

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.33673 of 2023

and

W.M.P.No.33517 of 2023

B.Vidyasagar,
Assistant Engineer,
Technical Cell,
Board Headquarters,
Tamil Nadu Housing Board,
Koyambedu, Chennai – 600 107.

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by its Secretary to Government,
Department of Special Initiatives and Welfare
Of Differently abled persons,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai – 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
CMDA Complex,
E & C Market Road,
Koyambedu, Chennai – 600 107.

3.The Administrative Officer,
Tamil Nadu Housing Board,
CMDA Complex,
E & C Market Road,
Koyambedu, Chennai – 600 107.



W.P.No.33673 of 2023

4.The Tamil Nadu Public Service Commission,
Rep by its Secretary, TNPSC Road, Broadway,
Chennai – 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 2 & 3 not to insist the petitioner to produce the certificate of passing the Tamil Language Test in the light of the Government Order No.49 Human Resource Development Department dated 23.05.2022 and to grant pending increments and promotion.

For Petitioner : Mr.D.Muthukumar
for M/s.Paul and Paul
J Hudson Samuel and Partners

For R1 : Mr.P.Balathandayutham
Special Government Pleader

For RR 2 & 3 : Mr.V.Logesh
Standing Counsel

For R4 : Mr.R.Bharanidharan
Standing Counsel

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the respondents 2 & 3 not to insist the petitioner to produce the certificate of passing Tamil Language Test and to grant the attendant benefits which have been kept in abeyance due to the non production of the certificate.



W.P.No.33673 of 2023

WEB COPY 2.The case of the petitioner is that he is 100% hearing and speech impaired person from the age of three. The petitioner after undergoing a very great challenge, underwent School education in English language. This is in view of the fact that G.O.Ms.No.1893, dated 24.03.1982, enabled such speech and hearing impaired children from studying in any language. The petitioner after completing the School, joined B.E. Civil Engineering and completed the course in the year 2003. He also learned design software.

3.The petitioner participated in the selection to the post of Assistant Engineer conducted by the Housing Board and he got selected and appointed in the year 2014 as Assistant Engineer.

4.The further case of the petitioner is that as per the relevant Government Order, the petitioner must produce the certificate for passing Tamil language test. The petitioner was expressing to the Board that considering the disability suffered by him, he must be exempted from this test. The Board was extending the time for completion of the Tamil language test and ultimately, through the letter dated 26.04.2024,



W.P.No.33673 of 2023

the petitioner was informed that he must complete the Tamil language test on or before 01.11.2023, failing which he will be discharged from service. It is under these circumstances, the present writ petition came to be filed before this Court.

5.The 2nd respondent has filed a counter affidavit. The 2nd respondent has taken a stand that as per G.O.Ms.No.89 dated 09.07.1996, the petitioner has to necessarily complete the Tamil language test and produce the certificate. No exemption has been granted in this regard by the Government and therefore, considering the disability suffered by the petitioner, the period was extended from time to time. Accordingly, in the absence of any exemption granted for a disabled person from clearing the Tamil language test, the Board will not be able to exempt the petitioner. Under such circumstances, the Housing Board has sought for dismissal of the writ petition.

6.Heard the learned counsel for the petitioner, learned Special Government Pleader for the 1st respondent, learned Standing Counsel for respondents 2 & 3 and the learned Standing Counsel for the 4th respondent.



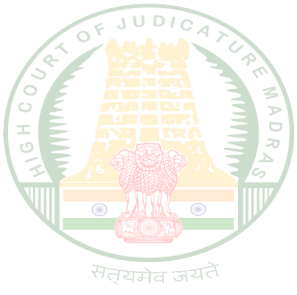
WEB COPY 7.The short issue that arises for consideration in the present writ petition is as to whether the petitioner must be granted exemption from passing the Tamil language test, which is mandatory under G.O.Ms.No.89 dated 09.07.1996.

