

(2015) 03 MAD CK 0060

In the Madras High Court

Case No : Writ Petition (MD) No. 2460 of 2013

C. Cynthia Mabel

APPELLANT

Vs

The Tamil Nadu Public Service Commission and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) LabIC 2910

Hon'ble Judges : T. Raja, J.

Bench : Single Bench

Advocate : Louis for T. Lajapathi Roy, for the Appellant; T.R. Janarthanan, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner/C. Cynthia Mabel, wife of Mr. I. Vinoj Sahayaraj, who belongs to BC Women Category, has filed the present writ petition seeking for issuance of a writ of certiorarified mandamus to quash the impugned tentative list of register number of candidates selected provisionally for appointment by direct recruitment to the posts included in Group-I Services for the years 2007-08, 2009-10 and 2010-11, for which oral test was held from 01.02.2013 to 05.02.2013, dated 06.02.2013, issued by the first respondent, by calling for the records connected thereto, and consequently, to consider the petitioner for appointment to any suitable post included in Group-I Services for the years 2007-08, 2009-10 and 2010-11, within a time-frame.

2. The case of the petitioner is that the petitioner has completed Bachelor of Engineering in Computer Science in the year 2006. In the year 2010, she has applied for Group-I Services, pursuant to the Notification in Advertisement No. 257, dated 29.12.2010, issued by the first respondent / the Secretary, Tamil Nadu Public Service Commission, Chennai, calling for applications for direct recruitment to the posts included in Group-I Services. Thereafter, she attended the preliminary examination on 05.06.2011 and, in the said examination, her name was also short-listed for the main written examination. On completion of

main written examinations i.e., Paper-I and Paper-II conducted respectively on 28.07.2012 and 29.07.2012, her Registration No. 02503116 was found place in the provisional list of candidates short-listed for oral test issued by the second respondent. Thereafter, she was also issued with a call letter dated 08.01.2013, inviting her to attend the oral test to be held on 04.02.2013. Pursuant to the oral test, the first respondent issued the impugned tentative list of candidates provisionally selected for appointment to the posts included in the Group-I services and, in the said provisional list of candidates, the name of the petitioner did not find place, though she secured 312.50 marks out of 600 in the written exam and 42 marks out of 80 in the oral test, totalling 354.50 marks. Aggrieved by the said impugned tentative list, the petitioner has filed the present writ petition with the prayer cited supra.

3. Assailing the impugned tentative list published by the first respondent, Mr. Louis, learned counsel appearing for the petitioner submitted that though the first respondent published the advertisement stating that the Rule of Reservation for appointments is applicable to each post separately and distribution of the vacancies will be as per the Rule in force, except to the backlog vacancies in the post of Deputy Collector, a clarification regarding 20% vacancies in direct recruitment on preferential basis to persons studied in Tamil Medium is not announced yet. While so, preference for Persons Studied in Tamil Medium (PSTM) was adopted in the final selection without any further amendment to the original Notification dated 29.12.2010, in which, it has been stated that clarification with regard to implementation of G.O. Ms.No.45, PandAR(S) Department, dated 30.09.2010, is awaited from the Government, therefore, he contended, the impugned tentative list, being bereft of particulars without category wise list by following the roaster system, is liable to be interfered with, inasmuch as the candidates belonging to BC category with lesser marks than that of the petitioner are strangely included in the impugned tentative list, as the petitioner, who has secured 354.50 marks, has not been included in the said list. On that count, he sought for quashing the impugned tentative list, as the same is per-se illegal and contrary to the Notification dated 29.12.2010.

4. Per contra, Mr. T.R. Janardhanan, learned standing counsel for the TNPSC submitted that since the petitioner had obtained only 354.50 marks from both written and oral tests, she was not called for the first phase of counseling held on 14.02.2013, however, the petitioner was called for the second phase of counseling in the ratio of 1:3 on 18.03.2013 to fill up the five unfilled vacancies in the post of Deputy Superintendent of Police (category-1) in the Tamil Nadu Police Service, along with other 18 candidates. Since the petitioner did not enclose the physical fitness certificate, she was directed to submit her physical fitness certificate and on the date of counseling held on 18.03.2013, she has produced the physical fitness certificate, wherein, it is stated that her height is 154 cm. It is further submitted that, as per paragraph 5(c) of the Commission's Notification dated 29.12.2010, height of the women candidates must be not less than 155 cms. Therefore, she was not allowed to attend the second phase of

counseling, as she admittedly did not possess the required height as stated in the Notification.

5. Learned standing counsel for the TNPSC further submitted that, in G.O. Ms.No.145, dated 30.09.2010, the Government have issued orders to fill up 20% reservation of all vacancies in direct recruitment on preferential basis to the persons studied in Tamil Medium. Therefore, by following the said G.O., four candidates -- K. Sankar, N. Kavitha Priya, T. Nallarasi and B. Geetha -- have been called for counseling against PSTM category and thereafter, all the above said candidates have been selected under the PSTM category, except one N. Kavitha Priya, as she has not chosen any post. But, the petitioner, who has secured 354.50 marks in BC (OBCM)(Female) category, could not be selected for want of physical fitness/height criteria as prescribed for the post of Deputy Superintendent of Police (category-1). Therefore, on that count, he contended, she cannot have any grievance over the appointment of the above said persons.

6. Rebutting the contention of the petitioner that some of the candidates with lesser marks than that of the petitioner have been strangely included in the impugned tentative list, learned standing counsel for the TNPSC contended that no candidate in the category of BC (OBCM) (Female) having lesser marks than that of the petitioner has been selected and appointed, and that the other candidates, who were appointed, belong to "Other Categories" such as, BC(OBCM)(PSTM), SC, SC(A) and SC(PSTM) and ST as per the Rule of Reservation in force, therefore, such contention of the petitioner cannot stand to any good reason. On that basis, he prayed for dismissal of the writ petition.

