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W.P.No.9034 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.9034 of 2016
and WMP.No.8020 of 2016

S.Immanuel Manasay

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Social Welfare and Nutritious Meal
Program Department,
Fort St. George,
Chennai – 9.

2.The Commissioner,
Commissioner for the Welfare of the Differently Abled,
Jawaharlal Nehru Inner Ring Road,
K.K.Nagar,
Chennai – 78.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the non selection of the petitioner as Deputy Warden (School for deaf or Orthopaedically handicapped) based on the recruitment notification dated 26.11.2015 issued by the 2nd respondent as illegal and arbitrary, consequently direct the 2nd respondent to consider and appoint the petitioner as Deputy Warden in the school for the deaf or Orthopaedically handicapped as per recruitment notification dated 26.11.2015 ROC.No.4333/S.S/2015 and subsequent certificate verification dated 16.02.2016.



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For Petitioner : Mr.D.Muthukumar

For Respondents : Mr.R.Kumaravel

Additional Government Pleader

* * * * *

ORDER

This Writ Petition is filed to declare the non selection of the petitioner as Deputy Warden (School for deaf or Orthopaedically handicapped) based on the recruitment notification dated 26.11.2015 issued by the 2nd respondent as illegal and arbitrary, consequently direct the 2nd respondent to consider and appoint the petitioner as Deputy Warden in the school for the deaf or Orthopaedically handicapped as per recruitment notification dated 26.11.2015 ROC.No.4333/S.S/2015 and subsequent certificate verification dated 16.02.2016.

2.During 2008, the second respondent called the eligible candidates for certificate verification based on the employment seniority to fill the 10 post of Deputy Warden and Secondary Grade Teacher and the petitioner was one among the candidates, who attended the certificate verification during 2008. As the petitioner was placed in the 11th position in Seniority list he was not appointed during 2008. Thereafter no recruitment was conducted by the second respondent for the post of Deputy Warden and the petitioner had to wait for 8 long years. On 26.11.2015, the second



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respondent advertised for recruitment of 13 post of Deputy Wardens. The said 13 posts were divided into three categories. 1) Deputy Warden – School for deaf – 8 vacancy – out of which 2 vacancies were allotted for BC (one BC – GL – Priority, another BC – Gl – Non priority), 2) Deputy Warden – School for the blind – 4 vacancies and 3) Deputy Warden – School for the Orthopaedically handicapped – 1 vacancy allotted for General turn – General – Non-priority. As per the aforesaid notification, the educational qualification for the post of Deputy Warden was as follows:

Educational qualification for Deputy Warden (School for the Deaf)	Must have obtained Diploma in - Teacher Education (D.T.Ed) from a Recognized Institution must have Completed junior Diploma in Teaching the Deaf
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Educational qualification for Deputy Warden (School for the Blind)	Must have obtained Diploma in - Teacher Education (D.T.Ed) from a Recognized Institution must have Completed junior Diploma in Teaching the Deaf
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Educational qualification for Deputy Warden (School for the Orthopaedically handicapped)	Must have obtained Diploma in - Teacher Education (D.T.Ed) from a Recognized Institution must have Completed junior Diploma in Teaching the Deaf/Blind
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3.The petitioner possessed Diploma in Teacher Education and Junior Diploma in Teaching the deaf and therefore, he applied for the post of Deputy Warden [School for Deaf] and Deputy Warden [School for



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Orthopaedically handicapped] for which he was qualified. The petitioner was called for certificate verification by the second respondent vide letter dated 16.02.2016, and the petitioner participated in the certificate verification process on 24.02.2016 for the post of Deputy Warden [School for Orthopaedically Handicapped]. He also participated in the certificate verification process on 25.02.2016, for the post of Deputy Warden [School for Deaf]. The petitioner's grievance was that though he was the senior most in the BC category as per the employment registration, he was not selected for the post of Deputy Warden [School for Deaf] and Deputy Warden [School for Orthopaedically handicapped], but some other persons who were junior to him in the Employment Exchange seniority were selected and appointed. The petitioner therefore gave a representation to the second respondent on 05.03.2016 questioning his non selection. Aggrieved by his non-selection to the post of Deputy Warden [School for Deaf] and Deputy Warden [School for Orthopaedically handicapped], the petitioner filed the above writ petition.