8.In the case in hand, there is no dispute with regard to the fact that the petitioner is differently abled person with 100% hearing and speech impairment. At this juncture, it will be relevant to take note of G.O.Ms.No.1893, dated 24.03.1982. The relevant portions are extracted hereunder:

“(i) The Deaf Students in the Higher Secondary Schools be exempted from study of any one of the language either Part-I (Language Tamil or Other Languages) are under Part-II (English)

(ii) They be permitted to appear for Higher Secondary Examination with only one Language either Part-I (Language Tamil or Other Languages) are under Part-II (English).

(iii) This candidates to eligible for admission to the University Courses of study provided that they have secured the minimum marks prescribed for pass in the all other subjects at the Higher Secondary Examination.”



W.P.No.33673 of 2023

9.It is clear from the above that for persons like the petitioner, they are permitted to study in any one of the language (i.e.,) either in Tamil or other languages. They are also permitted to appear in the examination either in Tamil language or other languages.

10.The petitioner inspite of facing such disability, cleared his School studies and joined in the Engineering course. He completed the B.E.(Civil Engineering) in the year 2003. The petitioner was appointed as Assistant Engineer by the Housing Board in the year 2014.

11.The Board was insisting that the petitioner must complete the Tamil language test and produce the certificate. On carefully going through the Government Order in G.O.Ms.No.89 dated 09.07.1996, it is seen that the language test consists of a written examination and Viva-Voce. The petitioner had in fact participated in the written examination twice. Considering the disability suffered by the petitioner, it is next to impossible to conduct a Viva-Voce.

12.The case in hand depicts the sorry state of affairs that prevails in the society while dealing with differently abled persons. The fact that



W.P.No.33673 of 2023

the petitioner who is 100% hearing and speech impairment right from his young age was able to complete the School Education and also the Engineering course, shows the amount of grit and determination on the part of the petitioner to remain in the mainstream of the society.

13.It was brought to the notice of this Court that the Regulation Book of the Housing Board itself provided for granting exemption in deserving cases. Useful reference can be made to Clause : 5 of the Regulation which insist for language qualification. Explanation to Clause : 5 also contemplates a situation where exemption can be granted in deserving cases.

14.One such instance that was brought to the notice of this Court is the case of a person with similar disability who was granted exemption by the Government by passing a Government Order in G.O.(D).No.14, dated 24.02.2023. That person was working in the Public Works Department (PWD) and the Government granted exemption by relaxing the Rules and thereby the concerned person was exempted from passing the language test in Tamil.



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15.The Rights of Persons with Disabilities Act, 2016, was brought into force in order to implement the unconvetion to which India is a Signatory.

16.The said Act specifically deals with a right of reasonable accommodation to be provided for persons who are differently abled. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Vikash Kumar Vs. Union Public Service Commission and others, reported in (2021) 5 SCC 370***. Relevant portions are extracted hereunder:

“60.At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the RPwD Act, 2016 . Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the



WEB COPY



W.P.No.33673 of 2023

realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.

61.As a social construct, disability encompasses features broader and more comprehensive than a medical condition. The RPwD Act, 2016 recognizes that disability results in inequality of access to a range of public and private entitlements. The handicaps which the disabled encounter emerge out of disability's engagement with the barriers created by prejudice, discrimination and societal indifference. Operating as restraining factors, these barriers have origins PART H which can be traced to physical, social, economic and psychological conditions in society. Operating on the pre-existing restraints posed by disability, these barriers to development produce outcomes in which the disabled bear an unequal share of societal burdens. The legislation has recognized that remedies for the barriers encountered by the disabled are to be found in the social environment in which they live, work and co-habit with others. The barriers encountered by every disabled person can be remedied by recognizing comprehensive rights as inhering in them; rights which impose duties and obligations on others.



WEB COPY



W.P.No.33673 of 2023

62. *The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realization of these ends."*

63. *In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence – whether as students, members of the workplace, participants in governance or, on a personal plane, in realizing the fulfilling privacies of family life. The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.*



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W.P.No.33673 of 2023

64.For instance, for a visually impaired person, the reasonable accommodation she requires might consist of screen magnification software or a screen reader [which can speak out the content on a computer screen in a mechanical voice]. It might also consist of content being made available in Braille and a sighted assistant. In the same way, for someone with a hearing impairment, reasonable accommodation could consist of speech-to-text converters, access to sign language interpreters, sound amplification systems, rooms in which echo is eliminated and lip-reading is possible. Similarly, for a person with dyslexia, reasonable accommodation could consist of access to computer programmes suited to meet their needs and compensatory time.

