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W.A.No.202 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.202 of 2022 and

CMP No.1523 of 2022

Dr.M.Mathiyazhagan

... Appellant

Vs.

1. The Member Secretary, Teachers Recruitment Board,
4th floor, EVK Sampath Maaligai,
DPI Compound, College Road, Chennai 600 006.

2. The Director of Collegiate Education,
9th floor, EVK Sampath Maaligai,
DPI Compound, College Road, Chennai 600 006.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 14.12.2020 made in W.P.No.30012 of 2014 and allow the writ appeal.

For Appellant : Mr.Bala Vijayan
for M/s C.S. Associates

For Respondents : Mr.R.Neelakandan, Addl.Adv.General
Assisted by Mr.C.Karthiravan,
Spl.Govt.Pleader for first respondent
Mr.D.Ravichander,
Spl.Govt.Pleader for second respondent



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JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This intra-court appeal has been filed by the writ petitioner, as against the order passed by the learned Single Judge in W.P.No.30012 of 2014, dated 14.12.2020, in and by which, his claim " *to appoint him under Tamil Medium quota as Assistant Professor (Botany) and confer all the consequential benefits to him*" was negated.

2. The appellant/writ petitioner belonged to Schedule Caste community and he is a post graduate in M.Sc.(Botany). Pursuant to the notification No.4 of 2013, dated 28.05.2013 issued by the Teachers Recruitment Board, he applied to the post of Assistant Professor in Botany. Subsequently, he was called for certificate verification and he participated in the interview and he secured 14 marks. According to the appellant, he did his school education as well U.G.Decree [B.Sc.(Botany)] in Tamil Medium, however, since there was no Tamil Medium in post graduate Degree, he did M.Sc (Botany) in English Medium. Therefore, while applying for the post, he claimed under Tamil Medium preferential category. However, the



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petitioner was not selected to the said post, whereas, one Gowi Shankar, who himself not possessed the P.G. degree in Tamil Medium, was selected.

Hence, the appellant filed the writ petition seeking direction to the Teachers Recruitment to appoint him as Assistant Professor (Botany) under reservation category of PSTM and the same was dismissed, which is impugned herein.

3. Heard the learned counsel for the appellant and the learned Additional Advocate General appearing for the first respondent and the learned Special Government Pleader appearing for the second respondent.

4. It is an admitted fact that the appellant belonged to Scheduled Caste Community; and he did his schooling and U.G. Degree in Tamil Medium and did his P.G. Degree in English Medium. It is contended by the learned Additional Advocate General that, as per the notification, those candidates, who claimed preference under the category of Tamil Medium, should have studied the P.G. Degree also in Tamil Medium. He further submitted that, the cut off mark of the last candidate under SC(G) and



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SC(G)(T) is 25; and SC(W) is 22; and since there is no available candidate in SC(G)(T) category, one Gowri Sankar, who belonged to Schedule Caste and secured 25 marks, was appointed as Assistant Professor (Botany) in SC category.

5. For the purpose of claiming reservation under PSTM category, the candidate should pursued his/her throughout education in Tamil as Medium of Instruction. At this juncture, it is useful to rely upon the decision of the ***Hon'ble Full Bench*** of this Court in ***R.Boominathan Vs. The Government of Tamil Nadu rep. by its Secretary, Home Department (W.P.No.27127, 27165/2018 and batch dated 27.09.2019)***, which was followed by the ***Hon'ble First Bench*** of this Court in its decision in ***W.A.Nos.404, 405 /2020 etc. batch, dated 19.03.2020 (the Secretary, Department of School Education Vs. R.Vijayalakshmi)***.

6. The Full Bench of this Court in ***R.Boominathan case***, cited supra, has held that in the absence of a certificate issued by the Registrar/Principal or Head of the Institution in the prescribed format stating that the person



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pursued the education in Tamil as Medium of Instruction throughout, he or she cannot be placed on par with PSTM Candidates for the purpose of claiming reservation under the preference quota.

7. Following the aforesaid Full Bench judgment, the First Bench of this Court in ***R.Vijayalakshmi case, cited supra***, has held as follows.

:" 20. Nonetheless, this issue came up before this Court for consideration as to whether a person having studied a course can be treated to have studied in Tamil medium in the background of Law Degrees being awarded by various Institutions throughout the State in a matter arising out of a claim by a candidate who was appearing in the Civil Judges examination conducted by the Tamil Nadu Public Service Commission and who claimed horizontal reservation of 20% on the ground that he had undertaken his Law course in Tamil medium. The Full Bench after having analyzed the provisions vide its judgment dated 27.09.2019 in the case of *R.Boominathan v. Government of Tamil Nadu and others* (supra) on the facts of that case came to the conclusion that the Law courses in Tamil were being pursued, but intermittently in some selected Colleges depending upon the number of takers. The Court went on to hold that it is therefore evident that the course was not being imparted in Tamil, but was rather being pursued by the students and then, further held that a certificate issued by the competent authority certifying that the Institution was imparting courses in Tamil medium of instruction was compulsory. Paragraphs 29 and 30 of the Full Bench judgment are extracted herein under:

"29. Therefore, it is evident that Law degree is not imparted, rather pursued by the students in Tamil in the State continuously, but intermittently, whenever offered in some selected colleges depending upon the number of takers. However, the State Government has earmarked 20% of all vacancies in appointment in the services under the State, which are to be filled through direct recruitment, as preferential



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appointment, but only very few Colleges in the State are imparting education with Tamil as the medium of instruction. We are also not aware as to how many candidates have so far availed this concession in the State.

