

(2015) 01 MAD CK 0094

In the Madras High Court

Case No : W.A. No. 229 of 2013 and M.P. No. 1 of 2013

K. Balasundari

APPELLANT

Vs

The Chairman Teachers Recruitment Board

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0094

Hon'ble Judges : P.R. Shivakumar, J.;N. Paul Vasantha Kumar, J.

Bench : Division Bench

Advocate : N.G.R. Prasad for A.V. Arun, for the Appellant; P.H. Arvind Pandian, A.A.G Assisted by A. Srijayanthi, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Shivakumar, J.—This writ appeal has been filed against the order of the learned single Judge dated 07.11.2012 dismissing W.P. No.22486 of 2012, wherein the appellant herein/writ petitioner had prayed for the issuance of a Writ of Certiorarified Mandamus for quashing the selection list for appointment to the post of Graduate Assistants published on 01.08.2012 by the Chairman of the Teachers Recruitment Board, College Road, Chennai-600 006, namely the first respondent herein and to direct the first respondent herein to issue appointment order to the appellant/writ petitioner as per the selection list published on 20.07.2012.

2. The appellant herein completed her graduation in Tamil and obtained a B.Litt degree in April 1991. She had also completed Tamil Pandit training in July 1992 and got her name registered in the Employment Exchange on 27.10.1992 with Registration No. 1991F07171. She also completed her Post- Graduate course and obtained M.A. degree in April 1994 and the same was also registered with the Employment Exchange subsequently. A number of vacancies for the Graduate Assistant posts in the Government High Schools, Corporation Schools and the schools run by Adi Dravidar Welfare Department were notified to be filled up in

accordance with State level employment seniority, from out of the candidates to be sponsored by the second respondent in the ratio of 1:5. After certificate verification, the first respondent published a provisional selection list on 20.07.2012 (according to the respondents the correct date of the provisional list was 17.07.2012) in which the writ petitioner's name was found a place and she was shown to have been selected against the General Turn (Women) as per the roster. However, subsequently, the said provisional selection list was cancelled by the first respondent and a revised selection list, in which the appellant's name was not included, came to be published on 01.08.2012. Hence the appellant approached this court with the writ petition seeking the above said relief.

3. The claim of the appellant herein/writ petitioner was resisted based on the contention of the respondents that the first respondent received lists of candidates for each subject and in accordance with the communal roster from Employment Exchange on 04.05.2012, 11.05.2012 and 19.06.2012, based on which the Merit list was prepared taking the cut off date for the subject Tamil in General Turn as 23.10.1992 and the cut-off date for the said subject for General Turn (Women) as 09.10.1992; that the date of appellant's employment's registration with the Employment Exchange being 27.10.1997, she was found to be outside the purview of consideration and that the same was the reason why the appellant was not selected for appointment as Graduate Assistant in the subject Tamil.

4. The learned single Judge accepted the reason assigned by the respondents and dismissed the writ petition holding the appellant not entitled to the relief sought for in the writ petition. Hence the appellant is before us with the present Writ Appeal.

5. Mr.N.G.R. Prasad, learned counsel representing Mr.A.V. Arun, learned counsel on record for the appellant contended that when the vacancy positions to be filled up in accordance with the State level employment seniority was notified, the cut-off date shall be of no consequence and insignificant, if the seniority list in accordance with the State level employment seniority was prepared in a proper manner; that the list submitted by the second respondent would contain four times more than the vacancies notified; that when a candidate's name was found in such list submitted by the second respondent, it could not be contended that such a candidate was out of the zone of consideration; that at the best, the cut-off date shall be of some help for quick reference to find out whether any senior in the list of State level employment seniority had been omitted to be selected and whether any one whose employment seniority was lower had been selected and that apart from such purpose of verification, the cut-off date shall have no relevance to the selection of the candidates for appointment as Graduate Assistants in the concerned subject, applying the roster system.