4.The respondents filed a detailed counter stating that G.O.No.44, Labour and Employment (T2) Department, dated 11.03.2015, was issued in confirmity with the confirming Judgment of this Court in W.A.No.1027 of



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2013. The Director of Employment and Training also sent the sponsored list of candidates to the 2nd respondent vide his letters dated 13.11.2015 and 06.01.2016. The respondent stated that in pursuance of G.O.Ms.No.44, notification was issued on 26.11.2015, calling for applications to fill the post of Deputy Warden by the second respondent. The respondent further submitted that in G.O.Ms.No.44 dated 11.03.2015, it was clearly stated that the second respondent constituted the selection committee for recruitment to the post of Secondary Grade Teachers / B.T. Assistants / Deputy Wardens in the Government Special Schools run by the Department for the Welfare of the differently abled vide Procs.No.4333/SS/2015 dated 24.08.2015. The Selection Committee formulated the modalities for the selection of candidates by laying down the selection mode/method based on the marks obtained for the post of Deputy Wardens as per the rules and regulations prescribed by the Government and hence, the selection was legal and valid.

5.The learned counsel for the petitioner submitted that the petitioner was fully qualified and therefore the petitioner ought to have been considered for appointment. The learned counsel relying on the additional affidavit filed by the petitioner submitted that as per the employment



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seniority the petitioner was in serial No.3 in seniority list and two other persons above him in the BC General category did not apply for the said post and therefore, the petitioner as the senior most in the employment exchange seniority was alone eligible for selection. The learned counsel further submitted that the recruitment notification did provide for any selection method/mode and the same was introduced subsequent to the notification. The learned counsel submitted that the procedure adopted by the respondents was in clear violation of law laid down by this Court. The interference with the mode of selection after the process commenced was illegal. The learned counsel further submitted that considering the long lapse of time, the petitioner was not inclined to challenge the selection, but would restrict the challenge to his non-selection.

6.The learned Additional Government Pleader on the other hand submitted that it was true that in the recruitment notification the selection method/mode was not specified. The Government in pursuance of the G.O.Ms.No.44, issued the recruitment notification dated 26.11.2015, by adhering to the orders passed by this Court in W.A.No.1027 of 2015. The learned Additional Government Pleader submitted that in W.P.No.26162 of 2010, this Court vide order dated 02.08.2010, directed the respondents to



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constitute a selection committee for framing the criteria for selection before the commencement of the recruitment notification depending on the post to be filled up. The learned Additional Government Pleader therefore submitted that the selection committee was constituted and selection committee decided to adopt the method of grading marks through the weightage method as prescribed in G.O.Ms.No.71 School Education (TRB) Department dated 30.05.2014. The learned Additional Government Pleader therefore submitted that based on the said method eligible candidates were selected and as the petitioner was ranked 61, he was not selected.

7.I have heard both the learned counsels and I have perused the materials placed on record.

8.It is admitted that prior to G.O.Ms.No.44, Labour and Employment (T2) Department, dated 11.03.2015, the method of selection to the post of Deputy Warden was made on the basis of seniority in employment exchange. Moreover, this Court vide order dated 02.08.2012 in W.P.No.26162 of 2010 held as follows:

“A writ in the nature of mandamus is issued directing the respondents to advertise the post in all



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leading newspapers and other media to enable all the eligible persons to compete for the post. The advertisement should show the number of posts to be filled up, the qualification for the post. The age limit and relaxation in age if any. The post reserved for different categories. The respondents should also constitute selection committee, who shall adopt the criteria of selection before commencement of selection process laying down marks for qualification, experience, interview, etc. depending on the post to be filled up.

In view of the different Government orders placed on record, it is directed that the State Government should take immediate steps to fill up the posts, by inviting applications from all eligible persons, along with names sponsored by the Employment Exchange after laying down criteria for selection, so as to select best available talent. ”

9.The above said order dated 02.08.2012 was challenged before the Hon'ble Division Bench of this Court in W.A.No.1027 of 2015 and the same was confirmed by the Hon'ble Division Bench vide order dated



