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W.P.No.21981 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.21981 of 2021
and W.M.P.Nos.23195 of 2021

R.Jaya Glory

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Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

2. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3. The Principal,
Ethiraj College for Women (Autonomous)
Egmore,
Chennai – 600 008.

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Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India
praying for the issuance of a Writ of Mandamus directing the respondents
to comply the provisions of Rights of Persons with Disabilities Act, 2016



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(49 of 2016) to fill up the post of Assistant Professor in the Department of Mathematics notified through paper advertisement in the month of February 2021 and consequently consider the selection and appointment of the petitioner to the post of Assistant Professor in the Department of Mathematics under the Persons with Disability category in the third respondent college based on the selection conducted in the month of September 2021, within a time frame fixed by this Court.

For Petitioner	: Mr.G.Sankaran Senior Counsel for S.Nedunchezhiyan
For Respondents-1& 2	: Mr.K.Surendran Additional Govt. Pleader
For Respondent-3	: Mr.Willson Topaz for M/s.A.S.Kailasam & Associates

ORDER

Heard Mr.G.Sankaran, the learned Senior Counsel for the petitioner, Mr.K.Surendran, the learned Additional Government Pleader for R1 and R2, Mr.Willson Topaz, the learned Counsel for R3.

2. The petitioner has filed this writ petition seeking a Writ of Mandamus directing the respondents to fill up the post of “Assistant



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Professor” in the Department of Mathematics and consider the selection and appointment of the petitioner to the said post under the Persons with Disability category in the third respondent college based on the selection conducted in the month of September, 2021.

3. Mr.G.Sankaran, the learned Senior Counsel for the petitioner, submitted that the petitioner is a physically challenged person who is fully qualified for the teaching post in Higher Education; she has passed her State Eligibility Test and National Eligibility Test also; the petitioner has 60% locomotor disability and that has been certified by the Medical Board under Rule 18(1) of Right of Persons with Disabilities Rules, 2017; in order to provide public employment to the persons with disabilities, the Central Government has enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was superceded by the Central enactment as "The Rights of Persons with Disabilities Act, 2016".

3.1 The third respondent College is a Government aided College governed under the provisions of Tamil Nadu Private Colleges



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Regulation Act; in response to the advertisement made by the third respondent College inviting applications from eligible women candidates for the appointment of “Assistant Professor” in regular vacancies in various Departments in the month of February, 2021, the petitioner had submitted an application and she was issued with a Call Letter dated 04.09.2021 to attend the Certificate Verification to be conducted on 14.09.2021 and 16.09.2021; the petitioner participated in the Certificate Verification and produced all the certificates along with her Physical Disability Certificate; however, the petitioner was not considered for selection; it is found that the third respondent College has not complied the provisions of 'Persons with Disability Act' for providing employment to persons in disabilities category; to the knowledge of the petitioner, no physically handicapped person has been employed in the Department of Mathematics in the capacity of Assistant Professor.

3.2 Reliance was placed on the judgment of the Hon'ble Apex Court held in *State of Uttar Pradesh Vs. Dr.Dina Nath Shukla* reported in *AIR 1987 SC 1095*. As per the said judgment, each Department in the College would be a separate unit for the purpose of applicability of rule



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of reservation. So the third respondent College does not have the rule of reservation as contemplated under Section 34 of the Right of Persons with Disabilities Act, 2016.

4. Mr.K.Surendran, the learned Additional Government Pleader for the respondents 1 and 2, submitted that the petitioner belongs to BC category and the post allotted for reservation would come under the MBC and DNC (Locomotor Disabilities) and hence she cannot be accommodated in the post reserved for MBC category; he further submitted that even in any recruitment year, any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, it will be carried forward to the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it will be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, such vacancy shall be filled up by appointment of a person, other than a person with disability, provided the nature of vacancies in a Department is such that if a given category of person cannot be employed, the vacancies may be



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interchanged among the five categories with the prior approval of the Government. Since the above circumstances did not arise in the third respondent College, the petitioner could not be accommodated. Due to the interim order of this Court dated 08.10.2021, one vacancy was not filled up, and that is detrimental to the interest of students and hence this petition should be dismissed.

5. However, the learned Senior Counsel for the petitioner submitted that the notification inviting the applications does not state that the category of the vacancies are whether the vacancies fall in favour of any reserved category, especially, persons with disability.

6. Mr. Willson Topaz, the learned counsel for the third respondent, submitted that the subsequent to the notification, a Corrigendum has been issued by the third respondent college. In the revised Corrigendum issued by the third respondent College, it has been sated that the category benchmarked against the disability as under:



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Category wise Benchmark disability	Communal Roaster	Turn
Locomotor disability including Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victims and Muscular Dystrophy	MBC	37

7. From the above corrigendum it seen that the post reserved is for MBC Category. So it cannot be said that the respondents did not follow the rules of reservation and the notification has not been given by indicating the category for which the applications are called for. Admittedly, the petitioner belongs to BC category.

8. The learned Senior Counsel for the petitioner submitted that the reservation for disabled person as per the judgment rendered by the Hon'ble Supreme Court in *State of Uttar Pradesh Vs. Dr.Dina Nath Shukla* reported in *AIR 1987 SC 1095* should be done subject wise and not by considering the whole college as one unit. The relevant part of the judgment is extracted as below:

“ Thus, it could be seen that if the subject wise recruitment is adopted in each service or post in each cadre in each faculty, discipline, speciality or super-speciality, it would not only be clear to the candidates who seek recruitment but



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also there would not be an over-lapping in application of the rule of reservation to the service or posts as specified and made applicable by Section 3 of the Act. On the other hand, if the total posts are advertised without subject wise specifications, in every faculty, discipline, speciality or super-speciality, it would be difficult for the candidates to know as to which of the posts be available either to the general or reserved candidates or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. As indicated earlier, if there is any single post of Professor, Reader or Lecturer in each faculty, discipline, speciality or super-speciality which cannot be reserved for reserved candidates, it should be clubbed roster applied and be made available for the reserved candidates in terms of Section 3(5) of the Act. Even if there exists any isolated post, rule of rotation by application of roster should be adopted for appointment. For achieving the said object, the Vice-Chancellor, who is responsible authority under Section 4 to enforce the Act, would ensure that single posts in each category are clubbed since admittedly all the posts in each of the categories of Professors, Readers or Lecturers carry the same scale of pay. Therefore, their fusion is constitutional and permissible. The Vice-Chancellor should apply the rule of rotation and the roster as envisaged under sub-section (5) of Section 3. The advertisements are required to be issued so that the reserved and the general candidates would apply for consideration of their claims of recruitment in accordance therewith. This interpretation would subserve and elongate



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constitutional objective and public policy of socio-economic justice serving adequacy of representation in a service or post, grade or cadre as mandated and envisaged in Articles 335 and 16(4) read with Articles 14 and 16(1), Preamble, Article 38 and Article 46 of the Constitution and all other cognate provisions.”

9. However the learned counsel for the third respondent submitted that the post which is kept vacant belongs to “Assistant Professor” in Mathematics Department.

10. It is learnt that the post reserved is only for MBC under the category of physically challenged persons. If the post is still vacant due to non-availability of the eligible person in MBC category, the third respondent can get permission from the department to appoint the petitioner who belongs to BC category for the said post. It is desirable if the whole exercise is completed within a period of three months from the date of receipt of a copy of this order.



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11. With the above observations, this writ petition is disposed. No costs. Connected miscellaneous petition is closed.

22.03.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
bkn



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State of Tamil Nadu,
Higher Education Department,
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R.N.MANJULA, J.,
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