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W.A.No.2242 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.06.2024	08.08.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2242 of 2022
and C.M.P.No.17012 of 2022

S.Premkumar

... Appellant/Writ Petitioner

-VS-

1. The Secretary to Government,
P & AR Department,
Fort St.George, Chennai-09.
2. The Chairman,
Teachers' Recruitment Board,
DPI Complex, College Road,
Chennai-06.
3. The Director,
Department of Employment and Training,
Guindy, Chennai-32.
4. The Assistant Director,
District Employment and Training,
Kanchipuram.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 05.07.2022 made in W.P.No.13180 of 2015.



W.A.No.24 of 2022

For Appellant : Mr.V.Prakash, Senior Counsel
For Mr.C.Seethapathy

For Respondents : Mr.V.Manoharan
Addl. Govt. Pleader for R1, R3 and R4

Mr.R.Neelakandan
Addl. Advocate General
Assisted by Mr.K.Sathish Kumar for R2

JUDGMENT

D.KRISHNAKUMAR, ACJ.

This Writ Appeal has been filed, challenging the order of the Writ Court dated 05.07.2022 made in W.P.No.13180 of 2015, in and by which the Writ Petition filed by the Writ Petitioner/Appellant herein was dismissed on the ground of age of the Writ Petitioner as well as dispensation of recruitment through District Employment Office.

Brief Facts in nutshell:

2. The appellant, having acquired qualification in the relevant field, had registered his name with the District Employment Exchange in the year 1995 and was fully eligible to be appointed as Computer Instructor. In addition to the above, he had obtained a Priority Certificate bearing No.057/2011/A1 dated 01.12.2011 from the Tahsildar for parting with 16.5 cents of land belonging to his father for the purpose of installation of



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North Chennai Thermal Power Plant by the Government. For acquiring the said land, a compensation of Rs.4571/- was paid by an Award No.1/92 dated 23.03.1992. It was submitted that the appellant was running a shop in the name of M/s.Sathyajothi Computers Centre with a Permanent Certificate No.13466/GA7/96 and was providing services, such as DTP, Laser Print, Xerox, Data Processing in a rented premises.

3. In the year 2007, the petitioner's computer company was sought to be acquired vide proceedings dated 29.01.2007 for the purpose of construction of IT Expressway Limited and he was advised to approach IT Expressway Limited with all relevant documents. He was awarded a sum of Rs.10,125/- towards compensation and was issued a certificate by IT Expressway Limited, mentioning that he is a Project Affected Person. When the appellant requested the 3rd respondent to register the Priority Certificate under the priority category (land acquisition), he was made to run from pillar to post and his request was rejected on several times. He also obtained a certificate in Na.Ka.20549/2013/A1 dated 10.01.2014 from the Tahildar, Ponneri and the 3rd respondent, instead of pointing out queries at the first instance, purposely delayed the registration of his priority for the reason best known to him. Subsequent to the petition dated 01.12.2014 given by the appellant to the Chief Minister's Cell, he was called by the 4th respondent and after much hardship, his name was enrolled in the priority



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category only on 09.01.2015.

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4. The appellant made a representation to the authority concerned for restoration of his employment seniority from the year 2011 and to sponsor his name for the post of Computer Instructor under priority category, but, however, his name was not sponsored. The second respondent / TRB issued Notification No.07/2014 dated 13.10.2014 for Direct Recruitment of Computer Instructor and the final list of shortlisted candidates was also released. Since his name was not sponsored, he filed W.P.No.13180 of 2015 for a direction to restore his seniority and sponsor his name in the category of priority (land acquisition) as per G.O.Ms.No.188 P&AR Department dated 28.12.1976 by fixing the ratio applicable for priority category and the said Writ Petition was dismissed by the learned Single Judge, against which, the instant appeal has been preferred.

5. The 2nd respondent has filed a counter affidavit, wherein it has been *inter alia* stated as follows:

i) The scheme of recruitment through Employment Exchange is no longer in existence and pursuant to the Notification dated 13.10.2014, the Teachers Recruitment Board (Board) addressed the Directorate of Employment and Training to sponsor candidates at the ratio of 1:5 after following communal reservation and other priority



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categories as per their registration seniority;

ii) The Board also conducted certificate verification from 27.02.2015 to 04.03.2015 for those candidates sponsored by the Employment Exchange and the request of the appellant to restore his seniority and sponsor his name cannot be considered for the reason that he falls under Sl.No.(v) of Group II in the Government Order concerned, whereas the entire recruitment was based on Sl.Nos.(i) to (iv) of Group II in the priority group;

iii) The minimum age limit for consideration for appointment of teachers by the Board is 50 years in terms of G.O.Ms.No.144, School Education Department dated 18.10.2021 and the appellant, being 51 years old, is not eligible for appointment. The Government Order in G.O.Ms.No.188 P&AR Department dated 28.12.1976 has been amended from time to time vide G.O.Ms.No.1161, P&AR Department dated 22.11.1984, G.O.Ms.No.939, P&AR (Per-R) Department dated 24.09.1986. Thereafter, vide G.O.Ms.No.229, P&AR (Per-R) Department dated 07.04.1988, there was an amendment to G.O.Ms.No.188 P&AR Department dated 28.12.1976, which reads as follows:

Group II:

(i) Destitute Widow (Destitute Widow means one who has neither any means by herself to live or nor any dependent to protect her from starvation)

(ii) Inter-Caste Married Couple (where one of the spouses belongs to



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Scheduled Caste/Scheduled Tribe)

(iii) Ex-Servicemen and wives, sons and unmarried daughters of serving military personnel and of ex-servicemen.

