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W.P.(MD) Nos.15616 and 16439 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)Nos.15616 and 16439 of 2020

&

W.M.P(MD)Nos.13108, 13109, 13757 and 13758 of 2020

W.P.(MD)No.15616 of 2020

P.Vaira Muthu

... 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 -600 006

... Respondents



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 second respondent vide his impugned proceedings Nil 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 third respondent vide his proceedings Na.Ka.No. 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.

W.P.(MD)No.16439 of 2020

1.M.Elakkiya
2.S.P.Kavitha
3.G.Suguna Sundari

... Petitioners

Vs.

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Rep. by its Secretary to Government,
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Secretariat, Chennai - 600 009.
- 2.The Teachers Recruitment Board,
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E.V.K.Sampath Maligai, College Road,
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(In both W.Ps)

For Petitioners : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.V.Om Prakash,
Govt.Advocate for R1 and 3

: Mr.VR.Shanmuganathan
Standing Counsel for R2 & 4



COMMON ORDER

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The Petitioners herein, who are an unemployed, have responded to a Notification issued by the second respondent vide Notification No.5/2017, dated 26.07.2017, for filling up the post of Special Teachers (Physical Education, Drawing, Music, Sewing) in Tamil Nadu Educational Subordinate Service. Altogether 1325 vacancies were notified by the respondent No.1. In the said Notification, certain posts are reserved for the categories, by providing horizontal reservation in favouring certain categories viz., Destitute Widow, Ex-Servicemen, reserving for persons studied in Tamil medium (PSTM) and for persons with Disability.

2. According to the petitioners, all the posts that were notified under the notification in question were not filled in for want of availability of candidates belonging to various categories, including the category of Ex-Servicemen, PSTM, persons with disability, etc. As the respondent No.2 has not been taking up the further steps for filling up the posts ear-marked for the above said categories by selecting the candidates belonging to the reserved categories in the horizontal reservation, the petitioners approached this Court by filing the present writ petitions.



3. It is the contention of the learned counsel for the petitioners that in terms of Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in particular proviso to clause (c) of Section 27, if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the respective reserved category and if no such candidates is available even in that category for selection for appointment against the reserved turn, then only such turn shall be carried forward as provided in clause (d) of Section 27. Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, reads as under:

"27. Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall be made on the following basis.

(a) The unit of selection for appointment, for the purpose of this section, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims,



Most Backward Classes and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

Provided that even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes in Schedule-V, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the other Scheduled Castes in the inter-se-merit among them and if any appointment or post reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.

(b) Out of the total number of appointments referred to in clause (a), in the case of appointment made by direct recruitment, one per cent each shall be reserved for persons with benchmark disabilities under categories (i), (ii) and (iii) and one per cent for persons with benchmark disabilities under categories (iv) and (v) both taken together, namely:-

(i) blindness and low vision;

(ii) deaf and hard of hearing;

(iii) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;



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(iv) autism, intellectual disability, specific learning disability and mental illness;

(v) multiple disabilities from amongst persons under categories (i) to (iv) including deaf -blindness in the posts identified for each disabilities; and the appointment shall be made in the turn and in the order of rotation specified in Schedule–VI;

(bb) Reservation for persons with benchmark disabilities shall be made in respect of posts identified by the Government in each department, under section 33 of the Rights of Persons with Disabilities Act, 2016;

(bbb) Where 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, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first 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 that if the nature of vacancies in a department is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the Government.



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(c) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five per cent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in Schedule-VII:

Provided that if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d).

(d) The claims of the members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities), Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward Class (Other than Most Backward Class/Denotified Community) Backward Class



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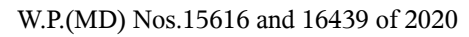
Muslims or Most Backward Class/Denotified Community is selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/ Denotified Communities), Backward Class Muslims or the Most Backward Classes/ Denotified Communities, as the case may be, shall not in any way be affected.

(e) Selection for appointment under this section shall be made in the order of rotation specified in Schedule-V.