6. Learned counsel for the appellant also pointed out the discrepancy in the cut-off dates allegedly fixed for General Turn (General) and General Turn (Women) insofar as an earlier date was fixed as the cut-off date for General Turn (women)

and a later date was fixed for General Turn (General) as cut-off dates and contended that the same would be enough to hold that the first respondent committed mistakes in making the selection and the mistakes were sought to be justified by providing wrong and incorrect particulars.

7. Mr.P.H. Arvind Pandian, learned Additional Advocate General assisted by Mrs. A. Srijayanthi, learned Special Government Pleader for respondents 1 and 2, submitted that there was apparently a mistake in the counter affidavit dated 07.10.2014 filed by the Member Secretary, Teachers Recruitment Board, Chennai wherein the cut-off date for General Turn (General) was mentioned as 23.10.1992 and the cut-off date for General Turn (Women) was noted as 09.10.1992; that the said mistake was corrected in the subsequent affidavit of Member Secretary, Teachers Recruitment Board, Chennai dated 07.01.2015 correcting the said mistake by providing the correct particulars of the cut-off dates for General Turn (General) and General Turn (Women) as 09.10.1992 and 23.10.1992 respectively.

8. Of course a consideration of the copies of the selection list produced makes it clear that while reproducing the cut-off dates for General Turn (General) and General Turn (Women), the cut-off date for General Turn (General) was wrongly furnished as the cut-off date for General Turn (Women) whereas the cut-off date for General Turn (Women) was wrongly furnished as cut-off date for General Turn (general) and that the said mistake has been rectified in the subsequent affidavit noted 07.01.2015 containing additional particulars. However, as rightly pointed out by the learned counsel for the appellant, the cut-off date shall be of insignificance and no consequence excepting its use for verification as a ready reckoner to find out whether any senior to the selected candidates was omitted and whether any junior to the non-selected candidate was selected.

9. It is not the case of the respondents that the total number of candidates sponsored by the Directorate of Employment and Training, Guindy exceeded the ratio of 1:5 and the writ petitioner's name could not be found in the list if drawn in accordance with the said ratio. It is an admitted fact that the appellant was very much within the list prepared for consideration in the ratio of 1:5. No doubt the selection was to be made based on State level seniority, which gave no discretion to the first respondent to make a selection of any one out of the list submitted by the second respondent. The selection list was to be prepared strictly in accordance with the State level seniority which provided only a scope for elimination on the ground of absence of qualification, disqualification or non-appearance for certificate verification. In the event of such elimination, the next person in line in the category alone shall be selected.

10. Of course, as pointed out by the learned Additional Advocate General, the selection has been demonstrated to have been made in accordance with the State level seniority for each subject following roster system. We are not concerned with the selection of the candidates for appointment as Graduate Assistants for other subjects. The scope of consideration in this appeal is

restricted to the selection of candidates for appointment as Graduate Assistants in the subject Tamil. The admitted number of vacancies notified to be filled up was 319 for all subjects, out of which, the vacancies notified to be filled up in Tamil subject was 155 (132 in schools under the control of Directorate of School Education, 19 under the control of Adi Dravidar Welfare Department and 4 under the control of Coimbatore Corporation).

11. The provisional list dated 17.07.2012 in which the appellant was shown to be provisionally selected was given a go by on the premise that the supplemental panels sent by the Employment Exchange were not taken into consideration and hence the mistake had to be rectified. The revised list of subject wise selection containing the selected candidates in accordance with the communal roster seems to have been prepared in accordance with the State level seniority, after taking into account the supplementary lists sent by the second respondent. It is no one's case that in the revised selection list, which has been challenged in the writ petition, the name of any junior to the appellant in accordance with the communal roster applicable to the appellant is found among the selected candidates for Tamil subject. However it is contended on behalf of the appellant that either calculated efforts were made to eliminate the appellant or a mistake was committed in non preparation of the waiting lists from which the vacancies that remained vacant due to the non-joining of the selected candidates were to be filled up. It is the further contention raised on behalf of the appellant that if at all the rules regarding preparation of waiting list for each category had been followed, the appellant would have got appointed towards the vacancies, which remained unfilled due to the non-joining of the selected candidates.

