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W.P.No.1305 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.1305 of 2018
and
W.M.P.Nos.1641 & 1642 of 2018

S.Amanullah

... Petitioner

Vs.

1. The Registrar General,
High Court, Madras,
Chennai-600 104.

2. The Registrar (Recruitment),
High Court, Madras,
Chennai-600 104.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Ceriorarified Mandamus, calling for the records of the 2nd respondent herein in regards to selection of Sanitary Worker pursuant to its notification No.125/17 dated 14.07.2017 and quash the selection list dated 08.01.2018 and direct the respondents to prepare a fresh selection list by including the name of the petitioner.



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For Petitioner : Mr.C.Harsha Raj for
M/s.Rajan Raj Associates

For Respondents : Mr.S.HajiMohideen Chisthi

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The writ on hand has been instituted questioning the validity of the selection for appointment to the post of Sanitary Worker in Madras High Court Services.

2. The petitioner states that he participated in the process of selection for appointment to the post of Sanitary Workers, pursuant to the recruitment notification No.125/2017 dated 14.07.2017. The petitioner scored 46 out of 50 marks in the Written examination and in Practical examination, he scored 9 out of 15 marks and in Interview he scored 7.25 out of 10 marks. The total marks scored by the petitioner was 62.5 out of 80 marks.



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3. The learned counsel, appearing on behalf of the petitioner, Mr.S.Harsha Raj would submit that the Selection process was not conducted by providing reservation in accordance with the provisions of the **Rights of Persons with Disabilities Act, 2016**. There is no provision available in the recruitment notification to apply under the differently-abled category. Thus, the High Court has committed an error in not notifying the reservation in the recruitment notification. However, the fact remains that the High Court recruited six (6) candidates from the differently-abled category adopting roster point.

4. The learned counsel for the petitioner would further submit that the petitioner was discriminated, despite the fact that he is fully qualified for selection and appointment to the post of Sanitary Worker in the High Court services. The Disability Certificate, issued by the competent Medical Board recording the disability of the writ petitioner is as follows:



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4. Sri. A. K. M. Harsha Raj, Petitioner, submits the following physical requirements for discharge of his/her duties:

F - can perform work by manipulating with fingers.	Yes ☒ / No ☐
P - can perform work by pulling and pushing.	Yes ☒ / No ☐
L - can perform work by lifting.	Yes ☒ / No ☐
KO - can perform work by kneeling and crouching.	Yes ☒ / No ☐
B - can perform work by bending.	Yes ☒ / No ☐
S - can perform work by sitting.	Yes ☒ / No ☐
ST - can perform work by standing.	Yes ☒ / No ☐
W - can perform work by walking.	Yes ☒ / No ☐
HE - can perform work by heel up.	Yes ☒ / No ☐
H - can perform work by hand up/raising.	Yes ☒ / No ☐
RW - can perform work by reading and writing.	Yes ☒ / No ☐

Registration No. 123456789 Member, Medical Board
Registration No. 987654321 Member, Medical Board
Registration No. 112233445 Member, Medical Board

CHENNAI, 12/12/2018

Entry: In accordance with the provisions of the Tamil Nadu, Protection of Public Health and Safety Act, 1996 (Act No. 38 of 1996) of the Tamil Nadu Government, in order to ensure the health and safety of the public, the Government of Tamil Nadu has issued the following order: The State Government has decided to constitute a Medical Board consisting of a and three members of officers, doctors, and to be appointed to the post of the Medical Board and to be appointed to the post of the Medical Board.

1. The committee should be constituted for a period of 3 years from the date of its formation. The three members appointed should be, 1/3 each from the three categories mentioned above.

5. Relying on the medical certificate it contended that the petitioner is fully capable of performing the job of Sanitary Worker in High Court services, Mr. Harsha Raj would submit that the Selection Committee has not taken into consideration that the petitioner scored higher marks than that of the candidates, who were included in the selection list under general category. In other words the petitioner scored 62.5 marks out of 80 and the persons who scored lesser marks than that of the petitioner were selected and appointed. As per the marks secured by the petitioner, he would have been placed in Sl.No. 19 in the selection list, which consist of total 60 people. That being so, rejection of the candidature of the



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petitioner is directly in violation of the provisions of the Right of Persons with Disabilities Act, 2016, and further the petitioner was discriminated.

