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*WA Nos.2391 and 2414 of 2019
and Review Aplc No.190 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WA Nos.2391 and 2414 of 2019

and

Review Aplc No.190 of 2023

J.Saradha Devi : Appellant in WA Nos.2391 & 2414 of 2019 &
Petitioner in Rev Aplc No.190 of 2023

versus

1.K.Prasad : First respondent in WA No.2414 of 2019 &
Second respondent in Rev.Aplc No.190/2023

2.Teachers' Recruitment Board,
Represented by the Chairman,
College Road,
Chennai-600 006 : First respondent in WA No.2391 of 2019 &
Review Aplc No.190 of 2023
Second respondent in WA No.2414 of 2019

3.The Assistant Director,
District Employment Office,
Thiruvallur : Third respondent in WA No.2414 of 2019
Third respondent in Rev.Aplc No.190/2023



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- 4.The Joint Director of School Education (Employment)
College Road,
Chennai-600 006. : Second respondent in WA No.2391/2019
- 5.The Chief Educational Officer,
Krishnagiri : Third respondent in WA No.2391 of 2019

Prayer in WA Nos.2391 and 2414 of 2019: Writ Appeal filed against the common order in WP No.11227 of 2014 and 19951 of 2012 dated 22.02.2018 of the learned Single Judge.

Prayer in Review Aplc No.190 of 2023 :Review application filed to review the order in WA No.2775 of 2018 dated 03.01.2019.

Appearances :-

Mr.Munusamy for the appellant in WA Nos.2391 and 2414 of 2019 and petitioner in Review Aplc No.190 of 2023

Mr.R.Neelakandan, Additional Advocate-General, Assisted by Mr.Sathish Kumar, Standing Counsel for Teachers Recruitment Board

Mr.Durai Raj, Additional Government Pleader, for respondents 2 and 3 in WA No.2391 of 2019; for the third respondent in WA No.2414 of 2019 & Rev Aplc No.190 of 2023

Mr.R.Rahendran, for K.Prasad, First respondent in WA No.2414 of 2019 &



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Second respondent in Re.AplcNo.190/202

COMMON JUDGMENT

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

The Writ Appeals, WA Nos.2391 & 2414 of 2019, are filed against the common order in WP Nos.11227 of 2014 and 19951 of 2012, dated 22.02.2018 of the learned Single Judge.

2. Brief facts of the case:

2.1. The appellant/Saradha Devi has passed B.Sc., (Mathematics) under Telugu Medium in the year 2003 and B.Ed., under Telugu Medium in the year 2007. She has registered her name and qualification in the District Employment Exchange at Chittor, as she was then residing with her parents at Chittor District, State of Andhra Pradesh. She belongs to Hindu Jangam caste, which is recognized as backward class in the State of Andhra Pradesh. Subsequently, she, along with her parents, settled in Tamil Nadu. Thereafter, she got her employment registration transferred to the District Employment Office at Thiruvallore, vide NCO Code No.2008 W 00352 on 06.02.2008 with employment seniority effective from 05.12.2007. The Hindu Jangam



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community is recognized as Most Backward Class in Tamil Nadu. But her caste was mentioned as Backward class in the community certificate issued by the authority in Andhra Pradesh. This was not taken into account by the authorities and her community was marked as open category at the time of transfer of her employment registration card in the District Employment Office at Thiruvallore. Subsequently, she has obtained community certificate, specifying her caste as 'Hindu Jangam', belonging to the Most Backward Community, from the concerned Revenue Authority, Thiruvallore vide certificate dated 29.03.2010.

2.2. The first respondent Board has issued notification, notifying the backlog vacancies for the years 2008-2009, 2009-2010 and 2010-2011, for the post of Graduate Assistants in Minority Languages and Subjects. Pursuant to the said notification, the Joint Director of School Education (Employment) has obtained seniority list of candidates from the District Employment Exchange, containing names and particulars of candidates to be appointed for the vacancies in various posts and forwarded the same to the Teachers Recruitment Board. In the said seniority list, the name of the



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appellant herein has been placed at Serial No.45 against open category for B.T. Assistant Maths (Telugu Medium). According to the appellant, it was not known to her then. The said list was only a tentative list. She was called for certificate verification by the respondent Board, by call letter dated 13.06.2012 to be held on 23.06.2012. On 23.06.2012, she appeared before the concerned authorities. In the said certificate verification, she had furnished all certificates, including the Community Certificate bearing Certificate No.3443491 dated 29.03.2010, as per which, she was shown as a member of MBC Community. Taking note of her MBC community certificate furnished at the time of certificate verification, she has been selected by the first respondent Board as Graduate Assistant Maths (Telugu Medium) in the vacancy of most backward community, vide proceedings dated 31.08.2012. Subsequently, an order of appointment was issued on condition that she has to pass TET within five years from the date of appointment. She joined duty on 11.10.2012.

