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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **02.01.2025**

Pronounced on : **29.04.2025**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3379 of 2024

and C.M.P.Nos.26262 and 26263 of 2024

1. S.Dhinakaran

2. D.Harish

... Appellants / Petitioners

Vs.

1. Teachers Recruitment Board

Rep. by its Member Secretary,

3rd and 4th Floor, Puratchi Thalaivar

Dr.MGR Centenary Building,

DPI Campus, College Road,

Chennai - 600 006.

2. The Commissioner of School Education

Directorate of School Education,

DPI Campus, College Road,

Chennai - 600 006.

... Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order passed by this Court in W.P.No.25228 of 2022, dated 15.07.2024 and allow the writ appeal.



W.A.No.3379 of 2024

For Appellants

: Mrs.N.Kavitha Rameshwar

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For Respondents

: Mr.R.Neelakandan, AAG

assisted by

Mr.C.Kathiravan, Standing Counsel for R1

Mr.U.M.Ravichandran, SPL. G.P for R2

JUDGMENT

R.SURESH KUMAR, J.

This Intra Court Appeal has been directed against the order passed by the writ court dated 15.07.2024 made in W.P.No.25228 of 2022.

2. The facts in nutshell which are to be noticed for the disposal of this writ appeal reads thus :

(i) that the first respondent, i.e., Teachers Recruitment Board in short "TRB" issued a Notification No.1/2021, dated 09.09.2021 inviting applications from the eligible candidates to fill up the post of Post Graduate Teachers in various subjects available in Government Schools. 69% Communal Reservation is to be followed in the Recruitment. PG Teachers vacancies for various subjects are notified to be filled up as per Government Order in G.O.Ms.No.110, School Education [SE2(1)] Department, dated 26.05.2017. 10% of the Post Graduate Assistant only in languages and



W.A.No.3379 of 2024

WEB COPY

academic subjects vacancies in School Education Department shall be reserved for the qualified secondary grade teachers and other teachers with secondary grade scale of pay working in Government Higher Secondary Schools, Government High Schools, recognised Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools in the local bodies and all aided Managements. Therefore in each of the subject, 10% of the vacancies are reserved for inservice secondary grade teacher candidates, in short SGT candidates.

(ii) The two appellants have applied for the said recruitment under 10% quota earmarked for inservice SGT candidates. The first appellant belongs to Scheduled Caste and the second appellant belongs to the Backward Class.

(iii) Both have applied for PG Teacher History subject. The total vacancies available for PG Assistant 121 posts, therefore being 10%, 12 vacancies were earmarked for SGT candidates.



W.A.No.3379 of 2024

(iv) During the recruitment process, the two appellants since had not given any no objection certificate from the employer at the time of applying for the post of PG Assistant (History), the first respondent Board has considered them under SC General Turn and BC General Turn and not considered in 10% quota for SGT.

(v) During the recruitment process, the first appellant secured 93 marks and the second appellant secured 96 marks.

(vi) After completion of recruitment process, since the appellants did not reach the zone of consideration for selection, they have not been selected.

(vii) Only at that juncture, according to the appellants, since two vacancies earmarked specifically for SGT candidates in PG History have not been filled up for want of candidates as they were reserved for Tamil Medium candidates, in those two unfilled vacancies these two peoples who secured higher marks than the cut off mark ought to have been selected,



W.A.No.3379 of 2024

Since they have not been selected, seeking for such selection, they approached this Court by filing writ petition praying for mandamus directing the first respondent to select the petitioners / appellants against unfilled two seats under the 10% quota available for the secondary grade teachers for the post of PG Assistant (History) based on the marks secured by the petitioners / appellants in the written examination.

(viii) The said writ petition was heard and decided through the impugned order, dated 15.07.2024 where the learned Judge having considered the factual matrix as well as the legal position has rejected the plea raised by the petitioners / appellants thereby dismissed the writ petition.

3. Assailing the said order in this Intra Court Appeal, Mrs.N.Kavitha Rameshwar, the learned counsel appearing for the appellants would contend that, insofar as the 10% quota specifically reserved for SGT candidates are concerned, 12 vacancies have been reserved for the SGT teachers in History subject. Out of the 12 vacancies reserved for 10% quota for SGT candidates,



W.A.No.3379 of 2024

the 12 vacancies have been distributed among various communal categories, where, there were 4 vacancies reserved for Backward Class Tamil medium candidates, out of which, one seat is earmarked for SGT candidates. Like that, four vacancies are earmarked for Scheduled Caste Tamil medium candidates, out of which one has been specifically reserved for SGT candidates.

