

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-1-2015

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR  
AND  
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.34971 of 2014  
M.P.No.1 of 2014

J. Kumaran

.. Petitioner

Vs.

1. Union of India,  
rep.by The Chief Secretary to Government,  
Government of Puducherry,  
Puducherry.
2. The Secretary to Government (Law),  
Government of Puducherry,  
Puducherry.
3. The High Court of Judicature at Madras,  
rep.by the Registrar General,  
Chennai.
4. The Pondicherry Advocates Bar Association,  
rep.by its General Secretary,  
District Court Complex,  
Mudaliarpet,  
Puducherry.
5. The Tamilnadu Public Service Commission,  
Government of Tamilnadu,  
Chennai.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration declaring that candidates having residence of Puducherry region alone entitled for reservation benefits in Puducherry Judicial Service and consequently direct the third respondent not to provide reservation benefits for non-residents of Puducherry region in Puducherry Judicial Service.

For Petitioner : Mr.J.Kumaran  
Party-in-person

For Respondents1 &2 : Mr.T.Murugesan,  
Government Pleader  
Assisted by Mrs.N.Mala  
Addl. Government Pleader (Pondy)

For 3rd Respondent : Mr.V.Ayyadurai

For 4th respondent : Mr.K.S.Ilangovan

| Date on which reserved for orders | Date of Pronouncement of orders |
|-----------------------------------|---------------------------------|
| 21-1-2015                         | 23-1-2015                       |

O R D E R

N.PAUL VASANTHAKUMAR, J.

This writ petition is filed praying for issuing a writ of Declaration declaring that candidates having residence at Puducherry region alone are entitled for reservation benefits in Puducherry Judicial Service and consequently direct the third respondent not to provide reservation benefits for non-residents of Puducherry region in Puducherry Judicial Service.

2. The case of the petitioner as narrated in the affidavit filed in support of the writ petition are as follows:

(a) Petitioner is a native of Puducherry belonging to Vanniar Community, which is notified as OBC by Government of Puducherry as well as by the Government of India. Petitioner completed his Law Degree course during March, 2004 from Dr.Ambedkar Government Law College, Puducherry, and got himself enrolled as an Advocate on 31.3.2004 in the Bar Council of Tamil Nadu and Puducherry. Petitioner is practising in various subordinate Courts in Puducherry and from the first week of January, 2011, he is practising in Madras High Court and he is also authorised to appear as Government Advocate before the High Court of Madras on behalf of the Puducherry Government on Criminal side.

(b) The High Court issued notification on 23.11.2014 inviting applications for appointment of eight Civil Judges (Junior Division) in Puducherry Judicial Service, of which five vacancies are earmarked

for Unreserved/General category; two vacancies are earmarked for OBC; and one vacancy is earmarked for Scheduled Caste category.

(c) Pursuant to the said notification, petitioner submitted his application and his grievance is that if candidates from OBC category and SC category who are not residing in Puducherry Union Territory are allowed to get selected under the said OBC and SC categories, the rights of the petitioner and similarly placed persons pertaining to the Union Territory of Puducherry will be affected.

(d) According to the petitioner, when applications were invited for recruitment under the Tamil Nadu Judicial Service for the post of Civil Judges (Junior Division), persons belonging to Puducherry (residence) were allowed to take part in selection only under the Unreserved/General category and the candidates who are residents of Tamil Nadu State are alone given the benefit of reservation and the said recruitment is under process.

(e) Petitioner has filed this writ petition contending that when persons belonging to Puducherry Union Territory are not permitted to claim reservation in the State of Tamil Nadu, the persons belonging to other States are not entitled to claim reservation in the Union Territory of Puducherry. On the said contention this writ petition is filed with the above said prayer.