2.3. While so, one Mr.K.Prasad has filed WP No.19951 of 2012 before this Court challenging the tentative seniority list containing the names and



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particulars of the candidates selected for appointment of backlog vacancies in minority languages. He had also challenged the selection of the appellant herein as Graduate Assistant in Maths (Telugu Medium), through Employment Registration State Seniority 2010-2011, on the ground that he is senior among the Most Backward class category candidates and therefore, the appellant's selection against the MBC General category is illegal. He further prayed for a direction to the Teachers Recruitment Board to select him as a Graduate Assistant against the Most Backward Class General Category.

2.4. The Writ Court, in the said writ petition, by order dated 26.07.2012, granted interim stay and the same was extended periodically. Pursuant to the order of interim stay of tentative list of seniority insofar as the appellant herein is concerned, the second respondent, vide proceedings dated 22.03.2013, cancelled the order of her appointment. Further, the third respondent, by consequential proceedings dated 28.03.2013, had relieved the appellant from service and communicated the order of the second respondent to the appellant. Aggrieved by the said orders, the appellant had filed writ



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petition in WP No.11227 of 2014.

2.5. The Writ Court, by a common order dated 22.02.2018, allowed WP No.19951 of 2012 filed by Prasad (first respondent in WA No.2414 of 2017) and dismissed WP No.11227 of 2014 filed by J.Saradha Devi, the appellant herein, with the following observations:

“For the aforesaid reasons, the writ petition No.19951 of 2012 is allowed. The respondent No.1 is directed to select the writ petitioner in the said post of BT Assistant Mathematics(Telugu) earmarked for MBC (General) (backlog) cancelling the impugned selection of the respondent No.3 and also necessary appointment order be issued to the petitioner by the respondent concerned, within a period of one month from the date of production/receipt of the copy of this order. So far as the writ petition No.11227 of 2014 filed by the respondent No.3 challenging the cancellation of her selection and appointment and relieve from the post vide the impugned orders are concerned, the same being devoid of merit stands dismissed.”

2.6. Challenging the said common order, the appellant has preferred the present intra court appeals.



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2.7. The appellant has filed the review application in Review Aplc No.190 of 2023 to review the order in WANO.2775 of 2018 dated 03.01.2019, filed by the TRB, on the ground that no opportunity was given to her to put-forth her case and that an order was passed without hearing her.

3. The primordial contention of the learned counsel appearing for the appellant is that the impugned cancellation order passed by the second respondent is in violation of the principles of natural justice and even though appellant was eligible under OC category, the name of the appellant was not considered for appointment under OC category. It is brought to the notice of this Court that in the counter affidavit filed by the respondent Board, it is admitted by the respondent Board that a mistake has been committed by selecting the appellant under MBC category when her name was placed under Open Category for BT Assistant Maths (Telugu Medium). It is further contended by the learned counsel for the appellant that she is continuing in service for more than 18 years and now it is impossible for her to get employment opportunity in any other department due to his over age and



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therefore, the impugned order cancelling the appointment order passed by the second respondent is totally unjustified, illegal and the same is liable to be quashed. It is further contended that Mr.K.Prasad, who is the first respondent in W.A.No.2414 of 2019, claiming that he is eligible under MBC category and he has also filed community certificate within time along with the application and whereas the appellant has not submitted the community certificate in order to claim MBC category for appointment to the post of Graduate Assistant in Maths (Telugu Medium) and therefore he filed the writ petition seeking to set aside the order passed by the Writ Court and allowing of these writ appeals.

4. The learned Additional Advocate General, appearing for the respondent Board, submitted that the selection of the appellant was due to the mistake committed by the respondent Board at the time of certificate verification and that the community certificate submitted by the appellant before the Board, ought not to have been entertained by the Board during certificate verification. The learned Additional Advocate General further



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submitted that one Prasad, who has also submitted the MBC community certificate along with application, had filed WP No.19951 of 2012, challenging the selection of the appellant herein as Graduate Assistant in Maths (Telugu Medium), through Employment Registration State Seniority 2010-2011 and in pursuant to the interim order passed in the said writ petition, the said mistake committed by the respondent board has been rectified by the Board and therefore, there is no necessity to interfere with the order of the learned Single Judge and seeks to dismiss the writ appeals.

5. The learned counsel appearing for the private respondent, namely Prasad, reiterated the stand of the respondent Board that the private respondent is qualified and eligible for appointment under MBC category, since he has satisfied all the terms and conditions and the respondent Board has admitted that on account of the mistake committed by the Board at the time of certificate verification the appellant was selected and there is no fault on the part of the private respondent and therefore, the order of the Writ Court is perfectly valid and seeks for dismissal of these writ appeals.



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6. Heard learned counsel for the parties and perused the materials available on record.

7. The point for consideration in the Appeals is whether the order passed by the respondent Board cancelling the appointment of the appellant is valid or not.

8. The first contention of the appellant is that the appointment order has been passed by the second respondent, on the basis of which, she joined in the school but suddenly she has been relieved from the said service without giving any opportunity to defend her case and therefore to that extent, the cancellation order violates the principles of natural justice.