65.Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable



WEB COPY



W.P.No.33673 of 2023

accommodation requires the policy makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customization she seeks. Even if she is in a class of her own, her needs must be met While assessing the reasonableness of an accommodation, regard must also be had to the benefit that the accommodation can have, not just for the disabled person concerned, but also for other disabled people similarly placed in future.

66.As the Committee on the Rights of Persons with Disabilities (“the CRPD Committee”) noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and non-discrimination thus creates an obligation of immediate effect. Under this rights-based and disabled- centric conceptualization of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be made on a case-by-case basis, in consultation with the disabled person concerned. Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barrier.



WEB COPY



W.P.No.33673 of 2023

67.The concept of reasonable accommodation as a component of the equality guarantee has been recognized in a consistent line of precedents of this Court. Illustratively, in Syed Bashir-ud-din Qadri v. Nazir Ahmed Shah 31, this Court, speaking through Justice Altamas Kabir, held that a person having cerebral palsy should be given access to an external electronic aid as a reasonable accommodation to offset the impact of his inability to write on the blackboard. The Court held as follows:

“52. ... while a person suffering from cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort.”

68.A discordant note struck by this Court having a direct bearing on the principle of reasonable accommodation finds expression in a two judge Bench decision of this Court in the case of V Surendra Mohan v. State of Tamil Nadu 32 (“Mohan”). The proceedings before this Court arose from a judgment of the Madras High Court. At issue was the decision of the Tamil Nadu Public Service Commission 33 to impose a ceiling of 40-50% visual/hearing impairment to be eligible to be appointed as a Civil Judge (Junior Division). Differently stated, a person whose visual/hearing impairment exceeded 50% was



WEB COPY



W.P.No.33673 of 2023

disqualified from being eligible for the said post. In the said case, the appellant's disability was 70%. The appellant's name was not included in the list of registered numbers who were provisionally admitted to the oral test. He challenged this in the Madras High Court. By its judgment dated 5 June 2015, the Madras High Court held that, as per the decision of the Government dated 8 August 2014 and notification issued by the TNPC dated 26 August 2014, those partially blind with 40%-50% disability were only eligible and the appellant having 70% disability was not eligible to participate in the selection.

69.A two judge Bench of this Court held that a judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction. This court affirmed the submission of the Madras High Court that seeking to address the socially constructed barriers faced by a visually or hearing impaired judge, whose disability exceeds 50%, would create 'avoidable complications'. As a result, the impugned ceiling was found to be valid. The relevant portion of the judgment is excerpted below:

"45. ...The High Court in its additional statement has incapsulated the functions and duties of Civil Judge in following words:-



WEB COPY



W.P.No.33673 of 2023

“7.... Impaired vision can only make it extremely difficult, even impossible, to perform any of these functions at all. Therefore, creating any reservation in appointment for those with disabilities beyond the 50% level is far from advisable as it may create practical and seemingly other avoidable complications. Moreover, given the need to prepare judgments based on the case papers and other material records in a confidential manner, the assistance of a scribe or the like completely takes away the secrecy and discreetness that come with the demands of the post.”

70.This judgment was delivered by this Court after India became a party to the UNCRPD and the RPwD Act 2016, came into force. The aforesaid view espoused by this Court is innocent of the principle of reasonable accommodation. This Court did not consider whether the failure of the TNPC to provide reasonable accommodation to a judge with a disability above the impugned ceiling was statutorily or constitutionally tenable. There is no reference in this Court’s judgment to whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodations necessitated by his disability.

71.The analysis by this Court in the portion excerpted above begs the question. Specifically, the relevant question, under the reasonable accommodation analysis, is not whether complications will be caused by the PART H grant of a reasonable accommodation. By definition, reasonable accommodation



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W.P.No.33673 of 2023

demands departure from the status quo and hence 'avoidable complications' are inevitable. The relevant question is whether such accommodations would give rise to a disproportionate or undue burden. The two tests are entirely different.

