



W.A.(MD)No.1313 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1313 of 2016

and

C.M.P.(MD)Nos.9271 of 2016 and 3123 of 2017

The Chairman,
Tamil Nadu Public Service Commission,
Represented by its Secretary,
Government Estate,
Chennai-2.

... Appellant/Petitioner

Vs.

1.D.Rahamatulla

2.The Tahsildar,
Manamadurai Taluk,
Sivagangai

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 14.02.2012 made in W.P.(MD)No.3177 of 3011 on the file of this Court.

For Appellant : Mr.V.Panneer Selvam

For Respondents : Mr.S.Vellaichamy for R1

Mr.A.K.Manikkam
Special Government Pleader
for R2

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order passed by the writ Court in W.P(MD).No.3177 of 2011 dated 14.03.2012.

2. The first respondent originally belonged to Christian Religion and at that time, his name was D.Rayappan. Thereafter, he converted into Muslim on 23.09.2000 and also married one Mumtaj Begam on 08.04.2001. After the marriage, he changed his name as D.Rahamatula and accordingly, he was accepted the Muslim Community. The change of name has also been published in Tamil Nadu Government Gazette on 11.12.2002.



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3. Considering such conversion as Muslim Labbai Community, the Tahsildar concerned vide proceedings dated 11.06.2007 issued a Community Certificate that the first respondent belongs to Muslim Labbai Backward Class Community.

4. The first respondent had already been appointed on temporary basis with consolidated pay as Junior Assistant in Commercial Tax Office at Karur on 15.07.2003.

5. In that capacity, the first respondent was working. While that being so, the Government, in order to regularize the services of such temporary appointees like the first respondent, decided to conduct a Special Competitive Examination through the appellant/TNPSC in the year 2007. Therefore, the applications for Group-IV Services Special Competitive Examination for the year 2007 were called for by the appellant/TNPSC. The petitioner also had applied and written the examination where he has become successful.



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6. Though the results had been published in respect of all the candidates, the result in respect of the first respondent has not been published.

7. When this was enquired by the first respondent with the appellant/TNPSC, it was revealed that since the first respondent has converted from Christian to Muslim and those who had been converted into Muslim from Christian, whether are to be treated as Backward Class Community or any other Community since has so far not been clarified by the Government and no Government Order to that effect since has been issued, in the absence of any such Government Order, the first respondent can only be treated as others. Only for the said reason, the result has not been published. That was the reason seems to have been revealed by the TNPSC to the first respondent.

8. Only at that juncture, the said writ petition had been filed by the first respondent seeking for a writ of Mandamus to direct the TNPSC to consider the application of the first respondent in Group-IV Services considering him as belonging to Backward Class.



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9. The said writ petition was heard and decided by a learned Single Judge, by order dated 14.02.2012, whereunder, the learned Judge has allowed the said writ petition by giving the following directions:

“16. Consequently, the writ petition is allowed and the first respondent is directed to consider the petitioner in Group-IV services by considering him as one belonging to Backward Class, if the petitioner is otherwise qualified to the said post to which his appointment is to be considered. Such exercise shall be made by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected M.P is closed. No costs.”

10. Aggrieved over the same, the State Service Commission has preferred the present Intra-Court Appeal.

11. Heard Mr.V.Panneer Selvam, the learned Standing Counsel appearing for the appellant/TNPSC, who has mainly relied upon a Government Letter dated 14.02.2020 where it has been stated as follows:



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“பார்வையில் காணும் தங்களின் கடிதத்தின் மீது கவனத்தை ஈர்க்கிறேன். தாழ்த்தப்பட்டோர், பிற்படுத்தப்பட்டோர், மிகப்பிற்படுத்தப்பட்டோர் மற்றும் சீர்மரபினர் வகுப்புகளிலிருந்து கிறித்துவ மதத்திற்கு மாறியவர்களை பிற்படுத்தப்பட்ட மற்றும் மிகப்பிற்படுத்தப்பட்ட வகுப்புகளாக அறிவித்து ஆணைகள் வெளியிடப்பட்டுள்ளன. ஆனால் மேற்குறிப்பிட்ட வகுப்புகளிலிருந்து இஸ்லாம் மதம் அல்லது வேறு மதங்களுக்கு மாறியவர்களைப் பிற்படுத்தப்பட்ட வகுப்புகளாக அறிவித்து அரசாணை ஏதும் வெளியிடப்படவில்லை. தாழ்த்தப்பட்ட, பிற்படுத்தப்பட்ட, மிகப்பிற்படுத்தப்பட்ட மற்றும் சீர்மரபினர் வகுப்புகளிலிருந்து, கிறித்துவ மதம் நீங்கலாக, வேறு மதங்களுக்கு மாறியவர்களை பிற்படுத்தப்பட்ட வகுப்பாக அறிவித்து ஆணை ஏதும் வெளியிடப்படாத நிலையில் அவர்களை தற்போது இதர வகுப்பினராகவே கருத முடியும் என்பதைத் தெரிவித்துக்கொள்கிறேன்.

