

(2012) 01 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 12446 of 2007 (O.A. No. 465 of 2002)

V. Manivanan

APPELLANT

Vs

The Secretary Tamil Nadu Public Service Commission,
Chennai 2 and The Secretary to Govt., Public and Admn.
Reforms Dept., Fort St. George, Chennai 9

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Tamil Nadu Highways Engineering Service Rules — Rule 22

Citation : (2012) 01 MAD CK 0196

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K. Venkataramani, for the Appellant; Ravichandran, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The petitioner has approached this Court with the prayer for issuance of writ of mandamus to direct the respondents, to revise the applicant's

placement in the Public Works Department instead of Highways & Rural Works Dept., based on his marks obtained in the selection.

2. The petitioner is a Civil engineering graduate with Master's degree in Structural engineering as a specialised subject. The petitioner belongs to

backward class community and therefore, eligible to be considered under Rule of reservation in backward class quota.

3. A Combined engineering service examinations were conducted by the Tamil Nadu Public Service Commission for appointment of Civil and

Machanical engineers. The petitioner applied for the post by giving his first

preference for appointment in Public Works department whereas the department of Highways & Rural works was his second preference.

4. The total vacancies notified were 479 i.e. 210 in P.W.D. and 269 including 27 Mechanical engineers in the Highways & Rural Works Department.

5. The case of the petitioner is that appointment was to be made on the basis of marks obtained in the written and oral test. The petitioner secured 569.38 marks out of 918 marks in the written and oral test and was selected provisionally for appointment to the post of Assistant Engineer (Civil) in the Highways and Rural Works Department, in the Tamil Nadu Highways Engineering Service Rules.

6. The case of the petitioner is that for the appointment to the post of 210 vacancies in Public Works department, candidates who secured higher marks were considered, whereas vacancies in the Highways and Rural Works department were filled up from the candidates who secured lower marks but subject to their preference.

7. The case of the petitioner is that he was not considered for absorption in Public Works Department by not considering his case as backward class candidate. The petitioner submits that there is reservation for Scheduled caste, Scheduled tribe, Backward class, Most Backward class & Denotified communities. The vacancies which were outside the reservation quota were treated as open category.

8. The case of the petitioner is that reserved category candidates also have the right to compete in the open category.

9. The sum and substance of the case set up by the petitioner is that if Rule of reservation was followed, then he was to be selected for appointment in Public Works Department.

10. The petitioner prays for absorption in the Public Works Department, on the ground that all the backward class candidates who secured lesser marks than the petitioner were appointed in the Public Works Department, whereas the petitioner was appointed in Highways & Rural Works Department which is totally arbitrary and discriminative, thus violative of Article 14 and 16 of the Constitution of India.

11. The petitioner claims that his rank in mark list is at 52 after ignoring the candidates selected in the Highways & Rural Works department as per

their option. Therefore, petitioner deserves to be placed on the top of the selection list for the Public Works Department.

12. The writ petition is opposed by the respondents by filing detailed counter, wherein specific stand taken is that the candidates occupying the top most position in the ranking list were appointed in Public Works Department and the petitioner stood at 114th place in the ranking list therefore could not be selected for appointment in the Public Works Department. The petitioner was considered for appointment in the general category vacancies in the Highways and Rural Works Department being his second preference.

13. The counter of the first respondent reads as under: ""It is submitted that the applicant, Thiru V.Manivanan, was one among the candidates who had applied to the Commission for his recruitment. His Register No. was 607796. In his application, he claimed himself to belong to a backward class community and opted for the Public Works Department as his first preference and Highways and Rural Works Department as his second preference. The applicant, who was provisionally admitted to the written examination based on the claim made by him in his application thereafter to the Oral test relating to the recruitment, based on the marks obtained by him in the written examination and also having regard to the rule of reservation of appointments, secured 569.38 marks both in the written examination and in the oral test taken together (Written examination - 481-38; Oral Test -88).

