



WEB COPY



Writ Appeal No.1234 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2024

PRONOUNCED ON : 04.06.2024

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.1234 of 2021

M.Abdul Rahman ... Appellant

Vs

1.The State of Tamil Nadu

Rep., by its Secretary to Govt.,
Personnel and Administrative Reforms Dept.,
Fort St., George,
Chennai – 600 009.

2.Tamil Nadu Public Service Commission,

Rep., by its Secretary,
VOC Nagar, Frazer Bridge Road,
Park Town, Chennai – 600 003.

... Respondents

PRAYERS: Writ Appeal have been filed under Clause 15 of Letter Patent against the order dated 03.11.2020 made in W.P.No.14256 of 2013.

For Appellants : Mrs.Dakshayani Reddy (Sr., Counsel) for
Ms.Sunitha

For Respondents : Mr.P.Balathandayutham Spl.G.P., for R1



Writ Appeal No.1234 of 2021

Ms.G.Hema Standing counsel for TNPSC

JUDGMENT

WEB COPY

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

The instant Intra-Court Appeal had been preferred as being ag-grieved against the order of the learned Single Judge rejecting the claim of the appellant wherein the appellant had sought for a direction to direct the second respondent to fill the backlog vacancies in the BC (M) category for the post of Junior Assistant as notified in a notification dated 27.04.2012.

2.Heard Mrs.Dakshayani Reddy learned Senior counsel appearing for Ms.Sunitha, learned counsel appearing for the appellant, P.Balathandayutham learned Special Government Pleader appearing for the first respondent and Ms.G.Hema, learned Standing counsel appearing for the second respondent TNPSC.

3. The learned Senior counsel appearing for the appellant would submit that the second respondent herein had issued a notification dated 27.04.2012 for filling up of various vacancies, which had included the backlog vacancies in certain categories. She would submit that the backlog



Writ Appeal No.1234 of 2021

vacancies under the BC(M) category to the post of Junior Assistant was 200, Typist was 70 and Steno-Typist Grade III was 13. She would submit that there are about 10718 vacancies, which are sought to be filled up under the said notification including the backlog vacancies. It is the contention that the procedure for filling up the vacancies had not been properly followed and the BC (M) candidates, who were appointed under the General Turn have shown to have been filled up under BC(M) category and not on their own merit thereby denying various BC(M) candidates to be filled up under the BC(M) category. She would further submit that the second respondent had not followed the ratio laid down by this Court in the judgment in the case of ***K.R.Shanti vs. Secretary to Govt., Education Department, Chennai & Anr.***, reported in ***2012 (7) MLJ 241***, while filling up the vacancies. She would submit that the well settled law laid down by this Court in the manner of filling up vacancies had not been followed, particularly the meritorious candidates, who had applied claiming reservation and appointed under the open quota should not be adjusted against the reserved quota under the vertical reservation. She would vehemently contend that this had not been followed by the second respondent and had adjusted the BC(M) candidates appointed on their own merits in the open category against the reserved post



Writ Appeal No.1234 of 2021

for BC(M) category, both under the backlog vacancies and also under the current vacancies. She would further submit that it is a well settled law that firstly the open category ought to be filled from the candidates who had got on their own merit and thereafter, the backlog vacancies of the particular reserved category should be filled and only thereafter, the reserved category candidates in the current vacancies should be filled up. This has also been given a go-by by the second respondent.

4.The appellant had filed the Writ Petition immediately when the selection list was published in the year 2013, however, the learned Single Judge had rejected the Writ Petition that a period of 7 years had lapsed from the time of recruitment and disturbing the recruitment process at this distant point of time, would not be prudent for this Court to interfere. She would submit that the pendency of the Writ Petition cannot be put against the Writ Petitioner to be denied of the benefits. Further, the learned Single Judge had granted liberty to the appellant to work out his remedy in the manner known to law. If the filling up of the vacancies is in contravention to the scheme of the constitutional framework and not in tandem with the Constitution of India, the said liberty goes against his own finding that at this length of time,



