
(2005) 11 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No. 38986 of 2002

The Tamil Nadu Public Service Commission

APPELLANT

Vs

C. Munusamy and Others

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Citation : (2005) 11 MAD CK 0073

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : R. Suresh Kumar, for N. Paul Vasanthakumar, for the Appellant; V.R. Rajasekaran, for R. Singaravelan, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 11-07-2002 made in O.A.No. 7099 of 1996, Tamil Nadu Public Service Commission has filed the above Writ Petition to quash the same on various grounds.

2. The first respondent herein has claimed appointment to post of District Educational Officer in the selection conducted by the Tamil Nadu Public Service Commission during 1996. It is the claim of the first respondent that he has secured 212 marks. According to him, the procedure announced was that selection is based on the subject-wise and the reservation and rotation system were also followed, however, such procedure was not followed in his case in the selection. Candidates should be selected for the subject Mathematics. Among the candidates in Backward Class community, he is the highest scorer next to Backward Class (Women). It is also his claim that if the rotation system was adopted, as announced in the notification, as he is No.2 candidate in mathematics and belongs to B.C, since he has secured the higher marks, he would have been selected. It is also his grievance that instead of following the same, the highest scorer in the B.C (Women) has been selected and given posting apart from 2 M.B. Cs., and one S.C. He is No.2 among the candidates

whose subject is mathematics. The Tribunal, after referring to the stand of the Tamil Nadu Public Service Commission in their reply affidavit and finding that as per Clause 9 of the Notification, the selection is subject to rule of reservation only, has changed the system of selection and directed the applicant (first respondent herein) be given appointment as District Educational Officer in any one of the existing vacancies within a period of three months from the date of its order and also observed that if no vacancy, he shall be given appointment in the vacancy that arises in future. Questioning the same, the Tamil Nadu Public Service Commission has filed the above writ petition.

3. Heard Mr. R. Sureshkumar, learned counsel for the petitioner; Mr. V.R. Rajasekaran, learned counsel for first respondent and Ms. V. Velumani, learned Additional Government Pleader for second and third respondents.

4. The only point for consideration in this Writ Petition is, whether the positive direction issued by the Tamil Nadu Administrative Tribunal selecting the applicant/ first respondent herein as District Educational Officer is sustainable or not?

5. It is seen that the Tamil Nadu Public Service Commission ("Commission" in short) based on the estimate of vacancies furnished by the Government in Education, Science and Technology Department, in its Notification dated 12-07-1995, invited applications from the candidates for appointment against 15 vacancies in the post of District Educational Officer/Inspectress of Girls Schools in the Tamil Nadu School Educational Service to be made by direct recruitment. As per the Notification, 12 candidates have to be selected among the Open Market and 3 from among the teachers employed in the recognised Aided Secondary Schools, as detailed below:

-----	Subject	From	From among
the Teachers	Total	Open Market	employed in recognised aided Secondary
Schools.	-----	Maths	4 .. 4
Physics	4 .. 4	Psychology	3 .. 3
Chemistry	1 .. 1	English	.. 2 2
Philosophy	.. 1 1	-----	-----
Total	12	3	15
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6. The method of appointment to the post of District Educational Officer and the qualification prescribed therefore in the annexure which is to be read with rule 6 (i) of the Special Rules (Tamil Nadu School Educational Service) governing the post of District Educational Officer is as follows:

Name of the category Method of Qualification.

Recruitment

XXXXX

District Educational Direct recruit- i) Master's Degree of Officer, Inspectress ment (otherwise any University in the of Girls Schools, than from among state or a degree of Inspectress of Anglo teachers em-equivalent standard Indian Schools, employed in recognised in such subject or Assistant Director aided language as may be of School Education secondary specified by the (Librarian) and schools) State Government and Readers in the State Council of Educational Research & Training, Madras.

(1) (2) (3)

ii) Should have studied Tamil Under Part I or Part II of their intermediate or Pre-University course or H.S.C.