12. In view of the said submissions, as per the directions of this court, the first respondent submitted a list containing 9 persons who were omitted to be included in the provisional list, who were later on included in the revised selection list and the list of 9 persons, who were removed from the provisional selection list due to the inclusion of those 9 persons. Yet another list containing three names have also been produced as the list of non-selected candidates, who were seniors to the appellant. For ready reference the same are furnished below:

Eligible Candidates Senior to the Appellant (GTandBC Category) inadvertently omitted for the Recruitment of Graduate Assistants (Tamil) through Employment Registration Seniority (Backlog) Vacancies - Result published on 17.07.2012

CANDIDATES WHO WERE INADVERTENTLY INCLUDED IN THE PROVISIONAL SELECTION LIST PUBLISHED ON 17.07.2012

List of Not selected candidates senior to the Appellant

All the three lists are found included in the typed set of papers filed by the learned Special Government Pleader on 07.01.2015. The very same typed set of papers contains the tentative list of selected candidates for appointment through the Employment Registration State seniority for the year 2010-2011. It contains a list of total number of 155 persons selected for Tamil subject (132 towards the

vacancies in the schools under the control of the Director of School Education + 19 towards the vacancies in the schools run by Adi Dravidar Welfare Department + 4 towards vacancies in the schools run by Corporation of Coimbatore).

13. According to the respondents, in view of the accommodation of nine candidates who were seniors to the appellant, the appellant and three of her seniors (Senthil Nathan, Kalidas and Ulaganathan) were also not selected. Two of the seniors of the appellant are found in the said list. There is one more senior by name Ulaganathan. If his name is also taken into account, then the appellant's name could have found a place at Sl.No.4 in the waiting list if at all such waiting list had been prepared in accordance with the rules. For a query made by this Bench, it was informed on behalf of the respondents that S. Gomathi Nayagi was ranked at 56 and selected in the selection list dated 01.08.2012 did not join duty. A copy of the communication in this regard sent by the Director of School Education, Chennai to the Member, Teachers Recruitment Board, Chennai - 6 in proceedings Rc.No.095451/C5/E2/2014 dated 05.01.2015 has also been included as the last document in the first respondent's typed set dated 07.01.2015 and the same finds place at Page 71 of the typed set. A comparison of the selection list dated 01.08.2012 with the above said communication dated 05.01.2015 will make it clear that the said S.Gomathi Nayagi, whose name is found ranked at 56, was selected towards General Turn (women) category, whereas in the above said communication of Director of School Education dated 05.01.2015, by mistake, the turn was wrongly noted as General Turn (General). Had a proper waiting list been prepared, the said vacancy would have gone to the next in line in the General Turn (Women) category.

14. It is not in dispute that the appellant K.Balasundari is the senior most in the unselected candidates in General Turn (Women) category. However, learned Additional Advocate General would submit that once the selected candidate did not join, the said vacancy would go to a category other than the category in which the non-joining candidate was selected and that the vacancy which remained unfilled due to the fact that Gomathinayagi had not joined would go to Senthilnathan, who was the senior most among the unselected candidates. The said argument seems to have been made stretching the issue too far. Suppose a candidate after selection joins duty and thereafter quits the post within a short span of time, it can be validly contended that the said vacancy would lapse and if at all the same is to be filled up it shall be done by fixing it towards the appropriate roster which goes after the roster in which the last selected candidate was appointed. In case a selected candidate in respect of a particular roster does not join duty, the candidate in the waiting list, who will fit into that roster alone shall be appointed.

15. In this case, the appellant claims appointment towards the turn meant for General Turn (Women). Gomathi Nayagi who was selected at Sl.No.56 towards the General Turn (Women) did not join. Suppose she happened to be the last of

the selected candidates in the selected list there would not be any difficulty in fitting the appellant in that place at the very same serial number. On the other hand, T.Mangayarkarasi at Sl.No.70, N.Revathi at Sl.No.85, R.Mallika at Sl.No.93, B.Uma at Sl.No.105, R.Sumathi at Sl.No.111, R.Malar at Sl.No.119 and K.Muthulakshmi at Sl.No.131 meant for the schools under the control of Director of School Education and K.Subashini at Sl.No.9 and A.Shakila at Sl.No.16 meant for the schools run by Adi Dravidar Welfare Department were also selected towards General Turn (Women). No one was selected for the schools run by the Corporation of Coimbatore under the General Turn (Women) category. Due to the fact that Gomathinayagi who was selected at Sl.No.56 did not join the post, the other persons mentioned supra will be pushed upwards and the position occupied by A.Shakila would be available in which the appellant's name shall be fitted.

