
(2013) 12 MAD CK 0061

In the Madras High Court

Case No : W.A. No. 2099 of 2011 and M.P. No. 1 of 2011

K. Velu

APPELLANT

Vs

The Secretary to Government, Education, Science and
Technology Department, The Director of School Education,
The Secretary, Tamil Nadu Public Service Commission and
K.P. Maheswari

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 2 MLJ 90

Hon'ble Judges : R. Mahadevan, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : R. Thiagarajan, for Shri. K. Rajkumar, for the Appellant; R. Ravichandran, Additional Government Pleader for Respondents-1 and 2, Ms. C.N.G. Niraimathi for Respondent-3 and Shri. M. Selvam for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—This Writ Appeal is filed against the order of the learned Single Judge dated 15.09.2011 in W.P. No. 643 of 2009 dismissing the Writ Petition. The Writ Petition was filed by the appellant to quash the selection of the fourth respondent bearing registration No. 01735154 to the post of District Educational Officer in the Tamil Nadu Educational Service, published by the Tamil Nadu Public Service Commission, the third respondent herein dated 19.12.2008 and for consequential relief.

2. After hearing the learned senior counsel for the Writ Petitioner and respective learned counsels for the respondents, the learned Single Judge dismissed the Writ Petition holding that there is no irregularity in the appointment of the fourth respondent and correct roster system had been followed, and turned down the plea of the appellant for creation of supernumerary post. Aggrieved by the said order, the present Writ Appeal has been preferred.

3. The case of the appellant is that there were 19 vacancies to the post of District Educational Officer and out of 19 posts 30% was reserved for women i.e. 4 vacancies. According to the appellant since he had secured more marks than the fourth respondent in History subject, he must have been selected.

4. By assailing the learned Single Judge's order, learned Senior Counsel contended that the learned Single Judge proceeded on the wrong footing by misconstruing the facts and in view of wrongful accommodation of one Mr. Munusamy, who was in Sl. No. 20 in the 27th MBC/DC instead of 25th General turn and in all, three MBC/DC candidates have been appointed in the general vacancy of Maths, Commerce and Economics. Therefore, the next vacancy was filled by appointing the fourth respondent, who is also an MBC/DC. The learned senior counsel argued that once a candidate is part of roaster, importance must be given to merit, and that there cannot be any further reservation after the roaster was finalized and therefore the selection of the fourth respondent is untenable and is liable to be set aside. Referring to the Hon'ble Apex Court judgment in Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, and of this Court rendered by one of us (N.P.V., J.) in the case of M. Ravi Vs. Tamil Nadu State Transport Corporation (Salem) Limited , the learned senior counsel contended that the appellant has secured more marks and hence supernumerary post ought to have been created.

5. Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 argued that 30% reservation has been implemented to the overall selection and not just for creating the roaster and hence the order of the learned Single Judge does not warrant any interference. Further, he argued that since there was no irregularity in appointing the fourth respondent, there was no necessity for creating supernumerary post just to accommodate the appellant.

6. Supporting the arguments of the learned Additional Government Pleader for the respondents 1 and 2, the learned counsel appearing for the third respondent, TNPSC contended that after considering the increase in vacancies to 19, 4 posts were reserved for women. Since the selection is based on the clarification issued by the Government and following the correct roaster system, there is no irregularity in the selection of the fourth respondent.

7. Heard the learned senior counsel for the appellant and the learned Additional Government Pleader for the respondents 1 and 2 as well as the learned counsels for the respondents 3 and 4 in detail.

8. Initially, only 6 vacant posts were notified with one post reserved for women in the general category vide Notification dated 24.08.2007. In Sl. No. 5(B), it was mentioned that If no qualified and suitable woman candidates are available for selection against the vacancies reserved for them, those vacancies will be filled up with male candidates belonging to the respective communal categories. Further in Sl. No. 9 titled "Procedure for Selection", it is mentioned Selection will be made in two successive stages i.e., (i) Written Examination and (ii) Oral Test

in the shape of an interview. Final selection will be made on the basis of the total marks obtained by the candidates in the Written Examination and Oral Test taken together, subject to the rule of reservation of appointments. Candidate's appearance both in the Written Examination and Oral Test is compulsory. A candidate who has not appeared for the Oral Test will not be considered for selection, even if he/she secures the qualifying marks in the Written Examination.

9. From the above, it is clear that not only reservation for women was made, but it was also based on communal reservation. Further, it is clearly mentioned that the final selection will be made on the basis of total marks obtained by the candidates in both Written Examination as well as Oral Test, which again was subject to the rule of reservation. It is to be borne in mind that the purpose of reserving 30% of vacancy to women is not for mere preparation of roaster alone, but for appointing them. From the "Procedure for Selection", it is clear that, only if there is no woman candidate, then the male candidate from the roaster who belongs to the same community can be considered. By supplementary Notification dated 26.09.2007, 13 more vacancies were notified. In the second notification, all the vacancies were clubbed together in common pool and it has been mentioned that for every category 30% reservation was made for women. The subject-wise categorization was done away to give preference to appoint a woman candidate, in terms of rules of reservation.

10. In the Special Rules for Tamil Nadu School Education Service, Rule 3 clearly mentioned that rules of reservation has to be followed and appointments to each category shall be treated as one unit. The above rule implies that there cannot be any subject-wise categorization and from the reading of the entire rules, it could only mean post-wise categorization. In the Notification, the system to be followed has been clearly mentioned. If the appellant has any grievance, he should have challenged the Notification. Rather after participating in the Written Examination and Interview, the appellant cannot now question the category-wise reservation. From the ranking list, it can be seen that the fourth respondent is the first MBC/DC woman candidate and as per the supplementary notification, rightly she has been appointed. It is to be borne in mind that the intention of the Government in reserving 30% vacancy for women in the communal reservation is, for the upliftment of women in the society. Further, we do not find any discrimination in the policy decision of the Government to implement the reservation quota to women candidates and this cannot be treated as double reservation.

11. For the reasons stated above, we are unable to find any irregularity in the selection of the fourth respondent. Creation of a separate list for woman would be against Article 16 of the Constitution of India and therefore the third respondent was right in preparing a common selection list.

12. With regard to the judgments relied on by the learned senior counsel for the appellant for creation of Supernumerary posts, we are of the view that the said judgments are not applicable to the present facts of the case, since the appellant

was not selected and no illegality in the selection of the fourth respondent is established. In both the cited judgments, the selection was found to be vitiated. However, since the petitioners therein were already selected and were in service, appropriate directions to continue the service of the candidates were given. In the instant case, the appellant has not made out a case for selection. Therefore, such a direction cannot be given. Hence, the learned Single Judge has rightly rejected the plea for creation of Supernumerary post. In the result, the Writ Appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.