4. In this context, in order to fill up the one vacancy in BC Tamil medium and SC Tamil medium each, if there are no suitable candidates available, the selection authorities must go down further and find out who are all the non-Tamil medium candidates in the same BC category and SC category available with higher marks should have been selected under the SGT quota. If such a exercise had been undertaken, certainly these petitioners / appellants would have been selected, however, the first respondent / TRB has kept two vacancies vacant for want of vacancies, i.e., BC Tamil medium and SC Tamil medium. Therefore the mandamus which was sought for by the appellants / petitioners before the writ court ought to have been allowed, but erroneously the learned Judge has not considered



W.A.No.3379 of 2024

this aspect in proper perspective and rejected the plea raised by the petitioners / appellants. Therefore the prayer sought for in the writ petition should be considered and be allowed, she contended.

5. She would also submit that, after filing the reply affidavit by the first respondent in this Intra Court Appeal as directed by this Court, it has been refused by the first respondent that the two vacancies have not been kept vacant, wherein the suitable eligible candidate secured more mark than the cut off mark in the BC Tamil medium category and SC Tamil medium category of general candidates other than the inservice SGT candidates since have been filled up, the vacancies were not available.

6. Quoting this stand taken by the first respondent / TRB, the learned counsel appearing for the appellants would contend that, once the vacancy is specifically earmarked for SGT candidates, that cannot be shifted or transferred to general category, even though the Tamil medium candidates are not available, instead, it should have been given only to the SGT candidates in the said communal category, i.e., BC as well as SC General Non-Tamil medium candidates belongs to SGT.



W.A.No.3379 of 2024

7. This exercise alone is permissible because of the specific reservation of 10% being made by the Government through G.O.Ms.No.110, School Education [SE2(1)] Department, dated 26.05.2017, whereby the relevant rules since has been amended, which is the rule made under Article 309 of the Constitution, being a subordinate legislation it is having the force of law. Therefore the method adopted by the TRB in filling up these two vacancies for want of candidates of Tamil medium in the SGT category by filling up the vacancies through the non SGT candidates is the utter violation of the rules and therefore the learned counsel seeks indulgence of this Court.

8. In support of her contention, the learned counsel would rely upon a decision in a bath of writ petitions in the matter of B.Akkim v. The State of Tamil Nadu and Ors., etc., reported in MANU/TN/0277/2022, decided on 07.01.2022 by a learned Judge of this Court which will have some persuasive value of the issue raised herein. Therefore considering the same, the prayer sought for herein is to be allowed she contended.



W.A.No.3379 of 2024

9. On the contrary, Mr.R.Neelakandan, learned Additional Advocate

General appearing for the first respondent / TRB would contend by relying upon the averments made in the reply affidavit that, insofar as the merits claimed by the appellants / petitioners is concerned, the cut off marks for various communal category have been fixed, by which for the Backward Class community, the cut off mark is 98 and for the Backward Class Tamil medium also the cut off mark is 98. Like that, for the Scheduled Caste candidates, the cut off mark is 99 and for the Scheduled Caste Tamil medium candidates, the cut off mark is 97, whereas the marks secured by the appellants / petitioners is that, the first appellant secured 93 marks belongs to SC and the second appellant secured 96 marks belongs to BC, so they have not come within the zone of consideration as they secured lesser mark than the cut off mark in the respective communal category of both Backward Class Tamil and Scheduled Caste Tamil.

10. The learned Additional Advocate General would also submit that, insofar as the filling up of vacancies earmarked for the SGT candidates, for want of candidates, by the candidates of Non-SGT is concerned, it is the



W.A.No.3379 of 2024

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method to be adopted by the TRB as the 20% reservation provided by way of preferential allotment for Tamil medium candidates cannot be given a go-bye. Therefore if there has been no candidate of Tamil medium available in the concerned communal category among the SGT candidates then naturally such vacancies have to be filled up in the same communal category with Tamil medium students of Non-SGT candidates and that position cannot be altered, he contended. Therefore the learned Additional Advocate General would submit that, both on merits as well on the legal position because of the preferential reservation given for the Tamil medium candidates, the method adopted by the TRB is perfectly valid and the appellants / petitioners do not have any merits to claim such an appointment as has been claimed in this lis, he contended.