16. From the above discussions it shall be quite obvious that if proper waiting list was prepared in accordance with the rules, the appellant was entitled to get appointment as she was the senior most person to fit in the General Turn (Women) category which remained vacant due to the non-joining of the selected candidate Gomathi Nayagi.

17. Rules for Teachers Recruitment through Teachers Recruitment Board came to be framed and notified in G.O. Ms.No.1223, Education (V2) Department dated 12.07.1988. Rule 9 in the said rules contemplates preparing and keeping a waiting list containing a number of persons not exceeding 10 percent of the estimated vacancies reported as on 1st June. Though the term used therein is "may", equity and fair play of justice indicate that the term made therein has to be read as "shall" so that the persons who are not selected because of the selection of the persons held to be senior or more meritorious, as the case may be, shall have the chance in the event of such selected candidate failing to take up the job. However, it is the further contention of the learned Additional Advocate General that a policy decision was made to appoint Graduate Assistants by direct recruitment following State level employment seniority and accordingly G.O. Ms.No.152 School Education (Va.Se.2) Department dated 03.06.2010 and G.O. Ms.No.171 School Education (Q) Department dated 05.11.2011 were issued; that in the said Government Orders preparation of waiting list was not contemplated; that the first respondent was justified in not preparing a waiting list and that the appellant could not claim any right to appointment on the ground that had a waiting list been prepared she would have got appointment towards the vacancy caused by non-joining of a selected candidate towards the communal roster to which she claims right. We are unable to countenance the above said contention of the learned Additional Advocate General, for the simple reason that the above said Government Orders do not repeal the Recruitment Rules in toto, especially Rule 9 has not been touched by the Government Orders relied on by the learned Additional Advocate General. Hence, we are of the considered view that the non-preparation of the waiting list was not proper. If a proper waiting list had been prepared, names of 13 persons, in accordance with their seniority, would have been found in such a waiting list. As indicated supra,

the appellant's name would come well within the 13 names, which would have been included in the waiting list, even if a general waiting list has been prepared. In such a general waiting list, her name would have found a place at Sl.No.4. Once a person's name is found in the waiting list, then towards the vacancies that remained unfilled due to the non joining of a selected candidate has to be filled up by appointing a person from the waiting list according to the roster applicable to the post, which remained thus unfilled. As indicated supra, the other selected persons in General Turn (Women) category would be pushed upwards and the appellant Balasundari should have been accommodated at the place of Shakila.

18. It shall be pertinent to note that though the method of recruitment has been subsequently changed, the appellant has not claimed to be appointed in accordance with the changed rules of recruitment. On the other hand, she claims that she ought to have been selected and appointed in accordance with the rules prevailing as on the date of impugned selection. We see every justification in such a claim made by the appellant. Though the prayer made in the writ petition is for quashing the selection list dated 01.08.2012 and to direct the first respondent to issue appointment order to the appellant/writ petitioner as per the selection list published on 17.07.2012 (by mistake mentioned as 20.07.2012), we are of the considered view that the relief can be moulded by directing the first respondent to issue appointment order to the appellant as Graduate Assistant in Tamil on the premise that had a waiting list been prepared she would have got accommodated towards the consequential vacancy that remained unfilled due to the non-joining of a selected candidate, namely Gomathi Nayagi.

In the result, the writ appeal is disposed of directing the first respondent to issue selection order to the appellant/writ petitioner for appointing her as Graduate Assistant in the subject "Tamil" by the Director of School Education, Chennai-6, within a period of six weeks from the date of receipt of a copy of the judgment. However, there shall be no order as to cost. Consequently, connected M.P. No.1 of 2013 is closed.