

Case relating to fitment in roster:

Parties : J. Anvar Sathath Versus The Tamil Nadu Public Service Commission rep. by its Secretary & Another

Court : High Court of Judicature at Madras

Case No : Writ Petition No.27672 of 2008

Judges: THE HONOURABLE MR. JUSTICE S.J. MUKHOPADHAYA & THE HONOURABLE MR. JUSTICE V. DHANAPALAN

Appearing Advocates : For the Petitioner: K. Venkataramani, S.C., M. Muthappan, Advocates.
For the Respondents: R1, R2, CNG Ezhilarasi, Advocate.

Date of Judgment :

12-12-2008 **Head**

Note :-

Constitution Of India – Article 226 - The main grievance of the petitioner is that though he has higher qualification and secured total marks of 234, he has not been appointed, whereas, another person, viz. Mr.Sultan Aribeen, belonging to the same category and having lesser qualification, but obtained same marks (234), has been provided with the appointment - the direct recruitment has been made comprising written test and oral test. Under the Subsidiary Rule for direct recruitment comprising written examination and oral test, in case of two or more candidates scoring equal marks, the candidates senior in age has to be placed above in the merit list. Therefore, Mr.Sultan Aribeen has been placed above the name of the petitioner in the merit list - do not find any irregularity in the same. We have been informed that the petitioner's name appears at Sl.No.1 in the waiting list and therefore, the petitioner shall await for his turn of appointment, if there exists any vacancy due to non joining.

Comparative Citation:

2009 (5) MLJ 1514

(NOC)

Judgment :-

Petition under Article 226 of the Constitution of India praying for a writ of declaration declaring that non selection of the petitioner for the post of Civil Judge (Junior Division) for the year 2004-2008 conducted as per the advertisement 164 (Backward Class Muslim General Category) as null and void and further direct the respondents to select and appoint the petitioner as Civil Judge (Junior Division) under Backward Class Muslim General Category.

S.J. Mukhopadhaya,J.

The petitioner, who applied for admission to the post of Civil Judge (Junior Division), pursuant

to the notification dated 10.5.2008 issued by the Tamil Nadu Public Service Commission, came out successful in the written test held on 2nd and 3rd August 2008 and appeared for an interview in October 2008. Having not recommended for such appointment, the petitioner has preferred this writ petition for declaration that non selection of the petitioner for the post of Civil Judge (Junior Division) against the post reserved for Backward Class (Muslim) as null and void, with a further prayer to direct the respondents to appoint him as Civil Judge (Junior Division) under Backward Class (Muslim) category.

2. The main grievance of the petitioner is that though he has higher qualification and secured total marks of 234, he has not been appointed, whereas, another person, viz. Mr.Sultan Aribeen, belonging to the same category and having lesser qualification, but obtained same marks (234), has been provided with the appointment.

3. The stand of the first respondent is that the selection to the post of Civil Judge (Junior Division) was made based on the total marks obtained by the candidates and with reference to the rule of reservation of appointments and with reference to the provisions of the Commission's Subsidiary Rules. The petitioner Anvar Sathath (Register No.02803062) belongs to BC (Muslim) category. Another candidate Mr.Sultan Aribeen (Register No.00101145), who have obtained the same marks, also belongs to BC (Muslim) category. The details of marks obtained by the petitioner and Mr.Sultan Aribeen in the written examination and oral test are as under:

TABLE

4. The further case of the first respondent is that when there is a tie in terms of the total marks obtained by two candidates, as per the Subsidiary Rules issued by the Commission to regulate the appointment in order of merit of the candidates, in respect of direct recruitment conducted based on the written examination and oral test, a person senior in age is placed above in the merit list.

5. The learned counsel for the petitioner relied upon the Subsidiary Rules for direct recruitment based on merit in examination and submitted that if there is a tie between the candidates having the same marks, the person having higher qualification has to be given preference over the person having lesser qualification. He also placed reliance on the Proviso to Rule 5 of the Rules of Procedure, 1996 of the Tamil Nadu Public Service Commission and submitted that the certificates of higher qualification, NCC, etc., which the petitioner produced during the interview, have not been taken into consideration and marks

have not been provided in the interview.

6. We have heard the learned counsel for the parties and noticed the rival contention.

7. It appears that the Tamil Nadu Public Service Commission issued Rules of Procedure in 1996. Under Rule 5 therein, the Commission is to make certain arrangement in respect of the selection by direct recruitment. The said Rule is not applicable for the determination of merit between two persons having obtained same marks. The first proviso to Rule 5 is being quoted here under, as the learned counsel for the petitioner referred to the said proviso.

"Provided that where any interview is conducted as part of the Competitive examination for direct recruitment, the outstanding and meritorious record of candidates in Sports, Athletics, NCC, NSS, ACC, Scouts and Guides and Literary activities of the candidates besides his general physique, aptitude, flair for expression, grasp of General Knowledge, etc., shall be taken into account by the Commission. If the candidate is in the Service of the State of Central Government or in the Government Aided Institutions or the Quasi Government Organisations his personal file or record sheet or any other record showing his work and conduct may also be taken into account by the Commission."

8. From the marks obtained by the petitioner and other candidate Mr. Sultan Aribeen, it would be evident that the petitioner has been provided 32 marks in the oral test, whereas Mr. Sultan Aribeen has been provided with only 22 marks. This would mean that the Selection Board, during oral test, considered the higher qualification and certificates, if any, produced by the petitioner and therefore, the petitioner has been provided with more marks than the other candidate. In any case, 32 marks, as assessed and granted by the Selection Board cannot be altered by sitting in appeal under Article 226 of the Constitution of India.

9. Two Subsidiary Rules have framed in exercise of the power conferred by Rule 28 of the Rules of Procedure, 1996 of the Tamil Nadu Public Service Commission. One is "For direct recruitment comprising written examination and oral test" and the other is "For direct recruitment comprising written examination only". Clause 2 of both Rules are relevant for determination of the issue.

(a) Clause 2 of the Subsidiary Rules "For direct recruitment comprising written examination and oral test" reads as under:

"In case of two or more candidates scoring equal marks, the candidate senior in age may be placed above in the merit list".

(b) Clause 2 of the Subsidiary Rules "For direct recruitment comprising written examination only" reads as under:

"In case of two or more candidates scoring equal marks, the candidate possessing the highest qualification may be placed above in the merit list".

10. In the present case, admittedly, the direct recruitment has been made comprising written

test and oral test. Under the Subsidiary Rule for direct recruitment comprising written examination and oral test, in case of two or more candidates scoring equal marks, the candidates senior in age has to be placed above in the merit list. Therefore, Mr.Sultan Aribeen has been placed above the name of the petitioner in the merit list. We do not find any irregularity in the same. We have been informed that the petitioner's name appears at SI.No.1 in the waiting list and therefore, the petitioner shall await for his turn of appointment, if there exists any vacancy due to non joining.

The writ petition is dismissed. However, there shall be no order as to costs. Consequently, M.P.No.1 of 2008 is also dismissed.