Explanation.- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule-V and all selections for appointment shall be started afresh from serial number one in the said Schedule-V with effect on and from the said date.

(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment



Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty per cent of the total number of vacancies for a



particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject to the condition that the vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the earliest carried forward vacancies shall be made first:

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes



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and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as “backlog” vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the “backlog” vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the “backlog” vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the “backlog” vacancies and then the normal rotation shall be followed: Provided also that, in exceptional cases, for posts in Groups A and B for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved



vacancies and the non-filling up of posts causes hardship for running the administration, the Government may grant exemption from carrying forward of such vacancies and the procedure therefor shall be as specified in Schedule-IX:

Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the Reserve list:

Provided also that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen:

Provided also that the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty, but left thereafter while the reserve list is in force.

(g) Notwithstanding anything contained in this section and in the Special Rules for various State and Subordinate Services, the rule of reservation shall not apply to the appointments on compassionate grounds.



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(h) Notwithstanding anything contained in this section, in order to restore the representation of Scheduled Castes and Scheduled Tribes in a service, where their representation is less than eighteen per cent and one per cent, respectively, each department shall furnish such vacancies treating them as shortfall vacancies of Scheduled Castes and Scheduled Tribes in the lowest level of posts in each of the Groups A,B,C and D, besides the posts of Junior Assistants, Typist and Steno-Typist Grade III in the Tamil Nadu Ministerial Service and the Tamil Nadu Judicial Ministerial Service, to the Government and the Government, in turn, shall inform the same to the recruiting agencies for notifying the vacancies for direct recruitment as a one time measure:

Provided that reservation for Women, Differently abled person and Ex-servicemen shall not apply to the said recruitment."

4. In the instant case, according to the learned counsel for the petitioners, the candidates belonging to Ex-Serviceman are not available and therefore, the said vacancies ear-marked for Ex-Serviceman from out of the category of M.B.C and B.C are required to be filled in from the category of M.B.C and B.C to which the petitioners claims to be belonging to. Thus the



respondent No.2 is not following the mandate under proviso to clause (c) of Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in its entirety. It is also the case of the petitioners that, it is the same case in respect of the posts ear-marked for the category of PSTM and persons with disability.

5. The respondent No.4 filed counter affidavit stating that, out of 632 posts of physical educational teacher notified, the Board has taken steps to fill up 561 posts as per the revised provisional list and in respect of 71 posts out of 632 which were reserved for candidates in special categories could not be filled in due to non availability of the candidates during the certificate verification, when they were called for in 1:2 ratio and they are taking further steps to identify the candidates belong to in respect of special category candidates, who qualified in the written examination and secured the marks more than a cut-off mark.

6. Having noticed the above stand, this Court directed the learned counsel for the respondent to verify as to whether the said 71 posts are subsequently filled in or not. In response to the same, the learned counsel for



the respondents 2 and 4 submitted that the said vacancies which were notified under the notification in question in the year 2017 are not filled in as on date.

Further, it is also noticed from the counter affidavit filed by the respondent No.4 that the respondents 2 and 4 are intending to fill up the post that are notified by following Rules.

7. If that be the case, the respondents 2 and 4 having notified 632 posts of physical educational teacher are under obligation to fill up the same with candidates who qualified in the written examination by following relevant Rules. In terms of proviso to clause (c) of Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in case special category candidates such as Ex-Serviceman, persons with disability and PSTM are not available, the said posts are required to be filled with for the respective categories to whom the said post originally belonged to and such excise need to be carried out. The respondent Nos. 2 and 4 cannot take any exception from following the same.

8. In the light of the above, these Writ Petitions are disposed of, directing the respondents 2 and 4 to take further steps for filling up the



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unfilled vacancies of Physical Education teacher that are notified under Notification No.5/2017, dated 26.07.2017 and conclude the process by following the mandate of proviso to clause (c) of Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, as expeditiously as possible at any rate within a period of 3 months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

NCC : Yes/No

05.03.2024

Index : Yes/No

Internet : Yes

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To

- 1.The Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Chairman, , Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
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