



W.P.No.18388 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM

THE HONOURABLE MR JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.18388 of 2020

and

W.M.P.Nos.22780, 22778 of 2020

G.Rajmohan

.... Petitioner

Vs.

1. The State of TamilNadu
Rep by its secretary to Government,
School Education Department,
Secretariat, chennai 600 009.
2. The Teachers Recruitment Board,
Rep by its Chairman,
4th floor, E.V.K.Sampath Maligai,
DPI campus,college Road,
Chennai-600 006.
3. The Director of School Education,
O/o.The Directorate of School Education,
College Road,
Nungambakkam, Chennai 6.
4. The Member Secretary
Teachers Recruitment Board,
4th floor, E.V.K.Sampath Maligai,
College Road, Chennai-6

..... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed the 2nd respondent vide his impugned proceedings dated 28.10.2020 (Published in the official website of the TRB on 28.10.2020) in so far as it reserves the posts of Physical Education Teacher under MBC Category are concerned and the consequential impugned order passed by the 3rd respondent vide his proceedings Na.KaNo.40207/ C5 / E4 / 2015 dated 28.10.2020 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment to the post of Physical Education Teacher under MBC category in the available notified vacancies within the period that may be stipulated by this Court.

For Petitioner: Mr.S.Nambi Arooran
For R1 and R3: Mr.T.M.Rajangam
Government Advocate
For R2 and R4 : Mr.R.Siddarth
Standing Counsel

ORDER

The present Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide his impugned proceedings dated 28.10.2020 (Published in the official website of the TRB on 28.10.2020) insofar as it reserves the posts of Physical Education Teacher under MBC Category are concerned and the consequential impugned order passed by the 3rd respondent



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vide his proceedings Na.KaNo.40207/C5/E4/2015 dated 28.10.2020 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment to the post of Physical Education Teacher under MBC category in the available notified vacancies within the period that may be stipulated by this Court.

2. The case of the petitioner is that the petitioner is qualified with Bachelor of Physical Education and thus eligible to be considered for appointment to the post of Special Teacher (Physical Education Teacher). The second respondent issued a notification vide Notification No.5 of 2017 dated 26.07.2017, inviting applications from the eligible candidates for appointment to the post of Special Teacher. The petitioner is one among the aspirants to the post of Special Teacher (Physical Education Teacher). The selection process consists of written examination and certificate verification. The written examination took place on 23.09.2017 and the petitioner was also participated in the written examination. The marks secured by each candidate were published individually on 14.06.2018 and the petitioner was called for certificate verification in the ratio 1:2 and the petitioner's certificates were found to be in order. Pursuant thereto, the second respondent, vide his



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proceedings Nil dated 13.08.2018, has published a tentative provisional selection list, in which, the petitioner's name was also included. Thus, the petitioner was eagerly waiting for the appointment order to the post of Special Teacher (Physical Education Teacher).

3. When the matter stood thus, the second respondent, vide his impugned proceedings Nil dated 28.10.2020 (published in the official website of the TRB on 28.10.2020) has published the revised provisional selection list for appointment to the post of Physical Education Teacher. The said list contains the name of various candidates whose names were not included in the earlier provisional selection list. Since the names of the new candidates were included in the list, the second respondent should conduct certificate verification as the selection process consists of both written examination and certificate verification. Without conducting certificate verification, the second respondent proposed to conduct counseling for issuing posting orders. Consequent to the impugned provisional selection list, the 3rd respondent vide impugned proceedings Na.Ka.No.40207/C5/E4/2015 dated 28.10.2020 has proceeded with counseling for issuing posting order to the provisional selected candidates and the same was scheduled to be held on 03.11.2020 and 04.11.2020. There



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are about 561 candidates who were selected and the 71 remaining notified vacancies are reserved on the ground that the candidates in the respective category with the particular special reservation are not available.