Direct recruit- i) A Master's degree of ment from among any University in teachers employed the State or a degree in recognised of equivalent standard aided Secondary in such subject Schools or language as may be specified by the State Government.

ii) Should have studied Tamil Under Part I or Part II of their intermediate or PUC or HSC and

iii) Teaching experience for a period of not less than 12 years in a recognised school after acquiring the degree of B.T. or equivalent qualification .

Promotion and i) A degree of any Transfer university in the State or a degree of equivalent standard and ii) Teaching experience in a training or Secondary School for a period of not less than two years.

7. Rule 3 of the Special Rules governing the said post reads as under:

"3. Reservation of appointment. The rule of reservation of appointments (General Rule 22) shall apply to appointments by direct recruitment to all the categories in the service, the appointments to each category being treated as one unit."

8. It is clear from the above details, one who intends for the post of District Educational Officer, he should be a Post Graduate in the subject or language as specified by the Government. It also shows that the Rule of Reservation of

appointments applies to the appointments to be made by direct recruitment to all the categories of post in the service and the appointment to each category of posts is being treated as one Unit. The particulars furnished further show the total number of vacancies in all the subjects were taken together and they were distributed ,among the various community categories in the roster relating to the recruitment. The details also show that while doing so, excepting one carried forward vacancy which relates to the MBC/DC category, according to the roster relating to the recruitment, the remaining 14 vacancies were to be filled up as follows:

1. MBC/DC
2. OC (GT)
3. BC (W)
4. OC (GT)
5. BC
6. SC
7. MBC/DC
8. OC (GT)
9. BC
10. OC (GT) (W)
11. MBC/DC (W)
12. BC
13. SC (W)
14. BC (W)

9. The Notification further shows that distribution of the said 15 vacancies (including one MBC/DC backlog vacancy) thus arrived at in the following manner:

SC 2 (including one vacancy reserved for women MBC/DC 4 (including one Backlog vacancy and one vacancy reserved for women) BC 5 (including 2 vacancies reserved for women) Open Competition 4 (including one vacancy reserved for women) ----- Total 15 -----

10. The details furnished in the Notification make it clear that selection for recruitment to the post had been made based on the marks obtained by the candidates in the Main Written Examination and Oral Test taken together. It is the stand of the petitioner Commission that among the 15 vacancies, one vacancy relates to the subject - Philosophy and the same had to be filled up by the service candidates (ie) from among the teachers employed in the recognised aided Secondary Schools. Since no candidate with the Philosophy qualification

had appeared for the post from among the teacher candidates for recruitment against the one vacancy in the subject Philosophy, which was to be filled up by the Teacher candidate, the 15 vacancies announced for this recruitment was reduced to 14 at the time of drawing the list of candidates selected for admission to the Oral Test. Consequently, a BC (W) vacancy which was to be filled up according to the roster was not taken up for filling up the same.

11. In order to understand the steps taken by the Commission in making selection based on rule of reservation as well as subject-wise, the following roster furnished by the Commission is relevant:-

TAMIL NADU PUBLIC SERVICE COMMISSION

ROSTER FOR THE POST OF DISTRICT EDUCATIONAL OFFICER/INSPECTRESS OF GIRLS"