14. Further, in the reply, it is pointed out that the 269 vacancies advertised for the post of Assistant Engineer in the Highways and Rural Works Department also included 27 vacancies relating to the post of Assistant Engineer (Mechanical). Therefore, while selecting the candidates for admission to the Oral test in accordance with the procedure of selection announced in para 8 of the notification, 54 candidates in the ratio of 1:2 who possess B.E., (Mechanical) degree were selected for admission to the oral test for considering them for selection against the vacancies in the Mechanical side. After the oral test, those candidates based on the marks obtained by them in the written examination and in the oral test taken together secured top rank in the ranking list which was a common one for all the posts viz., Assistant Engineer (Civil) in Public Works Department

and Assistant Engineer (Civil/Mechanical) in Highways and Rural Works Department and drawn on the basis of the marks obtained by the

candidates in the written examination and in the oral test taken together.

15. It is further pleaded in the reply that after oral test, the final selection of the candidates was made following the principle laid down by the

Hon"ble Supreme Court in the case of P.S. Ghalaut Vs. State of Haryana and Others, and in accordance with the clarification issued to Rules

22(b) and 22(c) of the General Rules for the Tamil Nadu State and Subordinate Service by the Government in D.O.Letter No.44129/S/98, dated

20.8.98 of the Personnel and Administrative Reforms department. According to the said clarification, in respect of the General turn vacancies, the

required number of candidates, taking into account the vacancy position in that category were to be selected first based on their ranking position in

the ranking list irrespective of the community category to which they belong and fitted in the General turn vacancies and only thereafter, the

candidates were required to be selected against the vacancies in the reserved categories, taking into account the number of vacancies in each of

such reserved categories.

16. Accordingly, from among the candidates in the raking list, based on the ranking position of the candidates, the top most 104 candidates were

selected for appointment in the General Turn vacancies in the Public Works Department and in the Highways and Rural Works Department. While

doing so, all the 27 vacancies relating to the post of Assistant Engineer (Mechanical) in the Highways and Rural Works Department happened to

be filled up only with those candidates, since the candidates who qualified in Mechanical engineering occupied the top most position in the ranking

list by virtue of their marks. In addition, some of the candidates who also possess the Mechanical engineering degree and occupied the top most

positions in the ranking list were also passed over since they could not be considered for selection in the civil side vacancies. Thereafter, for the

general turn (women) vacancies required number of women candidates were selected. After selecting the candidates for filling up the General turn

(General) and general turn (women) vacancies, candidates from the respective community categories were selected for appointment in the

vacancies reserved for those community categories.

17. In this process, the petitioner who secured 569.38 marks in the written examination and in the oral test taken together and stood at 114 the place in the ranking list had to be considered for appointment in the General Turn (general) vacancies and upon such consideration, he did not reach his turn for selection for appointment in the Public Works Department with reference to his first option. He, however, reached in the Highways and Rural works department with reference to his second option. As the petitioner had reached his turn for selection for appointment in the general turn (general) vacancy by virtue of his ranking position in the ranking list which was prepared on the basis of the marks obtained by him in the written examination and oral test taken together and was selected in a general turn (general) vacancy in the Highways and Rural Works department, the question of considering him in the vacancies reserved for backward class category, the community category to which he belongs did not arise. Therefore, the writ petition deserves dismissal.

18. Though the stand of the first respondent cannot be accepted as the petitioner could not be put to disadvantage merely because he secured higher marks than backward class candidates, but at the same time, no relief can be granted to the petitioner at this stage as it will result in changing the settled position for number of years.

19. Even otherwise, the petition filed by the petitioner is not competent for non joinder of necessary party, as the persons who were lower in merit then the petitioner have not been impleaded as parties. In the absence of necessary parties, no relief can be granted to the petitioner, at this stage as the induction of the petitioner in Public Works Department will result in displacing an employee, who is not a party to the writ petition.

Vinod K. Sharma, J.

vaan

20. The writ petition is dismissed. No cost.