3. The Union Territory of Puducherry has filed a counter affidavit through its Law Secretary stating that in the notification issued by the High Court dated 23.11.2014 it is stated that reservation of posts for SC/OBC candidates shall be in accordance with the orders issued by the Central Government from time to time. In accordance with the said Rule, reservation in vacancies against roaster earmarked for OBC/SC category are being worked out by the Union Territory and based on the selection made by the High Court, appointment orders are issued by the Government of Union Territory of Puducherry. It is also stated therein that after notifying the list of Other Backward Class by the Union Territory of Puducherry, reserved posts can be claimed by the candidates, who have continuous residence of five years preceding the date of notification.

4. The 4th respondent viz., the Bar Association of Puducherry filed a counter affidavit supporting the case of the petitioner stating that only residents of Union Territory of Puducherry can claim reservation for recruitment to the posts in the Union Territory.

5. Petitioner, party-in-person argued that the reservation benefits can be claimed only based on residence, in terms of Clause (4) of Article 16 of the Constitution of India and the Puducherry Government having issued list of communities for treating them as OBC/SC, who are residing in the territorial limits of Puducherry

Union Territory, non-residents are not entitled to claim reservation and they can compete only under Unreserved/General category and in support of his contention he has relied on the judgments of the Honourable Supreme Court.

6. Mr.T.Murugesan, learned Government Pleader (Pondicherry) appearing for Puducherry Government also supported the case of the petitioner by stating that for getting nativity certificate in Puducherry five years residential qualification is prescribed and reservation in college admission or appointment in Government Service in Puducherry can be claimed by persons, who are residents of Puducherry region for five preceding years, and therefore the contention of the petitioner merits acceptance.

7. Mr.K.S.Ilangovan, learned counsel appearing for the 4th respondent also supported the stand of the petitioner as well as respondents 1 and 2.

8. Mr.V.Ayyadurai, learned counsel appearing for the High Court/3rd respondent has furnished the details regarding the number of applications received and the number of candidates appeared for written test. Totally 1126 candidates applied for selection, of which only 730 candidates appeared in the written examination and other 396 candidates have not appeared. Out of that, 509 belong to OBC category; 165 belong to SC; 4 belong to ST; and 52 belong to Others/General category. Among them, the number of candidates having residential qualification at Puducherry are 73 i.e, 54 OBC, 15 SC and 4 others/unreserved category. The learned Counsel also submitted that the notification was issued based on the rules, which contemplates reservation as per Central Government notification.

9. We have considered the rival submissions and perused the materials on record.

10. The point that arises for consideration is as to whether the petitioner is justified in seeking declaration to declare that the persons who are residing in Puducherry Union Territory alone are entitled to get reservation for appointment to the post of Civil Judges (Junior Division), for which eight vacancies are notified by the High Court through notification dated 23.11.2014.

11. Article 16(4) of the Constitution of India empowers the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service. Article 3 Explanation-I states that "State" includes a Union Territory. Thus, it is evident that Union Territory of Puducherry is entitled to make provision for reservation for appointment or post in favour of any backward class citizen.

12. The Union Territory of Puducherry notified the list of backward class, eligible for reservation containing 49 castes/communities through G.O.Ms.No.9/2001-Wel.(SW-II), dated 19.2.2001 gazetted in the Gazette of Government of Pondicherry. The Government of Puducherry also issued G.O.Ms.No.40 Revenue Department, dated 12.12.2002 and issued guidelines for issuing nativity certificate. Nativity Certificate can be issued to candidates, who have been born in the Union Territory of Puducherry and should have ordinarily resided within the Union Territory, prior to the date of notification for getting ordinary residence certificate. Second category of candidates who are continuously residing for five years in the Union Territory, prior to the date of application are also eligible to get nativity certificate. Thus, it is evident that residence of five years is mandatory to get nativity certificate for a person, who has not born in the Union Territory of Puducherry.