11. We have considered the rival submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

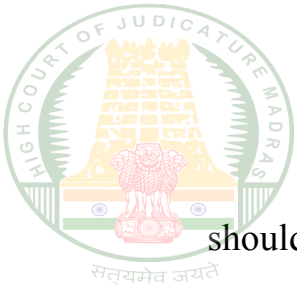


W.A.No.3379 of 2024

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12. Insofar as the claim made by the learned counsel appearing for the appellants that the two vacancies earmarked for Secondary Grade Teachers, i.e., inservice candidates, one is Backward Class another is Scheduled Caste communal category vacancies are concerned, it is earmarked for Tamil medium candidates. This has been specifically given in the notification, where under the subject History, out of the total 121 vacancies, 12 vacancies being 10% have been earmarked for Secondary Grade Teachers. Out of the 12 vacancies, one vacancy for BC Tamil medium candidates and one vacancy for SC Tamil medium candidates. Insofar as these two vacancies are concerned, it should be filled up by the Secondary Grade Teacher candidates belongs to Backward Class Tamil medium and Scheduled Caste Tamil medium respectively.

13. However, admittedly these two appellants do not belong to Tamil medium candidates. Moreover as per the averments made in the reply affidavit filed by the TRB since there has been no No Objection Certificate obtained by these teachers from the employers, they were in fact not considered as Secondary Grade Teachers category. Assuming that they

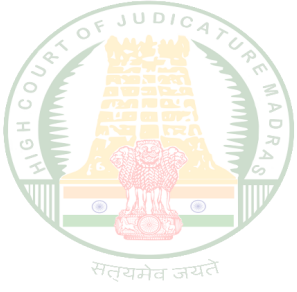


W.A.No.3379 of 2024

should be treated as Secondary Grade Teachers category, the two appellants since have secured 93 and 96 marks respectively, whether with the said marks, they come within the cut off mark earmarked for the said communal categories is to be looked into.

14. In this context as we stated supra, the cut off mark for Backward Class is 98 and the Backward Class Tamil medium is also 98. Like that the cut off mark for Scheduled Caste category is 99 and the cut off mark for Scheduled Caste Tamil medium category is 97.

15. The first appellant belongs to Scheduled Caste community secured 93 marks, therefore she has not come within the zone of consideration as the cut off mark for SC category was 99 and SC Tamil medium category was 97. Like that, the second appellant being a Backward Class candidate secured 96 marks. This also does not come within the zone of consideration because the cut off mark for Backward Class is 98 and Backward Class tamil medium is also 98. Therefore at the threshold, these two candidates are out of the zone of consideration, therefore they have to be rejected.



W.A.No.3379 of 2024

WEB COPY

16. However a question has been raised by the learned counsel appearing for the appellants by making a point that, once a vacancy is earmarked for Secondary Grade Teachers, that should be filled up only by the Secondary Grade Teachers even if the vacancy is though has been earmarked with the preferential reservation for Tamil medium candidates and if there are no tamil medium candidates available for want of candidates, the vacancy should be filled up by the non-tamil medium candidates belongs to the same community of the Secondary Grade Teachers and if such an exercise is adopted, the appellants / petitioners even though do not belong to the tamil medium category would have been in a position to be in the zone of consideration to be selected under non-tamil medium category of SG Teachers.

17. Whether these proposition as projected by the learned counsel appearing for the appellants / petitioners can be accepted in the teeth of the legal position is to be looked into.



W.A.No.3379 of 2024

18. In this context, the reservation of 10% quota for Secondary Grade

Teachers are provided as per G.O.Ms.No.110, School Education [SE2(1)]

Department, dated 26.05.2017. The relevant portion of the G.O. reads thus :

"5. The Government have examined the proposal of Director of School Education and direct that ten out of fifty percent quota for direct recruitment shall be filled from among qualified Secondary Grade Teachers and other Teachers with Secondary Grade Scale of pay working in Government / Panchayat Union / Municipal / Corporation and Government recognised Private aided Schools namely Elementary Schools, Middle Schools, High Schools and Higher Secondary Schools.

If no qualified and suitable candidates are available for appointment by the method suggested above, such vacancies shall be filled by direct recruitment."