7. Mr. R. Aravind Raj, learned counsel appearing for the fourth respondent submitted that respondents-1 to 3 have conducted the selection process as per the Rule of Reservation from the rank list prepared based on the total marks in the written and oral tests obtained by the candidates, therefore, the contention of the petitioner that her name did not find place in the impugned tentative list though various other candidates belonging to the BC (OBCM)(Female) category having lesser marks included in the said list, cannot be sustained. It is further contended that a mere perusal of paragraph 4(b) of the Notification issued by the Commission shows that in G.O. Ms.No.145, dated 30.09.2010, the Government have issued orders to fill up 20% of all vacancies in direct recruitment on preferential basis to the persons studied in Tamil Medium and the clarification in this regard is awaited from the Government. Thereafter, the Government also clarified that 20% reservation has been provided to each communal category and the G.O. was issued after examining all aspects, hence, the contention of the petitioner that, without announcing the distribution of vacancies with regard to PSTM Category, the respondents ought not to have implemented the said G.O., is far from acceptance.

8. Concluding his argument, learned counsel submitted that, from the rank list, it is amply clear that the total number of 131 posts are distributed based on the requirement already made by the each and every department. It is further

submitted that based on the marks obtained by the petitioner in the written examination and in the oral test, following the Rule of Reservation for appointments, the respondent TNPSC have not selected the petitioner as she has secured only 354.50 marks, whereas, the last selected candidate from the category of BC(OBCM)(Female) secured 357.00 marks. Further, though the fourth respondent, who belongs to BC(OBCM) (PSTM) category, secured lesser marks i.e. 349, than that of the petitioner, by virtue of G.O. Ms.No.145, dated 30.09.2010, followed by clarificatory letter dated 30.12.2011, which provides 20% reservation to each communal category, the fourth respondent has been selected under the category of PSTM, hence, he contended, the appointment of the fourth respondent on preferential basis cannot be questioned, as it is perfectly in order. With these submissions, he prayed for dismissal of the writ petition.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. The Tamil Nadu Public Service Commission (TNPSC), vide Notification No. 257, dated 29.12.2010, called for applications to fill up 131 vacancies for various posts under Group-I Services. Amongst these 131 vacancies, 22+1=23 vacancies were set apart for Scheduled Caste and Scheduled Tribe respectively as backlog vacancies. That apart, the Government of Tamil Nadu took a policy decision to provide for preferential treatment to the persons studied in Tamil Medium (in short "PSTM") and introduced an Ordinance, whereby, it has been decided that 20% of all Government posts were to be filled up on a preferential basis by persons who studied in Tamil Medium. Subsequently, the said Ordinances was replaced by an Act, namely, Act 4 of 2010, whereby the State Government reiterated its policy decision, as a result, the persons, who studied in Tamil Medium, are entitled to 20% reservation of the posts in the Government Services after the year 2010. In this regard, it is relevant to extract the category-wise distribution of vacancies, which is stated below:

11. As per the above said Notification of the Commission, the process of selection consists of three successive stages viz. (i) Preliminary examination, (ii) Main written examination and (iii) Oral interview. While so, preliminary examination was held on 05.06.2011 and subsequent to that, main written examinations were held on 28.07.2012 and 29.07.2012. Later on, the provisional list of 268 candidates for oral test was issued by the second respondent and thereafter, all those candidates appeared for the oral test for the said posts held on 01.02.2013, 02.02.2013, 04.02.2013 and 05.02.2013. Subsequently, though 131 candidates were called for counseling on 14.02.2013 to fill up the 131 vacancies, selection memos were issued to only 126 candidates. For the remaining five posts, 18 candidates were called for the second phase of counseling in the ratio of 1:3 on 18.03.2013 and the petitioner was one among the candidates, who had been called for, and on the date of counseling, she has produced the physical fitness certificate, wherein it is stated that her height is 154 cm., however, such

height cannot fit into the requirement specified for the post of Deputy Superintendent of Police, for, as per paragraph 5(c) of the Commission's Notification dated 29.12.2010, women candidates must be not less than 155 cms., therefore, she was rightly not allowed to attend the second phase of counseling.

12. It is no doubt true that the petitioner, who belongs to BC(OBCM)(Female) category and secured 354.50 marks, has not been included in the said impugned list, though other persons such as, K. Sankar/fourth respondent herein, N. Kavitha Priya, T. Nallarasi and B. Geetha, with lesser marks, have been included in the said list. But, as rightly contended by the learned counsel appearing for the TNPSC and the fourth respondent, by virtue of G.O. Ms.No.145, dated 30.09.2010, followed by clarificatory letter dated 30.12.2011 issued by the Government clarifying 20% reservation to each communal category on preferential basis to the persons studied in Tamil Medium, the fourth respondent and the above said other candidates have been rightly appointed under the PSTM Category on the basis of marks obtained by them in the written test as well as in the oral test, except one N. Kavitha Priya as she has not chosen any post. However, the petitioner, who was not called for in the first phase of counseling as she was not within the zone of consideration, was given opportunity in the second phase of counseling, while filling up the five unfilled vacancies for the post of Deputy Superintendent of Police (Category-I) along with 18 other candidates, however, she was again not allowed to attend the second phase of counseling, since her height was only 154 cm., as against the required height of 155 cm. as specified in the above said Notification.

13. Further, as stated above, the petitioner, who belongs to BC(OBCM) (Female) category, secured only 354.50 marks, whereas the last selected candidate in the category of BC(OBCM)(Female) secured 357.00 marks and, from the records, it is seen that no candidate in the said category having lesser marks than that of the petitioner was selected.

14. Thus, for all the aforesaid reasons, the writ petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.