Writ Appeal No.1234 of 2021

the Court would refrain from interfering with the recruitment process, which had concluded 7 years back. The learned Single Judge had wholly misunderstood the facts of the case and from the admitted facts in the counter affidavit filed by the respondents, it is clear that there has been violation of the well settled principles of recruitment as enunciated by this Court in the judgment reported in **2012 (7) MLJ 241** and the orders of the Hon'ble Apex Court. Therefore, she would pray this Court to interfere with the order passed by the learned Single Judge. She had also relied upon the judgments of the Hon'ble Apex Court in the case of **Union of India & Anr., vs. Satya Prakash & Ors.**, reported in **(2006) 4 SCC 550** and **State of Tamil Nadu & Ors., vs. K.Shobana & Ors.**, **(2021) 4 SCC 686** and the recent judgment of Division Bench of this Court in the case of **J.Sheena vs. Tamil Nadu Public Service Commission, & Ors.**, in **W.P.No.5105 of 2024, dated 27.02.2024 etc.**, case.

6.Countering her arguments, Ms.G.Hema, learned Standing counsel appearing for the second respondent would contend that there has been no error apparent in the recruitment process. She would submit that for the post of Junior Assistant, number of backlog vacancies in BC(M) was 192



Writ Appeal No.1234 of 2021

and the number of fresh vacancies in the BC(M) category is 167 and therefore, there are total number of vacancy in the BC(M) category is 359.

She would submit that there are seven phases of counselling conducted and during the course of counselling, 366 vacancies including the General Turn vacancies were filled up by the BC(M) candidates. She would further submit that 79 candidates who were selected in the General Turn had opted for communal reservation and therefore, their selection on the General Turn had been set off against their own communal vacancy. She would further submit that the last candidate, who selected under the BC(M) category was with 193.50 marks and the appellant had secured only 192 marks and that there are about 76 BC (M) candidates between him and the last selected candidate and therefore, even if he succeeds in the appeal, he would not be entitled to grant of an appointment as there are 76 persons who would be entitled to be appointment in the event of the appellant being successful. Therefore, she would submit that there is no error in the process of recruitment made by the second respondent and therefore, there is no necessity to interfere with the order passed by the learned Single Judge.



7. We have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

8. The *lis* involved in this Writ Appeal is as to whether the second respondent had made the recruitment process as prescribed under law. It is to be noted that this Hon'ble Court in a judgment reported in ***K.R.Shanti vs. Secretary to Govt., Education Department, Chennai & Anr.***, (referred supra), had laid down the detailed method for filling up of the vacancies earmarked for each of the categories. For better appreciation, the relevant paragraph is extracted hereunder:-

14. A perusal of the above judgments would keep at least two things beyond any pale of doubt. Firstly, the roster is not vacancy based, but the same is only post based. It identifies the number of posts earmarked for various categories under the vertical reservations and posts left behind for open quota as well as special reservations. Secondly, after so identifying the posts, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection. If once the number of vacancies earmarked for each category in the current selection is identified by using the Roster, thereafter the Roster will have no further role to play in the matter of selection. After identifying the number



of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below:-

First Step:-

(i) As against the number of vacancies identified for open quota, irrespective of caste, sex, physically challenged, etc., everyone should be allowed to compete based on merits.

(ii) The meritorious candidates should be first selected as against the above vacancies under open quota.

Second Step:-

(iii) After completing the first step, moving on to the vertical reservation categories, selection has to be made for each category from amongst the remaining candidates belonging to the particular reserved category (vertical) based on merits.

Third Step:-

(iv) After completing the second step, horizontal reservation which cuts across the vertical reservation has to be verified as to whether the required number of candidates who are otherwise entitled to be appointed under the horizontal reservation have been selected under the vertical reservation.

(v) On such verification, if it is found that sufficient number of candidates to satisfy the special reservation (horizontal reservation) have not been selected, then



required corresponding number of special reservation candidates shall have to be taken and adjusted/accommodated as against social reservation categories by deleting the corresponding number of candidates therefrom.

(vi) Even while filling up the vacancies in the vertical reservation, if, sufficient number of candidates falling under the horizontal reservation have been appointed, then, there will be no more appointment exclusively under the horizontal reservation.

Caution:-

(vii) At any rate, the candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations.

9.The aforesaid judgment had been approved by the Hon'ble Apex Court even as early as on 2021 in the judgment reported in **(2021) 4 SCC 686**. In the said judgment, the Hon'ble Apex Court had also reiterated its earlier decision reported in **(2021) 4 SCC 542**, where the following principle had been laid down, which is extracted hereunder:-

- (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*



Writ Appeal No.1234 of 2021

(c) the remaining reserved vacancies for the current year to be filled thereafter.