19. Therefore 50% of the substantive vacancy shall be filled up by direct recruitment and out of this direct recruitment 10% of such vacancy shall be filled from among the qualified Secondary Grade Teachers and other Teachers working in various Government aided schools.



W.A.No.3379 of 2024

20. It is also been stated that if no qualified and suitable candidates are available for appointment by the method suggested above, such vacancy shall be filled by direct recruitment.

21. The meaning being that, the 10% vacancies shall be filled up from among the Secondary Grade Teachers, but if there is no qualified suitable candidate available from the Secondary Grade Teachers, the vacancies shall be filled by the direct recruitment.

22. Relatively the 20% preferential reservation for Tamil medium students are provided under the Act of Legislature called Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act 2010, in short "Tamil Medium Act". Section 3 is the enabling section under which 20% of the vacancies horizontally be reserved for Tamil Medium candidates. Section 3 of the Act reads thus :

"3. (1) Notwithstanding anything contained in any law for the time being in force and subject to section 5, twenty per cent of all vacancies in



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W.A.No.3379 of 2024

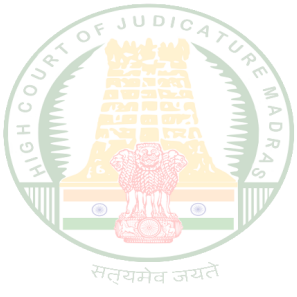
appointment in the services under the State which are to be filled through direct recruitment shall be set apart on preferential basis to persons studied in Tamil medium.

(2) Selection for appointment under sub-section (1) shall be made in such manner as may be prescribed.

(3) Nothing contained in sub-section (1) shall apply in the case of appointment to the posts in the services under the State for which the educational qualification prescribed in the rules or regulations or orders applicable to the post is a degree or diploma or any academic distinction in a language."

23. If no suitable candidates available in Tamil medium, how it should be filled up has also been provided under Section 6 of the Act, which reads thus :

"6. Notwithstanding anything contained in section 3, where adequate number of qualified and suitable persons studied in Tamil medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons



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W.A.No.3379 of 2024

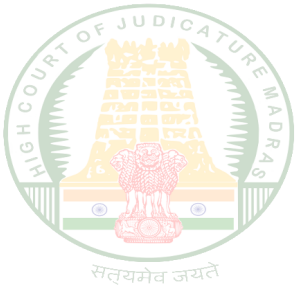
studied in other mediums within the respective category."

24. If we look at Section 3, it starts with a non obstante clause, i.e., "notwithstanding anything contained in any law for the time being in force and subject to Section 5, 20% of all vacancies....."

25. Therefore the 20% of all vacancies in appointment in the services of the State shall be reserved horizontally for Persons Studied in Tamil Medium.

26. Such a horizontal reservation for Tamil medium students shall have a primacy over any other law which are available for the time being in force, by virtue of the non obstante clause.

27. Like that if we look at Section 6, it makes very clear that, where adequate number of qualified and suitable Persons Studied in Tamil Medium are not available, the unfilled vacancies shall be filled up with Persons studied in other medium within the respective category.



W.A.No.3379 of 2024

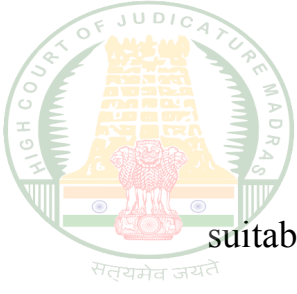
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28. The word respective category is a qualifying word, which means the respective communal category as the communal reservation is the vertical reservation.

29. This is the reason why when 10% of the posts are earmarked for SGT candidates as per G.O.Ms.No.110 as stated supra, the 12 vacancies for PG History earmarked for SGT candidates have been distributed among various communal category, out of which one vacancy goes to Backward Class Tamil medium and another one vacancy goes to the Scheduled Caste Tamil medium.

30. If the first appellant belongs to Scheduled Caste, he can compete with Scheduled Caste candidates as well as open competition category.

31. Here it is not in dispute that, the first appellant has not secured the required mark either under the open competition category or under Scheduled Caste category and in respect of the one vacancy reserved for Scheduled Caste Tamil medium for SGT candidates since there is no



W.A.No.3379 of 2024

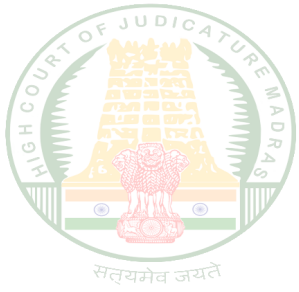
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suitable candidate available, the Teacher Recruitment Board has decided to invoke Section 6 of the Tamil Medium Act. That means the vacancy earmarked for Tamil medium Scheduled Caste category candidates shall be filled up by yet another SC Tamil candidate not necessarily be a SGT candidates but other direct recruitment.