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09.06.2014. In compliance of the above orders of this Court G.O.Ms.No.44 was passed. Based on G.O.Ms.No.44, recruitment notification dated 26.11.2015 was issued calling for applications for filing up of the post of Deputy Wardens in the School for Deaf, School for Blind and School for Orthopaedically handicapped. The petitioner applied for the post of Deputy Warden (School for deaf and for Orthopaedically handicapped). According to the petitioner, the petitioner satisfied the requisite educational qualification for the above said post having obtained Diploma in Teacher Education (D.T.Ed) from a Recognized Institution and also completed junior Diploma in Teaching the Deaf and Dumb. According to the petitioner, he was the senior-most in the Employment Exchange and therefore based on his seniority, the petitioner was eligible to be selected for the post of Deputy Warden either in the School for Deaf or School for Orthopaedically handicapped. It is the petitioner's case that the selection committee was constituted for adopting selection method/mode for selection. The method of grading marks through the weightage method as prescribed in G.O.Ms.No.71 School Education (TRB) Department dated 30.05.2014 was adopted by the selection committee. The petitioner's grievance is that the selection criteria or the mode of selection ought to have been advertised in the recruitment notification and therefore, the



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selection criteria adopted after the process of selection commenced was illegal and arbitrary. In short the petitioner's case was that if the earlier method of selection (i.e.) seniority in Employment Exchange was followed, then the petitioner would have got selected.

10.The short point for consideration is whether the respondent could have introduced the selection method of grading marks through the weightage method, as prescribed in G.O.Ms.No.71 School Education (TRB) Department dated 30.05.2014, after the selection process commenced? In the employment recruitment notification there was no whisper about the mode/method of selection. The recruitment notification was advertised on 26.11.2015 and the selection criteria was decided by the Selection Committee on 28.01.2016, almost 2 months after the recruitment notification was issued.

11.In my view, the procedure adopted by the respondent is not only contrary to law, but also contrary to the direction issued by this Court in W.P.No.26162 of 2010, wherein this Court specifically stated that the advertisement should show the number of posts to be filled up, the qualification for the posts, the age limit and relaxation if any, the post



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reserved for different categories and also that the respondents should constitute selection committee, who shall adopt the criteria of selection before commencement of selection process laying down marks for qualification, experience, interview, etc. depending on the post to be filled up.

12.From the aforesaid order of this Court, it is clear that the constitution of the selection committee and the determination of the mode/method of selection was to precede the recruitment notification. In the present case, mid-way through the recruitment process the Selection Committee was constituted and selection mode/method was adopted. In my view, in the absence of any publication of the selection mode/method in the recruitment notification, the selection method adopted cannot be sustained as it is not only violative of the petitioner's rights under Article 14 but also in violation of the orders passed by this Court. In this regard, the Judgment of the Hon'ble Supreme Court in the case of *Bedanga Talukdar Vs. Saifudaullah Khan & others* reported in *2011 (12) SCC 85*, can be usefully referred to. Though the case related to non-publication of the condition as to relaxation, the principle that the selection method/mode advertised in the recruitment notification has to be scrupulously followed



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and violation of the same would result in arbitrariness would squarely apply to the case on hand. The Hon'ble Supreme Court held that relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in [Articles 14](#) and [16](#) of the Constitution of India. In the present case, no particular criteria for selection was published in the recruitment notification. Hither to seniority in the Employment Exchange was the only method of selection and so in the absence of any selection criteria, seniority in the Employment Exchange which was followed in the previous notification would only apply. Moreover, only after the recruitment process commenced, the selection method/mode was adopted by the Selection committee constituted by the respondent. Therefore, I am of the view that the method/mode adopted by the respondent for selection to the post of Deputy Warden is unsustainable, as it is not only arbitrary but also because it is violative of the order passed by this Court in W.A.No.1027 of 2015 Vs W.P.No.26162 of 2010.

13.The petitioner has restricted the challenge only to his non-selection. It is seen that the age limit prescribed as per the recruitment process for Deputy Warden both for School for deaf and School for orthopaedically handicapped was 57 years as per the notification and



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therefore, in my view, the petitioner is entitled for consideration to the said post both as per Educational qualification and as per the age criteria. The petitioner has specifically stated in his affidavit that he was the senior-most in the Employment Exchange and the said statement of the petitioner has not been controverted by the respondents in the counter affidavit. At this juncture, the learned counsel for the petitioner submitted that there was one vacant post of Deputy Warden in Cuddalore District, which is not denied by the respondents. Therefore, the respondents are directed to consider the petitioner for the vacant post of Deputy Warden (School for Deaf and School for Orthopaedically handicapped) based on the petitioner's educational qualification and his seniority in the Employment Exchange, within a period of eight weeks from the date of receipt of a copy of this order.

14. Accordingly, this writ petition stands allowed. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes/No
Internet : Yes/No
Neutral citation : Yes/No



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N.MALA,J.

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