2.மண்டல் குழு வழக்குகளில் தீர்ப்பினை வழங்கிய இந்திய உச்சநீதிமன்றம் பிறப்பித்த கட்டளைக்கிணங்க எந்தவொரு வகுப்பினையும் பிற்படுத்தப்பட்டோர்/மிகப்பிற்படுத்தப்பட்டோர் பட்டியலில் சேர்க்கக் கோரும் கோரிக்கையினை ஆய்வு செய்து அரசுக்கு பரிந்துரை செய்ய தமிழ்நாடு பிற்படுத்தப்பட்டோர் ஆணையம் என்ற அமைப்பு ஏற்படுத்தப்பட்டு செயல்பட்டு வருகிறது, மேற்குறிப்பிட்ட ஆணையத்தின் பரிந்துரையின் அடிப்படையில் மட்டுமே எந்தவொரு வகுப்பினையும் பிற்படுத்தப்பட்டோர்/மிகப்பிற்படுத்தப்பட்டோர் பட்டியலில் சேர்க்கப்பட இயலும்.. மேற்குறிப்பிட்ட சூழ்நிலையில் தாழ்த்தப்பட்டோர், பிற்படுத்தப்பட்டோர், மிகப்பிற்படுத்தப்பட்டோர் மற்றும் சீர்மரபினர் வகுப்புகளிலிருந்து இஸ்லாம் மதத்திற்கோ அல்லது ஏனைய மதங்களுக்கோ மாறியவர்களையும் பிற்படுத்தப்பட்ட வகுப்புகளாக அறிவித்து ஆணை வெளியிடக்கோரி பெறப்பட்ட மனு ஆய்வு செய்து அறிக்கையினை அனுப்பும் பொருட்டு தமிழ்நாடு பிற்படுத்தப்பட்டோர் ஆணையத்திற்கு அனுப்பி வைக்கப்பட்டுள்ளது. இது தொடர்பான ஆணையத்தின் அறிக்கை எதிர்பார்க்கப்படுகிறது என்பதையும் மேற்குறிப்பிட்ட கோரிக்கை மீதான ஆணையத்தின் அறிக்கை கிடைத்த பிறகே அரசு பரிசீலித்து முடிவெடுக்க இயலும் என்பதையும் தங்களுக்கு தெரிவித்துக் கொள்ளப் பணிக்கப்பட்டுள்ளேன்.



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தங்கள் உண்மையுள்ள

அரசு செயலாளருக்காக”

12. Relying upon this communication, the learned Standing Counsel appearing for the appellant would contend that, insofar as those who converted into Christianity, they can be treated as Backward Class or Most Backward Class Community as the case may be as per the various Government Orders that have been issued by the Government. However, for those who converted into Islam or Muslim Community, such a Government Order so far has not been passed and that issue has been pending before the Government for consideration. A decision would be taken later on.

13. When such was a position that has been communicated or conveyed by the State Government to the appellant/TNPSC, it was the stand of TNPSC that whether the conversion that has been made by the first respondent from Christianity to Muslim can be treated as a conversion towards the Backward Class, is a matter to be decided which cannot be independently decided by the Service Commission, unless and until a



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Government Order issued by the State Government is made available giving such a clarification to be followed by TNPSC.

14. The learned Standing Counsel appearing for the appellant Service Commission also would contend that, it is not only the letter dated 14.02.2020, but subsequent letters to that effect were issued from time to time by the State Government on 22.08.2012, 04.05.2017 and 17.05.2019 reiterating the same position. Therefore, still the situation is fluid as to whether those who have converted to Muslim Community or Islam, can be treated as Backward Class Community or not, which has so far not been clarified by the Government. Therefore, the Service Commission did not have any other option except to treat the first respondent only as a candidate belonging to others (i.e.,) others Community means OC and if that consideration is made, that has been conveyed to the first respondent. Only at that juncture, he had approached this Court and the writ petition was ordered. Aggrieved over the same, the Service Commission had preferred this Writ Appeal. Therefore, the learned Standing Counsel seeks indulgence of this Court against the order impugned passed by the writ Court.



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15. On the other hand, Mr.S.Vellaichamy, the learned counsel appearing for the first respondent would submit that the earlier community of the first respondent itself is a Christian community which has also been treated as Backward Class Community. This is an admitted position and from that community, since the first respondent has converted into Islam where the Community has accepted him as Muslim Labbai Community person, based on which, the Competent Authority (i.e.,) the second respondent having considered the plea of the first respondent had issued a necessary Community Certificate declaring him as a Backward Class Community Candidate and that Certificate even though has been produced by the first respondent to the appellant Service Commission, the same has not been taken into account. In this context, he would submit that once the Community Certificate has been issued by the Competent Authority, unless and until it is modified or revoked or cancelled in the manner known to law, the same shall be accepted as genuine Community Certificate and in this context, the law is well settled. Therefore, the TNPSC should accept either the Community Certificate issued in favour of the first respondent and accordingly, treat him as Backward Class candidate, otherwise, the



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original community of the first respondent which is a Christian Community which has also been a Backward Class Community should be accepted. In both the cases, the first respondent belongs to Backward Class Community and at any cost, he cannot be placed under the category of "others". Therefore, to that extent, the action taken or inaction on the part of the Service Commission having been found fault with and accordingly, the learned Single Judge allowed the said writ petition.