32. This method adopted by the TRB is fully fortified and supported by Section 6 of the Tamil Medium Act.

33. The word respective category does not denote any other category except the communal category because under the guise of any horizontal reservation, the communal category cannot be compromised.

34. At the same time insofar as the 20% reservation by way of preferential basis for Tamil medium candidates are concerned, it is also a mandatory one because of the language used in Section 3 of the Act with non obstante clause.



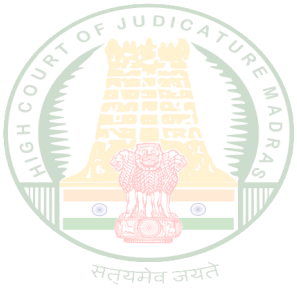
W.A.No.3379 of 2024

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35. The Tamil Medium Act is the Act of Legislature be otherwise called as plenary legislation, whereas G.O.Ms.No.110 is an Executive Order issued under Article 162 of the Constitution and assume that by virtue of the said G.O, the Rule has been amended, at the most it can be treated only as a rule within the meaning of Article 309 of the Constitution.

36. The said rule being the subordinate legislation always submitted to the plenary legislation, whereas the Tamil Medium Act being the plenary legislation can always override a subordinate legislation.

37. Except the meaning of the communal category for the word respective category used in Section 6 of the Tamil Medium Act, no other meaning could be possibly taken as the Act never forecast any such reservation like G.O.Ms.No.110 by way of quota to the SGT candidates since the Act is Act 40 of 2010 and the G.O.Ms.No.110, School Education Department is dated 26.05.2017, hence it cannot be stated even to any stretch of imagination that the respective category is nothing but a Secondary Grade Teachers category as projected by the learned counsel appearing for the Appellants.



W.A.No.3379 of 2024

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38. Therefore the method adopted by the Teachers Recruitment Board in selecting the two other meritorious candidates namely M.Ganesan under the Backward Class Tamil medium quota who secured 101 marks and one P.Mohan under SC Tamil medium quota who secured 97 marks which are certainly higher than the marks secured by the present Appellants namely S.Dhinakaran and D.Harish who secured 93 and 96 marks respectively belongs to Scheduled Class and Backward Class communities respectively.

39. Therefore even on merits also since these appellants did not reach the cut off mark or zone of consideration they cannot claim any selection for appointment.

40. That is the reason why the learned counsel wants to take a different route by raising a point stating that even though these appellants have secured lesser marks than the cut off marks in the respective communal category that seats earmarked for SGT candidates should be filled up only by the SGT candidates irrespective of the lower marks they secured and it should not have been filled up by the open market candidates belongs to the same community of Tamil medium.



W.A.No.3379 of 2024

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41. If such a proposition projected by the learned counsel appearing for the appellants is accepted, that will directly run contra to the mandatory requirement under Section 3 of the Tamil Medium Act, where, by virtue of the non obstante clause all other law for the time being in force since does not have any such mandatory requirement of reserving 20% of the vacancies for Tamil medium candidates, thereby, the Tamil Medium Act being the plenary legislation will always have the primacy over subordinate legislation or Executive orders. Therefore the proposition projected by the learned counsel appearing for the appellants is liable to be rejected, accordingly it is rejected.

42. The Judgment cited by the learned counsel for the appellants in B.Akkim v. The State of Tamil Nadu and Ors., etc., though has been made by a writ court by one of us (CSNJ) even for persuasive value, the same cannot be taken for the simple reason that the facts discussed in the said case is entirely different and also in view of the legal position which we have discussed herein above, the said Judgment also will not advance the case of the appellants / petitioners.



W.A.No.3379 of 2024

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43. Therefore for all these reasons, the Appeal is deserve to be dismissed, accordingly is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

(R.S.K., J.) (C.S.N., J.)
29.04.2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

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Teachers Recruitment Board
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W.A.No.3379 of 2024

**R.SURESH KUMAR, J.
AND
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**Judgment in
W.A.No.3379 of 2024 and
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