(iv) Indian Nationals returning from Burma/Sri Lanka and East African Countries of Kenya, Uganda and Tanzania due to repatriation.

(v) Members of family (including members of Scheduled Caste/Scheduled Tribe) whose lands have been acquired for Government purpose, etc.

iv) Later, by virtue of G.O.Ms.No.134, P&AR(R) Department dated 19.03.1990, the Government decided to extend all the concessions that are given to the dependents of war casualties to the dependents of casualties of Indian Peace Keeping Force Operations. After exhausting one priority category, the next priority category would be considered for selection in terms of the Government Order in force and so far, the candidates falling under priority (i) to (iv) of Group II have not been exhausted;

v) In a similar matter, Madurai Bench of Madras High Court in W.P.(MD) No.5956 of 2014 upheld the G.O.Ms.No.229, P&AR (Per-R) Department dated 07.04.1988 and therefore, the appellant herein is not entitled for the direction sought for. Since the priority category of the appellant has not been reached, there was no sponsorship from the Employment Exchange to the TRB and therefore, there is no violation or illegality as averred by the appellant. Moreover, the entire selection process was already over and the Government, by G.O.Ms.No.144, School Education



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Department dated 18.10.2021 clearly specified the maximum age as 50 and hence, the relief sought for by the appellant even on that ground is liable to be rejected and the Writ Appeal is to be dismissed *in limine*.

6. In the counter affidavit filed by the 4th respondent on behalf of the 3rd respondent, it has been *inter alia* stated as follows:

i) There was only one recruitment taken place for the post of Computer Instructor from 2011 to 2015 and against the vacancies, nominations in respect of priority categories have been done as per G.O.Ms.No.188 P&AR Department dated 28.12.1976, as per which, Destitute Widow, Inter Caste Marriage and Dependent of Ex-Servicemen and dependent of service person priority candidates were sponsored and the appellant submitted application for land acquisition priority registration only on 26.04.2013 and after collecting all the requisite particulars, the priority was registered on 09.01.2015 and as such, there was no delay of registration on the part of the 4th respondent;

ii) The recruitment through Employment Exchange was dispensed very long back and it should be done only through open competitive process. There was a significant change in the process of appointment by the TRB and the denial of his candidature based on his overage is not correct. For sponsoring candidates to the TRB for the post of



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Computer Instructor, the following priority category registrants alone were considered based on the cut-off date:

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- a) Destitute Widow
- b) Inter-caste Married Couple
- c) Ex-Servicemen/Dependent of Ex-Servicemen/Dependent of Serving personnel.

Thus, it was prayed that the relief sought for by the appellant is not maintainable and the Writ Appeal is devoid of merits.

7. The 1st respondent / Government has filed a short counter affidavit, indicating that the appellant had not challenged any of the Government Orders issued by the Personnel and Administrative Reforms Department and as such, the 1st respondent has been unnecessarily added as a party to the *lis*.

8. The learned Senior Counsel for the appellant submitted that since the Appellant had registered his Land Acquisition priority as early as on 09.01.2015, he has fulfilled the eligibility criteria for considering his name against vacancies under LA priority from 09.01.2015. The argument put forth by the respondents in respect of overage has no relevance to the facts of the appellant for the reason that though the appellant had knocked the doors of this Court at the age of 44, the appellant had to wait for seven years to see its fate. He further submitted that the stand taken by the Government that



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all the vacancies were already filled-in may not be true, as Sl.Nos.157-161 were reserved for Court case. That apart, as per the relevant Clause No.8 of the TRB Advertisement No.07/2014 dated 13.10.2014, the age of the candidate should not be over 57 years as on 01.07.2014 and if the seniority of the appellant is reckoned from the date of LA priority, the appellant fell within the zone of prescribed norms and qualified for the selection of Computer Instructor. He also submitted that the Writ Court failed to notice the wrongful act committed by the respondents and an unsubstantiated projection had been made before the Writ Court that the appellant is 57 years old. Thus, it was prayed that the order of the Writ Court is liable to be set aside and the appellant is entitled for appointment to the post of Computer Instructor.