30. For the purpose of recognising a candidate, within the realm of selection to employment in government services, under PSTM category, a candidate should have studied in Tamil as medium of instruction. Therefore, in order to avail the benefit of reservation earmarked under PSTM category, a candidate has to furnish a certificate to the effect that he or she studied in Tamil as medium of instruction. Such certificate will be issued by the Head of the Institution/Registrar or Principal of the College, as has been contemplated under G.O. (Ms) No.145, Personnel and Administrative Reforms Department dated 30.09.2010, in the prescribed format, certifying that he or she studied the course in Tamil by indicating the duration (academic year) during which the candidate pursued the course. It is this certificate which will form the basis for recognising a candidate for having studied in Tamil medium of instruction so as to enable him or her to get the benefit of reservation under PSTM category. It is needless to mention that merely because a candidate writes the academic examination or competitive examination in Tamil, it will not recognise such candidate to get the reservation under PSTM category. The requirement is that a Certificate issued by the Head of the Institution/ Registrar or Principal of the college, in the prescribed format, certifying that he was imparted with the course in Tamil as medium of instruction, has to be furnished, so as to enable a person to get the benefits of reservation under PSTM category. In the absence of such a certificate, a candidate cannot be regarded or recognised as a preferential candidate, who can avail the benefit of reservation under PSTM category. In other words, if such a certificate is not produced, he or she cannot be recognised as a candidate, who can be extended the benefit of reservation under PSTM category. Therefore, we hold that compliance of the requirements contemplated under G.O. (Ms) No.145



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dated 30.09.2010 to furnish a certificate issued by the Head of the institution/Principal or Registrar of the College, in the prescribed format, is a mandatory requirement to get the benefit of concession and/or reservation earmarked by the State under PSTM category. We therefore answer the reference made to us as follows:-

- (i) A person who studied the Course in Tamil or had written the University or Competitive examination in Tamil will not ipso facto recognise or qualify him or her to claim reservation under Persons Studied in Tamil Medium (PSTM) category*
- (ii) Even though a person opted for Tamil as Medium of Instructions in the Colleges or studied the Courses in Tamil or written examinations in Tamil, in the absence of a certificate issued by the Registrar/Principal or Head of the Institution in the prescribed format stating that he or she pursued the education in Tamil as Medium of Instruction throughout, he or she cannot be placed on par with PSTM Candidates for the purpose of claiming reservation under the preference quota*
- (iii) Tamil, as Medium of Instruction, is not in vogue in certain colleges, or rather to say, Law Degrees are not imparted in Tamil as a Medium of Instructions. Only in few colleges, Law Degrees are imparted in Tamil as Medium of Instructions and in some other colleges, it is being imparted intermittently. Only if a student pursued the entire Course in Tamil and obtained a Certificate to that effect from the head of the institution/Registrar or Principal of the College, will he or she be declared as the one who is eligible to claim preference in public employment under PSTM category. As on date, Law Colleges at Chennai, Madurai, Coimbatore, Tiruchirapalli, Tirunelveli and Chengalpattu are imparting the courses in Tamil as medium of instruction, as could be evident from G.O. Ms. No.33, Law (LS) Department dated*



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31.01.2017 as well as the counter affidavit filed by Director of Legal Studies, Chennai.”.

21. Thus, a combined reading of the provision of Section 2(d) of the Act 40 of 2010 read with the ratio of the Full Bench judgment, it is evident that a certification of the medium in which a particular course is being imparted and has been pursued by the candidate should be Tamil medium and therefore, the question has to be examined accordingly. The imparting of education in Tamil medium, coupled with it being pursued by the candidate and then being evidenced by a certificate issued by the competent authority, form the three principle ingredients of the legal proposition that has to be answered on the arguments advanced by learned counsel for the parties.

22. We are fortified in the aforesaid view as would be evident from an analysis of the advertisement in respect of the posts of Special Teachers for appointment which is the subject matter of this dispute.

...

33. Factually, the said argument raised on behalf of the respondents/petitioners that there is no Column for mentioning the medium of instruction separately is correct as compared to the requirement in respect of SSLC and HSC State Board Examinations. This, however, in our opinion, cannot be presumed to be not a requirement at all to produce the certificate in respect of the medium of instruction of the technical qualification. Accepting the argument of the respondents/petitioners would be negating the very purpose of Section 2(d) of the Act 40 of 2010 as also the 2010 PSTM Rules that were notified earlier and would be making the certificate verification Clause 8(b), Clause 9 and Annexure-II to the notification absolutely redundant. This could not be the purpose or intent of the format in the Online application form and therefore, this argument has to be rejected.