16. The learned counsel appearing for the first respondent also brought to our notice that, though he had been appointed in the year 2003 as Junior Assistant, since this legal battle has been continuing for all these years and because of pendency of this writ appeal, the service of the first respondent has never been regularized and in fact, he attained the superannuation on 31.07.2022 and retired from service, therefore, he seeks indulgence of this Court to comply with the order passed by the writ Court regularizing his service from the date of appointment and accordingly, he is entitled to get all service benefits for the whole service that has been rendered by him from 2003 to 2022. To that extent also, indulgence has also been sought for by the learned counsel appearing for the first



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by the Service Commission was negated and the plea raised by the candidate concerned was accepted.

20. The learned Judge also has relied upon two other decisions in the case of *Tamil Nadu Public Service Commission vs. V.Theivanaivalli and others* reported in 2010 (2) CWC 475 and in the case of *Tamil Nadu Service Commission vs. R.Manikandan and others* reported in 2011 (5) CTC 1. Having considered all these legal positions, where the law is well settled by more than one judgment, the learned Judge has come to a conclusion that the candidate must either be considered as a Muslim Labbai Community candidate based on the Community Certificate that has been issued in his favour, or assuming that the Government has not given so far any clarification as to the erstwhile community of the candidate from where only he has converted, the candidate must be considered only as a Backward Class community candidate and therefore, at any cost, the consideration that has been shown by the Service Commission by treating him as “others” category is unlawful and unjustifiable. Therefore, on that ground, the learned Judge was pleased to allow the writ petition.



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21. In addition to the said reasons stated by the learned Judge in the impugned order, we find one more reason stating that even in the letters that have been very much relied upon by the learned Standing Counsel appearing for TNPSC, starting from 04.02.2010 till 04.05.2017, it has been stated that those who have converted from Hindu community to Islam whether can be treated as Backward Class Community or not, was the question which is lingering at an appropriate level to take a decision for several years. Therefore, the Government says that a decision would be taken and communicated to the Service Commission.

22. Here, the question is entirely different. The candidate has not converted from Hindu Religion to Islam Religion. He has converted from Christian Religion to Islam Religion and the Christian religion where he belongs to a Community has already been declared as a Backward Class Community from where he has converted into Community in an Islam religion that has also been declared to be a Backward Class Community and to that effect, a Backward Class Certificate also has been given.

23. Therefore, these clarifications that have been pending before the



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Government as reflected in those orders or letters would not stand in the way to safely conclude that the candidature of the first respondent can very well be accepted as a Backward Class candidate either under his own community from where he has converted or in the converted community as per the Community Certificate. Therefore, at any cost, treating him as “others” or Open Competition candidate is thoroughly unjustifiable and not based on any materials. Therefore, we feel that the approach of the learned Single Judge and the conclusion reached by him in the order impugned is to be fully acceptable and justifiable. Hence, the said order which is impugned herein is to be sustained.

24. In the result, the following orders are passed in this writ appeal:

(i) that the order passed by the learned Judge which is impugned herein is to be sustained and accordingly, it is sustained. Therefore, this Writ Appeal fails and hence, it is liable to be dismissed.

(ii) as a sequel, since the first respondent has already superannuated on 31.07.2022, he shall be regularized in his service where he was



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originally appointed in the year 2003 as, for the said exercise of regularization only, the limited competitive examination in the year 2007 was conducted by TNPSC, where admittedly, the first respondent since has become successful, such a needful action shall be undertaken by the appellant/TNPSC and a communication to that effect shall be given to the parent Department where the first respondent was working and retired. Such a communication shall be sent by the appellant within a period of four weeks from the date of receipt of a copy of this judgment.

(iii) on receipt of such communication from TNPSC, the employer Department where the first respondent worked and retired on 31.07.2022, shall pass necessary orders absorbing or regularizing the services of the first respondent with effect from his initial appointment (i.e.,) in the year 2003. It is needless to mention that consequently, he shall be entitled to get all service benefits including pensionary benefits, if any, under the relevant provisions of law which are in vogue. The needful shall be undertaken by such Department within a period of 12 weeks thereafter (i.e.,) on receipt of the communication from TNPSC.



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25. With these directions, this Writ Appeal is dismissed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) & (K.K.R.K, J.)

16.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

ssb

To

The Tahsildar,
Manamadurai Taluk,
Sivagangai.



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**R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.**

ssb

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