9. The second contention of the appellant is that the appellant was called for certificate verification on 10.10.2012 and on that date, along with all certificates, she has also produced MBC community certificate and based on that, she has been provisionally selected under the MBC category. Subsequently, appointment order has been issued by the USER department.



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According to the appellant, it is a sheer mistake committed by the respondent Board in accepting the community certificate, and she was provisionally selected. Learned counsel for the appellant also admitted that the appellant has applied for registration of her name in the District Employment Exchange in the Open Category and her name was included by the District Employment Exchange under the OC category. Therefore, if the respondent board has considered her name under the OC category, the appellant would have also got an opportunity of getting selected to the post of Graduate Assistant Maths (Telugu Medium) in the OC category. The said mistake is admitted by the TRB. The appellant is now aged 43 years. Being over-aged, she could not get appointment in any other department. In such circumstances, when the appointment order has been served to the appellant by the department and subsequently, it was cancelled, it proves that there is no mistake on the part of the appellant as she has not misled or suppressed any material fact before the respondent Board. This fact has also not been disputed in the counter affidavit filed by the respondent Board. At paragraph No.9 of the counter-affidavit, it is stated that the first respondent Board by sheer mistake, on the strength of the MBC community certificate dated

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29.03.2010, selected the appellant against the vacancy of Graduate Assistant in Mathematics (Telugu Medium) in MBC (General) Turn, and she was appointed as Graduate Assistant in the High School, Thally in Krishnagiri District, pursuant to the proceedings of the Joint Director of School Education (Personnel) vide Na.Ka.61440/C3/E2/2012 dated 10.10.2012.

10. As the respondent Board has specifically admitted that it is a mistake on the part of the Board, the appellant should not be deprived of the right of getting a chance to the post of Graduate Assistant in Maths (Telugu medium). When no mistake has been committed by the appellant, the appellant should not suffer because of some mistake committed by the Board. We are not going into the aforesaid mistake committed by the TRB as it was not done wantonly or with any intention while considering the name of the appellant for such appointment. Since the appellant is now over-aged for getting any appointment in any other department and considering the fact that mistake has been committed by the authorities and that the appellant has not misled or concealed any fact, we are of the view that she should not be allowed to suffer, and she should be given first preference while drawing



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provisional select list in future vacancies. As per the facts of this case, pursuant to the provisional selection, the authority concerned also has passed an order of appointment in favour of the appellant and she joined duty on 11.10.2012 but however, she was relieved on 28.03.2013. She served for more than five months in the Department as a Graduate Assistant Teacher in Maths (Telugu Medium). Considering this background of the case, we are of the view that, as a special case, the appellant/petitioner was ought to have been considered for reappointment under OC category.

11. The learned Additional Advocate General informed to this Court that there is no vacancy at present to accommodate the appellant and only in future vacancies, she can be considered for reappointment as a fresh recruitee as Graduate Assistant in Maths (Telugu Medium). Considering the fact that in the counter affidavit, it is admitted by the respondent Board that a mistake has been committed by the respondent Board at the time of certificate verification and the name of the appellant was considered under open category and considering the fact that the appellant is over aged and taking into consideration the other factors, we are of the view that the



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appellant shall be considered for reappointment in the said department as a Graduate Assistant in Maths (Telugu Medium) as a fresh recruitee.

12. Therefore, we direct the respondents 4 and 5 to consider the name of the appellant for reappointment as Graduate Assistant in Maths (Telugu Medium) in any of the vacancies in future as a fresh recruitee and the appellant cannot claim any other service benefits in future for the non-working period.

13. In the light of the above, the impugned common order dated 22.02.2018 made in W.P.Nos.11227 of 2014 and 19951 of 2012 is set aside and these writ appeals stand disposed of with the above directions. There shall be no order as to costs. Consequently, CMP Nos.15723 and 15871 of 2019 are closed.

14. In the writ appeal filed by the TRB in WA No.2775 of 2018, the appellant was served with notice. It is the case of the appellant that she had engaged a counsel to argue her case; however, the said counsel had not



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appeared before Court when the appeal was decided. The appellant cannot now contend that an order was passed without hearing her. The appellant should have been vigilant enough to follow-up her case. However, in view of the order passed in the present writ appeals, we close the review application. Therefore, Review Applic.No.190 of 2023 stands closed.

15. In view of the fact that the present judgment is passed under the peculiar circumstances of the case, it cannot be cited as a precedent for any other case in future. In future, the TRB shall not commit such kind of mistake, unnecessarily harassing the Teachers to undergo legal battles before courts.

[D.K.K., J.] [K.B., J.]
05.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn
To
1.The Chairman,
Teachers' Recruitment Board,
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Chennai-600 006.



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2.The Assistant Director,
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3.The Joint Director of School Education (Employment)
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

4.The Chief Educational Officer,
Krishnagiri.

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