13. It is not disputed by the learned counsel appearing for the third respondent that the persons who are ordinarily residing or native of Puducherry Union Territory are not permitted to claim reservation benefits in the State of Tamil Nadu more particular in the ongoing selection of Civil Judge (Junior Division) notified by the TNPSC. Insofar as the Puducherry Union Territory is concerned, no post is reserved for ST and the list of Scheduled Caste Community in Puducherry Union Territory is notified by the President of India in exercise of powers conferred under Clause (1) of Article 341 of the Constitution of India, in the Constitution (Pondicherry) Scheduled Castes Order, 1964. In the said notification also it is stated that the Scheduled Castes in relation to the Union Territory of Pondicherry so far as members of the list of 16 communities, shall be resident in that Union Territory. Thus, residential status is one of the requirement to claim Scheduled Caste status by the notified communities for claiming reservation right under the Presidential Order in Puducherry Union Territory.

14. The issue as to whether reservation benefits granted by a State or Union Territory by exercise of power under Clause (4) of Article 16 or notification issued under Clause (1) of Article 341 or Clause (1) of Article 342 shall be restricted to the residents of the State/Union Territory came up before the Constitution Bench of the Supreme Court in the decision reported in (1990) 3 SCC 130 (Marri Chandra Shekhar Rao v. Dean, Seth G.S.Medical College). Though the said case relates to College admission, it is held therein that reservation benefit is granted based on the residence, where the boy or child, who grows in the area where there is disadvantage bearing in mind that protection is necessary for disadvantaged castes or Tribes. It was held that candidate who possess ST certificate from Maharashtra is not entitled to get admission in the State of Andhra Pradesh as he is not a domicile from Andhra Pradesh.

15. The Honourable Supreme Court in the decision reported in (2009) 15 SCC 458 (Subhash Chandra v. Delhi Subordinate Services Selection Board) considered the grant of reservation in posts for which the candidate is selected viz., a person is to be selected in the State service and the State run institution including the Union Territory services and Union Territory run institutions and central institutions and institutions run by Central Government. It is held therein that in the State service and State run institution, the reservation whether for admission or appointment must confine to the members of the SC and ST as notified in the Presidential Order, issued for the State or Union Territory. In respect of All India Services, Central Civil Services or admission to an institution run and funded by the Central Government, the members of the SC and ST and other reserved category candidates, irrespective of their State for which they have been notified, are entitled to the benefits and the services in the State or Union Territory is essentially different from All India Services.

16. From the above two decisions of the Supreme Court it is abundantly clear that for claiming reservation either under OBC category or SC category in the services of the Union Territory of Puducherry, the candidate must be a resident of the Union Territory of Puducherry and the candidates belonging to any other State can compete only under General/Unreserved category. In this case, out of eight vacancies notified, five are treated as General/Unreserved vacancies and only two vacancies are to be filled up by OBC and one vacancy is reserved for SC.

17. In the light of the above findings, we are of the view that the petitioner has made out a case for issuing a writ of Declaration as prayed for.

18. In fine, the writ petition is allowed and it is ordered that for filling up the vacancies notified viz., for appointment of Civil Judges (Junior Division) in Puducherry Judicial Service pursuant to Notification dated 23.11.2014, candidates belonging to Puducherry Union Territory alone are entitled for selection against the notified reserved vacancies: two for OBC and one vacancy for Scheduled Caste, and the candidates belonging to other States can complete only for the vacancies under General/unreserved category. No costs. Connected miscellaneous petition is closed.

vr

-s/d-

Assistant Registrar (CS-II)

Dt:23/1/2015

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary to Government,  
Government of Puducherry, Puducherry.
2. The Secretary to Government (Law),  
Government of Puducherry, Puducherry.
3. The Registrar General, High Court of Judicature at Madras,  
Chennai.
4. The General Secretary, Pondicherry Advocates Bar Association,  
District Court Complex, Mudaliarpeth, Puducherry.
5. The Tamilnadu Public Service Commission,  
Government of Tamilnadu, Chennai.

+ 1 cc to Mr.J.Kumaran, Party in Person SR 3564

+ 1 cc to Government Pleader (P) SR 3613

+ 1 cc to Mr.K.S.Ilangovan, Advocate SR 3563

gr(co)  
prk23/1

W.P.No.34971 of 2014



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