



W.P.(MD).No.10410 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.10410 of 2021

and

W.M.P.(MD)No.8093 of 2021

S.Jaseem Fathima

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Higher Education Department,
Secretariat,
Chennai-6.

2.The Director,
O/o. the Director of Technical Education,
Chennai-25.

3.The Principal,
Government Polytechnic College,
Nagercoil.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to provide all service and monetary benefits including the seniority by treating that the petitioner is deemed to have been appointed from the date on which other selected candidates were appointed in pursuant to the notification



W.P.(MD).No.10410 of 2021

issued by the Teachers Recruitment Board vide Advertisement No.2/12, dated 27.02.2012 and consequently disburse the revised benefits and by considering the petitioner's representation dated 02.02.2021 within the period that may be stipulated by this Court.

For Petitioner : Mr.Mohammed Imran,
For Ajmal Associates

For Respondents : Mr.M.Sarangan,
Additional Government Pleader

ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to direct the respondents to provide all service and monetary benefits including the seniority by treating that the petitioner is deemed to have been appointed from the date on which other selected candidates were appointed in pursuant to the notification issued by the Teachers Recruitment Board vide Advertisement No.2/12, dated 27.02.2012 and consequently disburse the revised benefits and by considering the petitioner's representation dated 02.02.2021.

2. The facts and circumstances which led to the filing of this writ petition are as follows:



W.P.(MD).No.10410 of 2021

WEB COPY

Pursuant to the notification issued by the Teacher Recruitment Board by notification No.2 of 2012 dated 27.02.2012, the petitioner made an application for the post of Lecturer, following which, the petitioner was permitted to appear for the written examination which was conducted on 13.05.2012. The petitioner scored 141 marks out of 200. She belongs to Backward Class Muslim category and she had obtained the highest marks under the category Backward Class Muslim. She duly appeared for the certificate verification and was awaiting for an order of appointment. While so, the impugned selection list came to be issued by the Teacher Recruitment Board, in which the petitioner's name was left out. Out of the total 19 posts, for which the selection process was initiated, one post which was reserved for Backward Class Muslim was filled with one candidate, namely, S.M.Syed Hussain, who had scored 118 marks much less than the petitioner's marks, that is, 141 marks. In view of the same, the petitioner made an enquiry as to how a person who had scored lesser marks was selected under the Backward Class Muslim category. Since the same was not properly addressed, she was constrained to file W.P.(MD)No.13890 of 2012 seeking to quash the tentative provisional list of candidates selected for the appointment and the same was allowed by the order of this Court dated 22.02.2017. Against which, a writ appeal in W.A.(MD)No.1024 of 2017



W.P.(MD).No.10410 of 2021

WEB COPY

was preferred by the respondent Department and the same came to be dismissed on 17.09.2018. Following which, the petitioner was issued with an appointment order, vide proceedings of the 2nd respondent dated 09.02.2019 and the said appointment was made as a temporary appointment. However, under such circumstances, the petitioner was placed much below her juniors who were recruited under the recruitment notification No.2 of 2012 dated 27.02.2012. The entire anomaly in the petitioner losing her seniority on par with the candidates recruited under notification No.2 of 2012 dated 27.02.2012 had happened exclusively due to the mistake on the part of the Teachers Recruitment Board. Hence, she made a representation dated 02.02.2021 requesting the 2nd respondent to provide all service benefits including the seniority on par with the candidates who were appointed under the selection process initiated by notification No.2 of 2012 dated 27.02.2012. Since the same was not considered, the present writ petition came to be filed.

3. The learned counsel for the petitioner Mr.Mohammed Imran categorically contended that, the petitioner has been prejudiced much to the loss of her service benefits exclusively due to the callousness and carelessness of the Teacher Recruitment Board, at the time of their selection



W.P.(MD).No.10410 of 2021

process. Having appointed a candidate who had scored much less than the petitioner in the selection process, the petitioner's prospectus of joining the said post as early as in the year 2012 was gravely denied by the authorities and she had to resolve it through a prolonged legal battle by filing a writ petition which was ultimately allowed by this Court. Even after that, without appointing her, the respondent board have preferred a writ appeal which resulted in dismissal of the same and only after filing a contempt, the petitioner was appointed to the said post and all the loss which has been incurred by her as far as her service benefits are concerned, has occurred only exclusively due to the mistake and carelessness of the respondent Department and accordingly, she is entitled for service benefits on par with those candidates who were appointed under the selection process in notification No.2 of 2012 dated 27.02.2012 and pressed for allowing the writ petition.