9. *Per contra*, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 contended that the averments made by the appellant regarding the delay in registration of Land Acquisition Priority are unsustainable for the simple reason that as per the Government instructions, persons with land acquisition priority were not considered for selection, as they did not fall within the ambit of cut-off date fixed for priority candidates. He further contended that in terms of G.O.Ms.No.188, Personnel and Administrative Reforms Department dated 28.12.1976. first 3 categories of Group I were under implementation by the Government for nomination against



priority categories. Moreover, candidates cannot be selected solely on the basis of the seniority in the Employment Exchange, as there was significant changes in the process of selection to the Government post after the orders of the Supreme Court. He also contended that the age factor of the appellant is also one of the criterion for non-consideration, in addition to the bar for nomination under Government Order dated 28.12.1976. He vehemently contended that by all means, the order of the learned Single Judge is a well reasoned order, warranting no interference by this Court and the same needs to be upheld.

10. The learned Additional Advocate General appearing for the second respondent strongly opposed to the claim of the Writ Petitioner, stating that the nomination of priority categories against vacancies would be decided on the basis of the Government Order in force and passed then and there, which cannot be bent to suit the whims and fancies of the appellant. He further stated that after exhausting one priority category, the next category would be taken up for consideration for selection and the said procedure cannot be bypassed without any authority and in the absence of the order passed by the Government. He also pointed out that this Court, in a Contempt Petition No.96 of 2022, by referring to G.O.Ms.No.144, School Education Department authoritatively held that a person aged 52 years is not entitled to be appointed as a Teacher, as the maximum age



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prescribed is 50 years only. Hence, he prayed for dismissal of the Writ Appeal.

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11. Heard the learned counsel for the parties and also perused the materials on record.

12. The fact remains that the appellant has registered himself under LA priority category on 09.01.2015 and he is eligible to be considered for vacancies under LA priority only from 09.01.2015 onwards. The second respondent/TRB has issued Notification No.7/2014 dated 13.10.2014 for recruitment of 652 vacancies of Compute Instructor in the third respondent department. The appellant is eligible for consideration under BC and OC general priority category. The order of consideration of priority has been stipulated by the Government vide G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department dated 28.12.1976. Candidates registered under the priority group of DW/ICM and Dependants of Ex-Servicemen categories were nominated under BC and OC general category and the land acquisition priority has not reached the purview of consideration.

13. It is the primordial contention of the appellant that there was a delay in registration of LA priority resulting in non-sponsorship of the candidates during vacancy notification of TRB to the third respondent for recruitment of 652 vacancies of Compute



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Instructor. However, the fourth respondent contends that LA priority registration of the appellant was delayed due to want of details and confirmation from the Revenue Authorities and even as per the order of priority governed as per G.O.Ms.No.188 dated 28.12.1976, Sl.Nos.(i) to (iv) of Group II in priority group alone was considered and therefore, the appellant is not entitled to be recruited. During the selection process in respect of priority categories, priority is followed as per the Government Orders in force. Only after exhausting one priority category, next priority category shall be considered for selection and as such, those candidates whose names were found in the priority categories are considered in order as per the Government Orders applicable as on date. Therefore, even if the appellant has to be considered under the land acquisition priority category, he would not be entitled to recruitment unless all persons falling under priority (i) to (iv) of Group II are exhausted. In the case on hand, "Destitute Widow" and "Intercaste Married Coupled" priority category candidates have been considered.

14. That apart, as per G.O.Ms.No.144, School Education Department dated 18.10.2021, the maximum age limit for consideration for appointment of teachers by the TRB is 50 years and even assuming without admitting that the appellant is 51 years old,



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still the appellant does not come within the eligibility for appointment. It is also to be noted that the recruitment process underwent many changes and the TRB no longer make recruitments through the State Employment Exchange and changed the Scheme of Selection by open competitive process and at the belated point of time, nearly after 8 years, the claim of the appellant is legally unsustainable. The appellant was aged about 51 years at the time of filing the writ petition and he was around 57 years at the time of disposal of the writ petition on 05.07.2022 and now he is almost 59 years old and the recruitment process which is under challenge has got concluded way back during 2014-2015 and all the selected candidates were appointment and at this distant point of time, the claim of the appellant/writ petitioner to sponsor his name under priority category cannot be considered. The appellant also had not challenged any of the Government Orders issued by the Personnel and Administrative Reforms Department. Since the process of recruiting the candidates through District Employment Exchange was dispensed with long back and now recruitments are made through open competitive process and the selection procedure has underwent changes, on this ground also, the claim of the appellant cannot be considered. The Writ Court has taken into consideration all these aspects and rightly dismissed the writ petition and this Court, in exercise of its appellate jurisdiction, finds no reason to interfere with the order of the Writ Court and the present writ appeal lacks merit and deserves dismissal.



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15. In the light of the aforesaid discussions, the Writ Appeal stands dismissed.

No costs. Consequently, connected miscellaneous petition is also dismissed.

[D.K.K., ACJ.,] [K.B., J]
08.08.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

Jvm

To:

1. The Secretary to Government,
P & AR Department,
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2. The Chairman,
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DPI Complex, College Road, Chennai-06.
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ORDER IN
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08.08.2024