6. In this context it is relevant to consider Section 3 of the Right of Persons with Disabilities Act, 2016, which deals with equality and non discrimination. Section 3(1) states *“No Government establishment shall discriminate against any person with disability in any matter relating to employment, provided that the the appropriate government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.”* Sub Section 3 denotes *“No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.”*

7. Section 20 enumerates non-discrimination in employment. Proviso to Sub-section 1 states that *“appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section”*. Sub Section (2) which is more important reads that *“every Government establishment shall*



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provide reasonable accommodation and appropriate barrier free and conducive environment to the employees with disability”

8. In the present case, it is not in dispute that the petitioner scored 62.5 out of 80 marks in the process of selection. Further it is not in dispute that the candidates who scored lesser marks than the petitioner were appointed and are serving. The only impediment for selection and appointment of the petitioner, as per the High Court, was that his hearing impairment was about 90 % which is not falling in line with Rule 25 of the Madras High Court Service Rules 2015.

9. Rule 15 of the Madras High Court Service Rules provides reservation for appointment by direct recruitment. The rule is framed based on Section 32 of the **Persons with Disabilities (equal opportunities, protection of rights and full protection Act 1995)**. Accordingly, one person from persons with partial hearing impairment that is 40% to 50% hearing impairment has to be appointed. Since the petitioner was not falling within the eligibility criteria as contemplated under Rule 25 of the Madras High Court Service Rules, 2015, his candidature was rejected.



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10. Pertinently, the High Court Service Rules 2015 was not amended subsequently in tune with the provisions of Right of Persons with Disabilities Act, 2016. The criteria fixed under Rule 25 was based on the erstwhile Central Government Act 1 of 1996. Importantly, the recruitment notification, which is under challenge in the present writ petition was notified in July 2017, after coming into force the 2016 Act with effect from 19.04.2017. Thus, the High Court ought to have amended the Rule in line with the provisions of the Rights of Persons with Disabilities Act 2016. Once the 2016 Disabilities Act came into force with effect from 19.04.2017, the said Act is to be applied in respect of the recruitment notifications issued thereafter. Thus, it is rightly pointed out by the learned counsel for the petitioner that the petitioner would be entitled to claim employment opportunity based on the provisions of the Right of Persons with Disability Act, 2016. Disability Act, 2016, which unambiguously stipulates that no person with disabilities shall be discriminated on the ground of disability. Further, Section 34 mandates reservation for the following categories :

“34.Reservation.- (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the



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cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:-

- (a) blindness and low vision;*
- (b) deaf and hard of hearing;*
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*
- (d) autism, intellectual disability, specific learning disability and mental illness;*
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities;*

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such



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notifications exempt any Government establishment from the provisions of this section.”

11. We could able to find out, no candidate under Section 34(1)(b) of Right of Persons with Disabilities Act, 2016, was selected and appointed. All the candidates appointed under the differently-abled category are under Section 34(1)(c) of Right of Persons with Disabilities Act, 2016, i.e., locomotor disability. No candidate from deaf and hard of hearing was appointed. Importantly, the nature of duties and responsibilities attached to the post was not considered at the time of selecting the candidates. The disability certificate issued by the Medical Board would amplify that the petitioner is qualified and capable of performing the duties and responsibilities attached to the post of Sanitary Worker. The learned counsel for the petitioner submitted that the petitioner is performing the same job in a private sector as of now successfully. However, in the selection process, the petitioner was discriminated, which is impermissible under the provisions of the Rights of Persons with Disability Act, 2016. Thus, the petitioner is to be considered for appointment to the post of Sanitary Worker in High Court Services. The petitioner scored 62.5 out of 80. Thus, he is eligible to be



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included under the General category in the selection list and to be appointed. On account of hearing impairment, he was denied an opportunity, which amounts to discrimination and running counter to the scheme contemplated under the provisions of the Rights of Persons with Disabilities Act, 2016.

12. The learned Standing Counsel for High Court would submit that the candidature of the petitioner was rejected mainly based on Rule 25 of the High Court Service Rules, 2015. We found that Rule 25 of the existing Madras High Court Service Rules, 2015, is not in consonance with the provisions of the Rights of Persons with Disabilities Act, 2016, and said Rule require re-evaluation and to be revisited. The reservation for differently-abled persons must be granted scrupulously in accordance with the provisions of the Disabilities Act, 2016, and in the present case, the notification was issued after the year 2016, when the Act already came into force and therefore, the provisions of the said Act will prevail over. Thus, the petitioner is entitled for the relief as such sought for in the present writ petition.



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13. The learned Senior Standing Counsel for the High Court, on securing instructions made a submission that post of Sanitary Worker in the High Court is vacant.

14. In view of the facts and circumstances, we direct the first respondent Registrar General, High Court of Madras, to appoint the writ petitioner to the post of Sanitary Worker within a period of four (4) weeks from the date of receipt of a copy of this order.

15. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(K.R.S.J.,)

28.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

1. The Registrar General,
High Court, Madras, Chennai-600 104.

2. The Registrar (Recruitment),
High Court, Madras, Chennai-600 104.



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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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