4. Further, as per the notification, there are 663 posts of Physical Education Teacher and as per the impugned list, 632 posts were shown to be earmarked and the petitioner belongs to Most Backward Class. Petitioner secured 71 marks which is a cut off mark for the post of Physical Education Teacher in his respective communal category. As per the impugned list, the post under the category of the petitioner's is lying vacant due to non availability. When petitioner very much available with the required cut off marks, the said post shall be filled up by the candidates belonging to the respective communal category and as such candidate should be considered as against the said vacancy taking into consideration of marks secured by the petitioner and reserving the post on the ground of non availability of candidates is wholly unreasonable. Likewise, the posts under the category of MBC Ex-serviceman are reserved due to non availability of the Ex-serviceman category and as per first proviso to Section 27(c) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if the Ex-serviceman candidate is not



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available, it should be filled up by candidate belonging to the respective communal category and, as such, reserving the post without considering the candidature is violative of Article 16 of the Constitution of India which guarantees the right to be considered for public employment.

5. In the same line, the post reserved for the candidates studied in Tamil Medium should also be considered by the candidate belonging to the respective communal category. As a matter of fact, the petitioner also entitled to be considered under PSTM category but the said certificate was obtained subsequently. As the petitioner was unable to submit the said certificate, his candidature was not considered under PSTM category. In any event, since the petitioner studied his courses in Tamil Medium and at present the petitioner is in possession of the PSTM certificate, the petitioner's candidature should have been considered under PSTM category. Hence, the petitioner come up with the present Writ Petition.

6. The learned counsel for the petitioner would submit that initially the petitioner applied under the MBC category, but the petitioner is also eligible for the appointment under PSTM category. The petitioner secured the required



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cutoff marks of 72 and, as such, there could be no impediment to consider his candidature in the available notified vacancies. As per the notification 632 vacancies were notified whereas as per the impugned list only 561 posts were filled up and, as such, in the availability of notified vacancies, the petitioner ought to have been considered in terms of marks secured by him.

7. He would further submit that out of the selected candidates nearly about 24 candidates were selected to the post of Physical Director Grade-I and they are not interested to get appointment as they are holding a better position and, as such, those posts are also lying vacant. It is the duty of the second respondent to publish the reserve list and for the reasons best known to the second respondent they have not published the reserve list. If the reserve list is published, the vacancies arose on account of non joining of the candidates will be filled up by the candidates from and out of the reserve list and the petitioner lost the chance due to the non publication of reserve list. It is also submitted that the vacancies, which would arise on account of non joining of selected candidates, have to be filled up from the reserve list drawn for such purpose and he was advised that the right to be considered for public employment is a fundamental right as the same is guaranteed under Article 16 of the



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Constitution of India and the said right included purposeful and meaningful consideration. If the candidates are not available under the horizontal reservation, the posts are to be filled up by the candidates belonging to the respective communal category except for the candidates coming under the reservation for person with disability.

8. The learned counsel for the petitioner submitted that the petitioner possessing the qualification prescribed under the notification and the other selected candidates do not possess the qualification prescribed under the notification. Further, he would submit that the second respondent ought to have filled up the notified vacancies in terms of the notification and the petitioner is very much available with the required cutoff marks and the notified vacancies are also available, there is no impediment to consider the candidature of the petitioner. He submitted that as per the impugned list, the posts under the category of M.B.C., are lying vacant due to non availability of the candidates and the petitioner is very much available with the required cutoff marks.

9. By relying upon the order dated 20.08.2019 in Rev.A.(MD)No.70 and etc., of 2019, the learned counsel for the petitioner contented that since the



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Division Bench of Madurai Bench, directed to consider the candidatures of the petitioner along with selected candidates and appoint them to the post of Special Teacher (Physical Education). In the case on hand, the petitioner was already selected under the Most Backward Class category ought to have been considered for the appointment of post of Special Teacher (Physical Education Teacher). Further, he submitted that in the tentative provisional list, the petitioner's name appeared at serial number 16 and Roll No.17ST22010828 under the Most Backward Class (MBC) category and was allotted to Social Defence Department.