72.As we have noted previously, the cornerstone of the reasonable accommodation principle is making adjustments that enable a disabled person to effectively counter the barriers posed by their disability. Conspicuous by its absence is any reasonable accommodation analysis whatsoever by this Court in Mohan. Such an analysis would have required a consideration of the specific accommodations needed, the cost of providing them, reference to the efficacy with which other judges with more than 40-50% visual/hearing impairment in India and abroad can discharge judicial duties after being provided the necessary accommodations, amongst other factors. In holding that the ceiling was reasonable on the application of the principle of reasonable accommodation, the ratio as expounded fails as "distinct exhortatory dimension that must always be kept in mind while determining whether an adjustment to assist a disabled person to overcome the disadvantage that she or he has in comparison to an able-bodied person is reasonable." It is persons with disabilities who have been the victim of this lapse."

17.It is clear from the above judgment of the Hon'ble Supreme

Court that failure to provide reasonable accommodation to persons



W.P.No.33673 of 2023

suffering from peculiar disability will result in a clear discrimination shown against them and which has to be rectified by a Constitutional Court.

18.The barriers faced by persons with disabilities go beyond just physical accessibility issues, extending to deep rooted prejudice, stereotypes and misconcepts that pervaded many aspects of the society. From education and employment to health care and public services, persons with disabilities often face significant obstinance that hinder their full participation and inclusion. In view of the same, a Constitutional Court must develop an understanding of the Societal, Attitudinal, Cultural, Institutional, Structural, Legal and Environmental barriers that persons with disabilities encounter daily. The Constitutional Court must strive to remove these barriers through their Rulings.

19.In order to fulfill the above requirement, various judgments have been passed by the Hon'ble Supreme Court which has been followed by the High Courts to ensure that a person suffering from disability is not put to undue hardship by imposing conditions which are normally imposed for able bodied persons.



W.P.No.33673 of 2023

WEB COPY 20. In the case in hand, the petitioner admittedly is suffering from 100% hearing and speech impairment. Somehow he completed his studies in English language. Tamil language test is now insisted which contains a written examination and also a Viva-Voce. Considering the disability suffered by the petitioner, it is beyond comprehension as to how the petitioner will attend the Viva-Voce test. Hence, the petitioner has to be reasonably accommodated in the given circumstances by granting exemption to the petitioner from clearing the language test.

21. The petitioner after a long struggle has entered the services of the Housing Board and he has been working for the last 10 years. If he is now shown the door, he will be virtually left in the streets without any employment considering the disability suffered by him. Therefore, the case in hand is one such deserving case where such exemption can be granted to the petitioner.

22. In the light of the above discussion, this Court wants to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and accordingly, there shall be a direction to the



W.P.No.33673 of 2023

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respondent Board to grant exemption to the petitioner to clear the Tamil Language Test and to produce the certificate. A specific order shall be passed in this regard by the 2nd respondent by citing this order passed in the Writ Petition. Such order shall be passed within a period of four (4) weeks from the date of receipt of a copy of this order.

23.The petitioner has not been given any increments and attendant benefits, since he has not cleared the Tamil language test. In the light of the above order, there shall be a direction to the respondents 2 & 3 to extend all attendant benefits to which the petitioner is entitled to. Appropriate orders in this regard shall be passed and the attendant benefits shall be extended within a period of eight (8) weeks from the date of receipt of a copy of this order.

24.In the result, this Writ Petition stands allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed.

No costs.

19.10.2024

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Index : Yes
Internet : Yes



W.P.No.33673 of 2023

Neutral Citation : Yes

NOTE: Issue on 28.10.2024.

WEB COPY

N.ANAND VENKATESH, J.

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To

1. The Government of Tamil Nadu,
Rep by its Secretary to Government,
Department of Special Initiatives and Welfare
Of Differently abled persons,
Namakkal Kavignar Maaligai,
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W.P.No.33673 of 2023



WEB COPY



W.P.No.33673 of 2023

19.10.2024