SCHOOLS IN THE TAMIL NADU SCHOOL EDUCATIONAL SERVICE, 1992-96

VACANCIES

GT - 4(1W) MATHS - 4

BC - 4(1W) PHYSICS - 4

MBC/DC - 4(1W) PSYCHOLOGY - 3

SCH - 2(1W) CHEMISTRY - 1

ST - 0(0W) ENGLISH - 2

SI.No CATEGORY MARKS ROLL NO NAME SUBJECT

BACKLOG VACANCY

1 MBC/DC 197.50 330001 THIRU R.PITCHAI MATHS

1ST ROTATION

2 15TH MBC/DC 195.00 330782 THIRU RAMESWARA MATHS MURUGAN V C

3 16TH GT 225.00 330223 THIRU KANNAPPAN S(BC)CHEMISTRY

4 17TH BC(W) 223.50 330469 TMT.RAJARAJESWARI V MATHS

5 18TH GT 221.50 330311 THIRU KARMEGAM S (BC) PHYSICS

6 19TH BC 196.50 330217 TMT. UMA D PHYSICS
7 20TH SC 162.50 330747 THIRU PALANISAMY M PHYSICS
8 21ST MBC/DC 183.50 330677 THIRU KARUPPASAMY A PHYSICS
9 22ND GT 205.50 330697 THIRU RAJENDRAN C M ENGLISH
10 23RD BC 186.50 330070 THIRU RAJENDRAN D PSYCHOLOGY
11 24TH GT(W) 172.50 330089 SELVI LATHA N (BC) PSYCHOLOGY
12 25TH MBC/DC(W)139.00 330122 TMT.RANJINI DEVI D PSYCHOLOGY
13 26TH BC 171.50 330145 THIRU AROCKIASAMY C ENGLISH
14 27TH SC(W) 125.00 330066 USHA RANI C MATHS

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In the affidavit, the Secretary of the Commission has explained that after the Oral test, based on the marks obtained by the candidates in the Main Written Examination and in the Oral Test taken together, a ranking list was prepared and from the said ranking list candidates were considered for selection for appointment based on their ranking position therein, and also having regard to the rule of reservation of appointments and the post graduate degree possessed by the candidates in the subject/language for considering them for appointment in such subject/language in which vacancies were announced. In addition, since two of the vacancies which relate to the language-English and to be filled up by the service candidates (i.e) Teachers working in the Government aided secondary schools, the same was also taken into account. It is seen that while making actual selection, apart from merit and rule of reservation of appointments, Post Graduate degree possessed by the candidates in the subjects/language for considering them in the vacancies pertaining to the said subject were to be considered. The Secretary has also informed that taking into consideration of all these factors, 14 candidates were selected from the ranking list according to the turns found in the roster and accommodated therein.

12. It is further seen that the first respondent herein, namely, C. Munusamy was one among the candidates who had applied to the Commission for this recruitment and selected for admission to the Oral Test. He belongs to Backward Class community and possesses M.Sc., degree in Maths and M.Ed., degree. He opted the subject Psychology as optional subject for answering the Main Written Examination. He secured 212 marks both in the Main Written Examination and in the Oral Test taken together. It is also demonstrated that based on the ranking obtained by him and having regard to the rule of reservation of appointments and also with reference to the vacancy position in the subject-Maths, the subject in which he has obtained the Masters degree, he did not reach his turn for selection for appointment to the post of District Educational Officer in the Tamil