4. The learned Additional Government Pleader, Mr.M.Sarangan relied upon the counter affidavit filed by the 2nd respondent, submitted that the selectee, namely, S.M.Syed Hussain, was originally selected under the visually impaired category for the post of Lecturer in English. That apart, he placed before me the details of the petitioner's employment when she served



W.P.(MD).No.10410 of 2021

as a P.G Assistant English in a Government School during the period 2017 to 2019 for which, she had duly received the Government salary for the said post. As a result of which, she cannot claim the service benefits for those period wherein she had actually served in another department under the Government itself for the reason that, she cannot claim service benefits as well as monetary benefits. The petitioner is officiating only with effect from 22.02.2019, that is, the date of her appointment. As such she has claimed service as well as monetary benefits whatsoever to which she is entitled to only from the date of appointment and not from the date of appointment of the candidates who were actually appointed under the recruitment under which she was selected and pressed for dismissal of the writ petition.

5. Heard the learned counsels on either sides and carefully perused the materials available on record.

6. As far as the contention raised by the learned Additional Government Pleader is concerned, the selectee, namely, S.M.Syed Hussain, was selected under the visually impaired category, the same has been settled by the order of this Court in W.P.(MD)No.13890 of 2012 dated 22.02.2017 and by the judgment of this Court in W.A.(MD)No.1024 of 2017



W.P.(MD).No.10410 of 2021

dated 17.09.2018 and the petitioner's right to be appointed in the said post came to be upheld by the judgment of this Court and as such the learned Additional Government Pleader's arguments do not hold good in that particular point. As far as his claim that the petitioner has served P.G. Assistant in a Government School during the academic year from 23.03.2017 to 21.02.2019, for which, she had duly received the Government salary is concerned, this Court is of the considered view that, the petitioner had achieved flying colours despite serious discrimination meted out to her in the earlier selection, vide notification No. 2 of 2012 dated 27.02.2012 conducted by the Teachers Recruitment Board. Later despite facing such difficulty she was also selected on merit in a subsequent selection conducted by the Teachers Recruitment Board for the School Education Department. On that basis, the learned Additional Government Pleader cannot press for denial of her service benefits when the petitioner is more particular about her service benefits rather monetary benefits in view of gaining seniority on par with her colleagues who were appointed under the notification No.2 of 2012 dated 27.12.2012.



W.P.(MD).No.10410 of 2021

WEB COPY

7. I find it is necessary to extract the relevant portion of the order passed by this Court in W.P.(MD)No.13890 of 2012 dated 22.02.2017 and the same is extracted as follows:

“12.If the third respondent has not been wrongly fit-in in the selection list under BC Muslim blind quota as a second candidate for which, there is no provision, since it is 1% reservation for blind candidate, certainly, the petitioner would have been selected, as admittedly, she has secured 141 marks, which is the highest marks obtained by any candidate belong to BC Muslim. Since one post is exclusively earmarked in vertical communal reservation for BC Muslim, in that post, the petitioner could have been selected, instead, the third respondent has been wrongly selected and has been fit in.”

8. Accordingly, for the mistake of the respondent authorities, the petitioner should not have been penalised by denying her service benefits. Hence, this Court direct the respondents to consider the petitioner's representation dated 02.02.2021 and pass appropriate orders giving her all the service benefits on par with those candidates who were selected under notification No.2 of 2012 dated 27.02.2012, Teacher Recruitment Board. However, I make it clear that, she is not entitled for any backwages.



W.P.(MD).No.10410 of 2021

WEB COPY

9. With the above observations, this writ petition stands allowed.
There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Higher Education Department,
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Chennai-6.
- 2.The Director,
O/o. the Director of Technical Education,
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W.P.(MD).No.10410 of 2021

L.VICTORIA GOWRI, J.

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W.P.(MD).No.10410 of 2021

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