34. We next come to the contention raised on behalf of the appellant that a learned Single Judge at the Madurai Bench had dismissed the writ petition and which fact was brought to the learned Single Judge,



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yet, without mentioning the same and without recording that he has a different opinion, instead of referring it to a Larger Bench, has chosen to allow the writ petitions. We accept this argument on behalf of the appellant, inasmuch as the learned Single Judge has failed to notice the aforesaid judgment even though it was on record of the counter-affidavit and secondly, judicial discipline did demand that if the same issue had been raised and a learned Single Judge had dismissed the writ petition, then unless it fell within the per incuriam rule or otherwise had been overruled, the same ought to have been a matter of reference instead of proceeding to allow the writ petitions that too even without noticing the said judgment.

35. The third argument of learned counsel for the State also deserves acceptance which is based on the ratio of the Full Bench decision extracted herein above. The Full Bench clearly rules that what has to be ascertained is as to whether the Institution is imparting the particular course in Tamil medium or not and for that the requirement of a certificate is sinequa non. The Full Bench even though having delivered later on, clearly holds to the contrary as held by the learned Single Judge, who has not delved into the issue. For this reason also, the impugned judgments deserve reversal.

36. There is an another argument on behalf of the appellant that the respondents/petitioners could not have turned around after having appeared in the examination and acquiesced to the procedure prescribed under the notification. To this, the answer of learned counsel for the respondents/petitioners is that there cannot be a medium of instruction in respect of the Higher Grade technical qualification of Sewing, Music, Drawing and Physical Education. We cannot accept this argument of the respondents/petitioners, inasmuch as no educational course can be normally imparted without a medium of instruction. Even the Deaf and Dumb schools have a medium of visual reading and lip movement and the school for the Blind have a Braille medium. The subjects of Special Teachers are not only practical, but also contain some part of theory. The argument of the respondents/petitioners that there is no medium at all to study the subjects is simply preposterous. Whether it is Drawing or whether



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it is Sewing or Music or Physical Education, the course has to be imparted even if orally, through an instruction, which has to have a medium. Thus, the argument that there is no medium as urged by the respondents/petitioners has to be rejected outright. A script has to be studied and translated either by signs or by any other medium or by any other linguistic medium. We can only advise the writ petitioners and the learned counsel to read an authority on the subject viz., "The Loom of Language" by Frederic Bodmer.

37. We are also of the considered opinion that all the writ petitioners with open eyes had applied Online against the notification, which has set out the requirement of certificates as indicated above in detail. Annexure-II read with Claus 9 of the notification, therefore, was well known to the respondents/ petitioners and they did not challenge the same. Learned counsel for the appellant is, therefore, right in his submission that this excuse cannot be set up to claim a right which is otherwise not available and also does not give rise to any legitimate expectation.

38. We may add further that even though they may have passed the written examination, a mere selection does not give a right of appointment unless all the conditions requiring the recruitment are fulfilled. If the Courts grant such relaxation dehors the terms and conditions, the same would be violative of Articles 14 and 16 of the Constitution of India, inasmuch as this is not a matter of compassionate or sympathetic appointment. The appointment to public employment are subject to Articles 14 and 16 of the Constitution of India. If such concessions are granted by the Courts, this would definitely discriminate those who never had an opportunity to apply or even stake such a claim which has been extended by the learned Single Judge to the respondents/petitioners."

8. Admittedly, in the instant writ appeal, the appellant did his P.G. Degree in English Medium. It is argued by the learned counsel for the



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appellant that, as there is no Tamil Medium in M.Sc (Botany), the appellant studied the P.G. Decree in English Medium and hence, considering the fact that the appellant studied his SSLC, +2 and U.G. Decree in Tamil Medium, he has to be appointed as Assistant Professor (Botany) under the Tamil Medium. Per contra, it is the contention of the first respondent/ Teachers Recruitment Board that, in the instant recruitment of Assistant Professors, the candidates, who claimed preference under Tamil Medium, should have studied the Post Graduate also in the Medium of instruction in Tamil. As argued by the learned counsel for the appellant, if there is no Tamil Medium in M.Sc.(Botany), it may not be any possible for having the candidates, studied the P.G. Decree (M.Sc. Botany) in Tamil Medium. However, the cut of marks of the last candidate under SC (G) as well as SC(G)(T) is 25 marks and it is not denied by the appellant himself that he scored only 14 marks, which means, he did not score the eligible marks even under SC(G)(T). Therefore, he was not considered for selection by the Public Service Commission. Further, the selection of Mr.Gowri Sankar, who scored 25 marks, was under SC General category, as per the communal turn and not under PSTM Category, as alleged by the appellant. Apart from that,



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as rightly observed by the learned Single Judge, without challenging the appointment of the above said Gowri Sankar, the appellant/writ petitioner has filed the above writ petition.

9. Therefore, in the light of the decisions of the *Hon'ble Larger Bench of this Court* as well as the *Hon'ble First Bench of this Court* in the case of *Boominathan* and *R.Vijayalakshmi* respectively, as cited supra, and also in view of the above discussion, we are of the view that there is no necessity to interfere with the decision of the learned Single Judge and hence, this writ appeal is liable to be dismissed.

10. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (K.B.J.)

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