10.From the reading of the aforesaid judgment as extracted supra, it could be seen that the general merit list should be filled up first, then the backlog vacancy of a particular reserved category to be filed, followed by the remaining reserved vacancy for the current year. It has also been approved that the candidates, who had selected as against the post under open quota shall not be adjusted against the reserved quota under the vertical reservation.

11.In the present facts of the case, it has been admitted by the second respondent in its counter affidavit filed by the Deputy Secretary that the BC (M) category persons, who have been selected on their own merit in the General Turn category had been fitted against the post, which had earmarked for BC (M) category. For better appreciation of the same, the said averment made in the counter affidavit filed by the second respondent dated 27.10.2021, is extracted hereunder:-



4.It is humbly submitted that the averments of the appellant herein in ground (b) (c) & (g) have no merits. Though the persons in the Muslim category were selected on the basis of their own merit in the General category, but option to choose the category having been given to them, they chose to take up the BCM category and, accordingly, they have been fitted against the said posts, which were earmarked for BCM category. The respondent commission has not acted against the option given by the meritorious candidates.

12.The said admission of the fact by the second respondent is in clear violation of the law laid down by this Court in filling up the vacancies as the second respondent has adjusted the candidates belonging to the reserved category who had got appointment on their own merit in the General Turn had been adjusted with the reserved category. In view of the admitted factual error committed by the second respondent, it is imperative upon us to interfere with the recruitment process. But however, we refrain from doing so for the simple reason that the entire recruitment process had been finalised in the year 2013 itself and it is only the appellant herein who had been agitating his rights and that no other candidates had approached



Writ Appeal No.1234 of 2021

this Court. It is also to be noted that all the candidates who were recruited pursuant to the said notification have all been working for the past decade and any order disturbing the recruitment process would also affect their right. Since they are all not parties before us, we do not also want to disturb the said recruitment process.

13.However, considering the fact that there has been a wrong methodology which had been followed by the second respondent in making the recruitment for the year 2013 and the admitted fact is that there were 79 BC(M) category candidates who had got recruited under the open quota had been adjusted in the BC(M) category and if the 79 names are taken out of BC (M) category, then there would be 79 vacancies which would remain in the BC (M) category. If that is so, it is also an admitted fact that the appellant herein is in the list in serial No.77, as per his own merit and therefore, he would be entitled to be recruited, but however, this can be done notionally without disturbing already recruited persons. Hence, we direct the second respondent herein to revisit the provisional selected list as per the directions issued by this Court in the judgments reported in **(2012) 7 MLJ 241** and **(2021) 4 SCC 686** and notionally arrive at a provisional list and if



Writ Appeal No.1234 of 2021

the appellant herein falls within the zone of consideration for recruitment, the second respondent can recommend to the first respondent, the candidature of the appellant for recruitment. However if the appellant is successful in getting recruited, he shall be placed last in the list of candidates recruited on the basis of the recruitment notification dated 27.04.2012 and he would be entitled to all benefits only notionally. We also make it clear that any promotion that had been gained by any of the subsequent recruitees, shall also not be disturbed as their rights have already been crystallised. The appellant would only be entitled for future promotions only.

14. With the aforesaid directions, this Writ Appeal is allowed and the order passed by the learned Single Judge in W.P.No.14256 of 2013, dated 03.11.2020 is set aside. However, there shall be no order as to costs.

(D.K.K.,J.)

(K.B., J.)

04.06.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Page No.13/15



Writ Appeal No.1234 of 2021



Writ Appeal No.1234 of 2021

D.KRISHNAKUMAR.,J.
and
K.KUMARESH BABU.,J.

pbn

To

- 1.The State of Tamil Nadu
Rep., by its Secretary to Govt.,
Personnel and Administrative Reforms Dept.,
Fort St., George,
Chennai – 600 009.
- 2.Tamil Nadu Public Service Commission,
Rep., by its Secretary,
VOC Nagar, Frazer Bridge Road,
Park Town, Chennai – 600 003.

Writ Appeal No.1234 of 2021

04.06.2024