10. A counter affidavit filed on behalf of the second and fourth respondents on 28.12.2020.

11. Per contra, Mr.R.Siddharth, learned Standing Counsel appearing for the Teachers Recruitment Board submitted that some of the vacancies earmarked for specific reservation turn such as Ex-serviceman Turn, PSTM turn are kept reserved due to the non-availability of suitable candidates for such turn in the certificate verification held on 13.08.2018. Further, he submitted that the Board has published the list of candidates for certificate verification in 1:2



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ratio for the vacancies reserved for PSTM and Ex-serviceman Turn on 02.12.2020. This list was arrived based on the information provided by the candidates in the application form and duly followed the procedure mentioned in the recruitment notification.

12. The learned Standing Counsel for the respondents 2 and 4 would further submit that Section 27(c) of the Tamil Nadu Government Servants (conditions of Service) Act, 2016 applies only when no Ex-servicemen candidates available to be considered under the Ex-servicemen reservation. The Teachers Recruitment Board has followed the rules of reservation as notified in the Notification No.5/2017 for the post of Special Teachers (Physical Education Teachers) and the claim of the petitioner is premature.

13. On instructions from the District Revenue Officer, Teachers Recruitment Board vide proceedings in R.C.No.6720/L-S/2020 dated 27.11.2024, the learned Standing Counsel for the Board would further submit that the total number of vacancies notified in MBC/DNC category for the subject Physical Education Teacher is 131, out of which 116 vacancies were filled and 15 vacancies were allocated under MBC/DNC



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(PSTM, PWD and Ex-Servicemen) priority category only. The Board is engaged in the process for filling the aforesaid 15 vacancies. He would submit that all the vacancies pertaining to MBC/DNC (General) category is filled. The petitioner herein does not fall under the aforesaid priority categories. Hence, the petitioner cannot be considered for selection.

14. The learned Government Advocate appearing for the first & third respondents would submit that the certificate verification was conducted for the aforesaid post on 14.06.2018, whereas the petitioner had obtained his PSTM certificate only on 21.08.2018 and the same was not submitted to the fourth respondent. He would further submit that pursuant to the order dated 20.08.2019 in Rev.A.(MD)No.70 and etc., of 2019, the 4th respondent is directed to consider the candidature of the petitioner along with other selected candidates. The petitioner who obtained the qualification certificate subsequently was asked to appear for certificate verification and many candidates were found to be successful and though the petitioner was selected earlier in a tentative provisional list in Serial No.16 was not selected and the other persons secured more marks and they were considered to the post of Special Teacher (Physical



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Education). In this regard, he relied on the judgment of the Full Bench of this Court in the case of *Nadar Thanga Shubha Laxman .A Vs. The State of Tamil Nadu*, reported in 2013 SCC OnLine Mad 3625: (2014) 2 LW 881 (FB): (2014) 3 CTC 433 (FB): 2015 Lab IC 954, wherein it has been held under:

"In view of the above settled position and for the foregoing reasons, we hold that the equivalence certificate issued by the committee constituted by the Governments declaring that the degrees obtained from one University is equivalent to the degrees obtained from yet another University cannot be held to be only prospective in operation but will have its effect and validity right from the date of issuance, therefore, with due respect to the Hon'ble Division Bench, the view taken in *N.Geetha's case* is incorrect. Accordingly, the reference is answered".

Registry is directed to place all matters before the learned single judge for disposal on merits.

15. Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 3 as well as the learned Standing Counsel for the respondents 2 & 4 and also perused the materials available on record.

16. In the case, on hand, the petitioner was tentatively selected for the post of Special Teacher (Physical Education Teacher) for the year 2012-2016 under the Most Backward Class (MBC) category, whose serial number is 16 and Roll No.17ST22010828 and was allotted to Social Defence Department.



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While so, the tentative provisional selection list was cancelled by the 4th respondent. The petitioner studied under PSTM category, and he had applied under the MBC category and not applied under PSTM category.

17. The main contention of the learned Government Advocate that the certificate verification was conducted for the above said post on 14.06.2018, and the petitioner has obtained his PSTM certificate only on 21.08.2018. Though the petitioner applied for the above said post under MBC category, he wanted to canvas the case under PSTM category, and his candidature cannot be considered, for the reason that the petitioner has applied under MBC category.