Nadu Educational Service. The counsel for the Commission has explained and demonstrated that while making selection, after selecting a candidate for the MBC/DC backlog vacancy, who was a Maths candidate and the higher mark holder among the MBC/DC Category, another MBC/DC candidate who stood second among the MBC/DC candidates in the ranking list who was also a Maths candidate was selected against one of the remaining 13 vacancies. It is also explained that since he too was qualified in the subject Maths, one of the remaining 3 vacancies in the subject Maths was filled up by selecting him. Thereafter, according to the Commission, against the Open Competition turn, a BC candidate who qualified in the subject-Chemistry was selected on the basis of merit. In the next turn reserved for BC (W), a BC (W) candidate who was also qualified in the subject Maths was selected. In the next vacancy reserved for Open Competition, a BC candidate who was qualified in the subject Physics was selected. It is highlighted that though in the next turn which relates to BC (General) category could have been filled up by selecting the first respondent, who was qualified in the subject Maths, in view of the fact that a turn reserved for SC (W) was available in the roster and the same had to be filled up by SC (W) candidate and two SC (W) candidates with the qualification in Maths alone were available and one among the two candidates who had secured higher marks had to be selected in that turn failing which, the turn reserved for SC (W) candidate could not have been filled up and would have had to be passed over and carried forward to the next recruitment. As rightly pointed out, the same could not be done when the candidates in the particular category were available, and the same was filled up by a SC (W) Maths candidate passing over the first respondent herein. Though Mr. V.R. Rajasekaran, learned counsel for the contesting first respondent, vehemently contended that though he (first respondent)-C. Munusamy B.C candidate scored more marks, namely, 212 which is higher than the selected candidate in Sl.No.6, namely, Tmt. Uma, D (BC)-whose mark is 196.50, in view of the above said reasons, namely, that one SC (W) candidate has to be filled up and 2 SC (W) candidates with qualification in Maths alone were available, and one among the two candidates who had secured higher marks had to be selected in that turn, we are of the view that the course adopted by the Commission is in consonance with the notification and also constitutional mandate of rule of reservation. We are satisfied that the selection was made strictly according to the ranking position of the candidates in the ranking list and also having regard to the rule of reservation of appointments. To make it clear that in the course of selection, a SC (W) candidate for whom a vacancy in the respective turn is available for selection, the first respondent herein, had to be left without selection. It is not in dispute that all the four vacancies in the subject Maths were filled up as indicated in the chart, and the first respondent who stood fourth in the ranking list and qualified in the said subject (Maths) happened to be not selected and he was passed over.

13. The scheme as notified by the Commission proceeds that while making subject-wise selection based on the marks obtained by the candidates in the

Written Examination and in the Oral test put together and also duly following the rule of reservation of appointments, if the vacancies in the particular subject are exhausted, subsequent candidates who are qualified in the said subject were passed over though they have secured higher marks and the next candidates in the ranking list who are qualified in the other subjects were selected against the vacancies in the respective subject. As rightly pointed out by the Commission, the said course is unavoidable while making selection for the recruitment of the special nature.

14. As rightly pointed out by the learned counsel for the petitioner/Commission, when a vacancy reserved for SC (W) category was available in the roster, the same had to be filled up from among the two candidates available in that category in the ranking list and they also possessed the qualification in the subject-Maths. As said earlier, failure to select a candidate against the said turn when candidates in that particular category were available would have resulted in serious violation and in the event if the first respondent had been selected, the said turn, viz., SC (W) - Sl.No. 14 would have been left unfilled and the same would have amounted to violation of the provision of the Constitutional right and that was the reason the first respondent herein was not selected for appointment. We are satisfied that the first respondent herein was not selected due to the accommodation given to a SC candidate (Maths). Though he was aware of the same, the first respondent has not impleaded the said SC (Maths) candidate in the Original Application filed before the Administrative Tribunal. We are satisfied that the selection made by the Commission is not erroneous as recorded by the Tribunal. In other words, the Commission had adopted the best method of selection and it is brought to our notice that all the selected candidates are working for nearly 7 years. If the order of the Tribunal is allowed to stand, it will certainly hamper the selection already made by the Commission and the selection for the subsequent recruitment for the same post. The Secretary of the Commission has also brought to our notice that there is no vacancy available in the post of District Educational Officer, since all the 14 vacancies were already filled up. It is also brought to our notice that the next selection for the post of District Educational Officer was already over and the results declared in October, 2000 . The Tribunal without considering all the relevant materials and without assigning reasons, has passed a cryptic order, directing the petitioner to select the first respondent herein for appointment to the post of District Educational Officer which cannot be sustained. Though learned counsel for the first respondent has contended that the subject-wise selection/reservation is not being strictly followed and it varies year to year, we are concerned with the Notification of the Tamil Nadu Public Service Commission dated 12-7-95. Hence, there is no merit in the said contention.

15. Under these circumstances, the impugned order dated 1 1-07-2002, passed by the Tamil Nadu Administrative Tribunal in O.A. No. 7099 of 96 is quashed and the Writ Petition is allowed. No costs.