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W.P.No.17555 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.04.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.17555 of 2021

and

W.M.P.Nos.18659 and 18660 of 2021

S.D.Chandrakumar

... Petitioner

Vs.

1. Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Park Town, VOC Nagar,
Chennai – 600 003.

2. The Principal Secretary,
Commissioner of Archaeology,
Department of Archaeology,
Tamil Valarchi Valaagam,
Tamizh Salai, Egmore,
Chennai – 600 008.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the pertaining to the impugned Provisional list of candidates admitted to original certificate verification and counselling to the post of Archaeological officer included in TamilNadu General Subordinate service for the year 2019-2020 issued by the 1st respondent dated 16.12.2020 and quash the same as illegal



insofar as not including the petitioner and consequently for a direction directing the respondents to select and appoint the petitioner in the post of Archaeological officer under Backward Community category based on the marks secured by the petitioner.

For Petitioner : M/s.S.Revathy
For R1 : Mr.R.Bharanidharan,
Government Advocate
For R2 : Mr.M.Murali,
Government Advocate

ORDER

The petitioner herein participated in the recruitment process conducted by the respondent Commission pursuant to the Notification No.33 of 2019 dated 28.11.2019 for filling up 18 vacancies in the post of Archaeological Officer in the Tamil Nadu General Subordinate Services in the Archaeology Department for the year 2019-2020. The petitioner participated in the selection process with Application No.930000052 and the petitioner was issued with Hall Ticket vide No.010001237 and appeared for the written examination. In the said examination, the petitioner claimed to have secured Overall Rank No.19 and Communal Rank No.12 and she was provisionally admitted to on-line certificate verification on 19.12.2020 and accordingly, he



also uploaded the certificates for verification on 31.10.2020. However, the petitioner was not included in the provisional list of candidates admitted for original certificate verification and counselling for the post of Archaeological Officer in the proceedings dated 16.12.2020 issued by the respondents. It is aggrieved by the said proceedings in not including the petitioner, he approached this Court by filing the present Writ Petition. According to learned counsel for the petitioner, the respondent treated the petitioner as 'PSTM category', though the petitioner never claimed any benefit under the said category.

2. The respondent Commission filed a counter-affidavit contending that in the on-line application submitted by petitioner, she mentioned the medium of instruction as 'Tamil', but she failed to upload the necessary certificates to claim reservation under 'PSTM category' and therefore, her name was not shortlisted for original certificate verification.

3. When the matter is taken up for consideration, it is brought to the notice of this Court by counsel on either side that under similar circumstances, issue has fallen for consideration before a learned Division Bench of Madurai



Bench of this Court in W.A.Nos.1950, 1951 and 1952 of 2021 and the learned Division Bench by an order dated 19.10.2023 has decided the said issue. A copy of the same is also placed before this Court. Paragraph Nos.8 and 9 of the said order reads as under:-

“ 8. Per contra, learned counsel appearing for the first respondents / writ petitioners relied on the Judgment of the Division Bench of this Court, dated 23.01.2019 in W.A.No.424 of 2018 [M.Silamparasan vs. The Secretary], wherein the very same issue was considered by the Division Bench. The relevant portion of the said Judgment reads as under:

“...Learned single Judge, has not considered the issue as to whether, if a candidate has made a claim, under PSTM quota, and if a certificate to such preferential claim is not submitted, whether the said candidate can be considered for selection against the seats earmarked for MBC quota, or in general category? Our answer to the above issue is that the candidate who is otherwise qualified, should be considered, against the seats earmarked for MBC, the category to which the candidate belongs or in general category.”

9. We have considered the facts of the present case independently. The first respondents / candidates, in their online applications, have



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stated that they acquired educational qualifications through Tamil medium. They have mentioned so in their applications. The column provided in the application issued by the Tamil Nadu Public Service Commission stipulates that the candidates should state the medium of instructions. However, there is no column for providing the choice of the candidates for the purpose of availing the benefit under PSTM Quota or otherwise. In the absence of any such column seeking the choice of the candidates for availing the benefit under PSTM Quota, mere mentioning of the medium of instructions cannot be a ground to draw an inference that the candidates have submitted their applications only under the PSTM Quota. After receiving the applications from the candidates, Tamil Nadu Public Service Commission cannot turn around and convert the applications only for the purpose of considering such candidates under the PSTM Quota. Those candidates in the event of not producing PSTM Certificates, they must be provided an opportunity under the General Pool or the Reserved Category, which they belong. Thus, the rejection of the applications of the first respondents / candidates in the present case has resulted in an inequality and therefore, equal opportunity in public employment has been denied to those candidates. Mere information given by the candidates about the medium of instruction would not disentitle them from availing the benefit under the General Quota or the Reserved Category / Quota in the process of selection. Equal opportunity in public employment being a constitutional mandate, the rejection of applications in the



present case has resulted in an unconstitutionality and infringed the rights of the first respondents / candidates. The learned Single Judge in the impugned order has relied on the findings of this Court made in W.P.No.5812 of 2020, dated 07.07.2021, [M.Nisha vs. The Secretary], wherein the facts are falling on the same line and akin to that of the Division Bench Judgment of this Court in the case of Silambarasan referred supra.

4. In the light of the above decision of the learned Division Bench, this Court is of the considered view that no fresh adjudication of the said issue on merits needs be made in this Writ Petition and it would be appropriate to follow the decision of the learned Division Bench.

5. Further, it is also brought to the notice of this Court that the order passed by the learned Division Bench referred to above was also accepted and implemented by the respondents and the candidates covered by the said order were duly appointed basing upon their merit.

6. In the aforesaid circumstances, the action of the respondent in not allowing the petitioner to participate in the original certificate verification along with other eligible candidates and to participate in the further selection



process is declared as illegal and consequently, the 1st respondent is directed to consider the case of the petitioner herein under general pool or under reserved category, as may be applicable to him and re-do the entire exercise.

In case, if the petitioner comes within the zone for appointment in terms of his merits and satisfy after qualifications criteria and communicate the decision taken therein to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands allowed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

29.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, VOC Nagar,
Chennai – 600 003.

2. The Principal Secretary,



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MUMMINENI SUDHEER KUMAR, J.

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