18. The main contention of the learned counsel for the petitioner is that in the review application filed to review the order passed in W.A.(MD).No.176 of 2019, dated 12.02.2019 a Division Bench of the Madurai Bench of Madras High Court, vide order dated 20.08.2019, directed the Teachers Recruitment Board to treat all the petitioners as eligible, having prescribed qualification for the post of Physical Education Teachers as per the recruitment notification dated 26.07.2017. In para 24,



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the Division Bench, held as under:

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"24. As a result, the Writ Appeals filed by the Writ Petitioners are allowed and all the Writ Petitions which are disposed of by the common order dated 07.12.2018 in the matter of Sivakami and other Writ Petitioners filed against Teachers <http://www.judis.nic.in> Recruitment Board and others are allowed. The Teachers Recruitment Board is directed to treat all the petitioners as eligible, having prescribed qualification for the post of Physical Education Teachers as per the recruitment notification dated 26.07.2017. **The Teachers Recruitment Board is directed to consider the candidatures of petitioners along with selected candidates and appoint them to the post of Special Teacher (Physical Education) if they are otherwise eligible on merits among the persons qualified.** This order cannot be taken advantage of by other candidates who have not come forward to challenge their non-selection. The Review Petitions are allowed and the Common Order impugned in Review Petitions is recalled and treated as modified in terms of this order. All the Writ Appeals filed by Teachers Recruitment Board and Director of School Education and other Writ Appeals filed by selected candidates and third parties to the Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

19. Thus, the learned counsel for the petitioner urged that the petitioner should have been appointed, since he was already selected under the MBC category.

20. The above order dated 20.08.2019 passed in W.A.(MD).No.70 and etc., of 2019 does not say that the persons who have been already selected have to be appointed. The above order only directs the Teacher



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Recruitment Board to consider the candidatures of the petitioners therein along with selected candidates and appoint them to the post of Special Teacher (Physical Education Teacher) and it does not say that the candidates who were already selected should be appointed. Hence, the contention of the learned counsel for the petitioner is unsustainable and untenable in law.

21. The other contention of the learned counsel for the petitioner is that as per the 1st proviso to Section 27(c) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if the Ex-serviceman candidate is not available, it should be filled up by a candidate belonging to the respective communal category and as such reserving the post without considering the candidature is violative of Article 16 of the Constitution of India, which guarantees the right to be considered for public employment.

22. In this regard, the 4th respondent has submitted his written instructions stating that the unfilled 15 vacancies were allocated under MBC/DNC (PSTM, PWD, Ex-servicemen) priority category only. The Teachers Recruitment Board is engaged in the process for filling the above



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mentioned 15 vacancies. It is stated that all the vacancies pertaining to MBC/DNC(General) category are filled. The petitioner herein does not fall under the above mentioned priority categories. Hence, the above contention of the learned counsel for the petitioner is also unsustainable/untenable in law.

23. According to the 4th respondent, the total number of vacancies for MBC is 131, out of which, 116 vacancies were already filled up and the remaining 15 vacancies mentioned supra, the Board is engaged in the process of filling the same.

24. In view of the above factual matrix of the case, the impugned order passed by the second respondent vide his impugned proceedings dated 28.10.2020 (Published in the official website of the TRB on 28.10.2020) in so far as it reserves the the posts of Physical Education Teacher under MBC Category are concerned and the consequential impugned order passed by the 3rd respondent vide his proceedings Na.KaNo.40207/C5/E4/2015 dated 28.10.2020, do not warrant any interference by this Court and the same are hereby confirmed.



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25. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/No
Speaking/Non-speaking Order
jd

To:

1. The State of TamilNadu
Rep by its secretary to Government,
School Education Department,
Secretariat, chennai 600 009.
2. The Teachers Recruitment Board,
Rep by its Chairman,
4th floor, E.V.K.Sampath Maligai,
DPI campus,college Road,
Chennai-600 006.
3. The Director of School Education,
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J.SATHYA NARAYANA PRASAD.J.,

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