selected, though she was less meritorious than the petitioner herein.

4. No doubt the notification in question does not specify that the post of School Assistant (Science) is earmarked for a women candidate. Had the said vacancy been notified to be filed only by a women candidate, the petitioner, would not have participated in the selection process and may not to have taken pain to write the written examination and then participate in the oral interview. No doubt, the respondent TNPSC did not notify the same. If the notification itself clearly earmarked that the post of School Assistant (Science) is earmarked for a women candidate and in case of non availability of a women candidate only, the man will be considered for appointment in respect of the said post, that is a different aspect.

5. But a mere failure on the part of the TNPSC to notify that the post is earmarked for a women candidate, will not result in vitiating the entire selection process. As already noted above, in Paragraph No.4 of the notification the respondent TNPSC, has categorically stated that the reservation will be followed in terms of the Rules providing for roster and reservation in favour of a women



candidate and the women candidate is said to have been selected by the Respondent TNPSC.

6. This has been explained by the respondent Commission in detail in paragraphs 4 and 5 of the counter affidavit, which reads as follows:

"4. It is submitted that two separate rosters, one for both the posts of School Assistant (Science) and School Assistant (History) and the other for the post of Tamil Pandit (Grade-I) were followed for this recruitment. Among the two vacancies in the posts of School Assistant (Science) and School Assistant (History), one vacancy was apportioned for BC category and the other was apportioned for GT (Women) category.

5. It is submitted that three candidates for the single post of School Assistant (Science), three candidates for the single post of School Assistant (History) and twelve candidates for four posts of Tamil Pandit (Grade-T) (Le 18 candidates in the ratio of 1:3) were admitted for Oral Test held on 02.08.2012 and the petitioner was one among them who were summoned for Oral test. The petitioner had scored a total of 249.00 marks in the Written Examination and Oral Test. Among the six candidates who were admitted for the Oral test to the posts of School Assistant (Science) and School Assistant (History), based on the marks (265.50] obtained by a BC candidate (Register No.00111134) having qualified B.A. (History)., B.Ed., the



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vacancy apportioned for BC was filled up with a candidate who had scored higher marks than the petitioner. Thus the vacancy in the post of School Assistant (History) was filled up with a candidate who had scored higher mark than the petitioner. Therefore, a female candidate having qualified in Science degree had been selected to fill up the remaining one vacancy in the post of School Assistant (Science) as the said vacancy was apportioned for GT (Women) category. Hence, the petitioner a BC candidate despite scoring higher marks among the Science Graduates couldn't be selected for the post of School Assistant (Science) since vacancy was reserved for Women candidate, and this turn has to be filled up only by Women candidate."

There is nothing brought before this Court that contradicts the above stand taken by the respondent commission in earmarking the post in question in favour of the women candidate and selecting the women candidate.

7. The stand of the learned counsel for the petitioner that the post of School Assistant (Science) being a solitary post notified under the notification in question, cannot be reserved for any category or class, and any such reservation would amount to 100% reservation and relied on the decision of the Hon'ble Apex Court in the case of the State of Karnataka and others (cited supra). In the considered view of this Court, the decision is not applicable to the facts of the



case on hand. The question of applying the said ratio laid down in the said decision would arise only in cases where there is only one post in the entire cadre. In the instant case, it is not as if the cadre of School Assistant (Science) consists of only one post. But there are a huge number of posts in the said cadre, but only one vacancy is not sought to be filled up in the present notification. Therefore, the said decision has no application to the facts of the case on hand.

8. In the light of the above, though there appears to be some vagueness in the notification issued by the respondents TNPSC, the procedure that is followed by the respondent TNPSC in finalizing the selection by giving order of the reservation provided under the roster system, provided under the then State and Subordinate Service Rules, cannot be found fault on the ground of mere vagueness of the notification. The action of the respondent commission in selecting the women candidate against the post of School Assistant (Science) is found to be in accordance with the law. Hence, this Court is not inclined to interfere with the action of the respondent commission in selecting the women candidate.

9. In the light of the above, the prayer sought for by the petitioner cannot be granted. Accordingly, this Writ Petition stands **dismissed**. There shall be no order



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as to costs. consequently,connected miscellaneous petitions are also closed.

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Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



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To

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