

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.24647 of 2015

and M.P.Nos.1 and 2 of 2015

J.Anthony Nisha Petitioner

Vs

1.The State of Tamil Nadu
rep. by the Secretary,
P&AR (S) Department,
Higher Education,
Fort St. George,
Chennai-9.

2.The Teacher Recruitment Board
rep. by the Chairman,
DPI Compound,
IV Floor, EVR Sampath Maligai,
College Road,
Chennai-600 006.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, calling for the entire records pertaining to the impugned Government Order Ms.No.145 dated 30.09.2010 passed by the 1st respondent, quash the same insofar as it pertains to paragraph 2 clause (b), where it has been defined that "persons studied in Tamil Medium" means "persons, who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil Medium of Instruction".

For Petitioner : Mr.S.Srinivasu

ORDER

S.MANIKUMAR, J.

Material on record discloses that earlier, the petitioner has filed W.P.No.700 of 2015, for a Mandamus, directing the Teacher Recruitment Board, Chennai, to treat him, as a Tamil medium candidate, pursuant to G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, for the post of Assistant Professor, under Notification No.4 of 2013, dated 28.05.2015, in which, the Member Secretary to the Teacher Recruitment Board, Chennai, has filed a counter affidavit, stating that the Government have issued G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, reserving 20% of the vacancies, for Tamil medium candidates. Member Secretary, Teacher Recruitment Board, Chennai, in his counter affidavit to the abovesaid Writ Petition, has also stated that the Teacher Recruitment Board, Chennai, has notified, out of 1093 of all subjects, 140 vacancies have been earmarked for subject Mathematics. The Teacher Recruitment Board, Chennai, has reserved 24 vacancies for Tamil medium, preferential basis candidates. Member Secretary, has further stated that as per G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, it has been clearly defined that "Persons Studied in Tamil Medium" means "persons, who obtained the educational qualification or qualifications, prescribed for direct recruitment, in the rules or regulations or orders applicable to any appointment, in the Services under the State through Tamil Medium of instruction". He has further stated that for the post of Assistant Professor, the requisite qualification is "a pass in Post Graduate Degree and pass in UGC/CSIR/JRF/NET/SLT/SLST or Ph.D., degree in the relevant subject".

2.As the petitioner has studied Post Graduate Degree course in English medium, she was not considered under the Tamil Medium preferential quota. According to the Member Secretary, Teacher Recruitment Board, Chennai, the petitioner herself has admitted that she has completed her M.Sc., (Mathematics) Degree course from Manonmaniyam Sundaranar University in English Medium, during the academic year 2004-2006. But, as per the existing Rules of reservation, only those candidates who studied the requisite qualifications in Tamil medium of Instruction, could be considered under the preferential basis, in the matter of recruitment.

3.In the abovesaid circumstances, the petitioner has now challenged G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, in Tamil Medium Rules, 2010, which is an Ordinance of the Government of Tamil Nadu in No.3/2010. The impugned G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, is extracted hereunder:

ABSTRACT

Ordinance - Tamil Nadu Appointment on preferential basis in the Services under the State of Persons Studied in Tamil medium Ordinance, 2010 - Rules framed - Notified.

PERSONNEL AND ADMINISTRATIVE REFORMS (S) DEPARTMENT
G.O.Ms.No.145

Dated: 30.09.2010

Read:

Tamil Nadu Ordinance No.3 of 2010

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by Sub-Section (1) of Section 8 of the Tamil Nadu Appointment on preferential basis in the Services under the State of Persons Studied in Tamil Medium Ordinance, 2010 (Tamil Nadu Ordinance 3 of 2010), the Governor of Tamil Nadu, hereby makes the following rules, namely:-

RULES

1.Short title:-These rules may be called the Tamil Nadu Appointment on Preferential basis in the Services under the State of Persons Studied in Tamil Medium Rules, 2010.

2.Definition:

(a)"direct recruitment" means first appointment of a person to any service under the State in accordance with the rules or regulations or orders in force:

(b)"Persons Studied in Tamil Medium" means persons who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil Medium of instruction:

(c)"Services under the State" includes the services under-

(i) Government;

(ii) the Legislature of the State;

(iii) any local authority;

(iv) any Corporation or company owned or controlled by the Government; and

(v) any other authority in respect of which the State Legislature has power to make laws.

3.Manner of selection for appointment:- Twenty percent of all vacancies in the appointment in the services under the State which are to be filled through direct recruitment shall be set apart on preferential basis to Person Studied in Tamil Medium as illustrated below:-

ILLUSTRATION

Out of 200 seats, 40 seats shall be set apart on preferential basis to persons studied in Tamil Medium, in their respective category, in the following manner:-

General Turn	19	31	48	65	81	100	115	131
	148	165	181	200				
Backward Classes (Other than Backward Classes Muslims)	18	38	58	74	94	114	134	149
	170	190	199					
Most Backward Classes/De-notified Communities	23	46	73	96	123	146	173	196
Scheduled Castes	26	62	92	126	162	192		
Backward Classes Muslims	188							
Scheduled Caste Arunthathiars	166							
Scheduled Tribes	150							

(By order of the Governor)

K.N.VENKATARAMANAN
SECRETARY TO GOVERNMENT

4.Assailing the correctness of the said Government Order, by inviting the attention of this Court to the note mentioned at the end of the provisional selection list issued, after the interview for the post of Assistant Professor (Mathematics), Mr.S.Srinivasu, learned counsel for the petitioner submitted that when there were no eligible candidates available in Tamil Medium, General candidates have been included in the said list, have been considered. He further submitted that when the Government or Universities, do not impart Post Graduation Courses, in Tamil Medium, then G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, i.e., Tamil Nadu Ordinance 3 of 2010, in which, 20% vacancies are allotted to the candidates, do not serve any purpose, insofar as the selection to the post notified and in the abovesaid circumstances, G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, has to be amended or to be set aside, as there is no opportunity for the Post Graduate candidates, to apply for selection, as against 20% of vacancies earmarked for the candidates, who have studied in Tamil Medium. It is also the submission that in the impugned G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, there is no clarification regarding the selection of Tamil medium candidates, who have studied upto Under Graduation.

5.Heard the learned counsel for the petitioner and perused the materials available on record.

6.The Government have issued an Ordinance No.3 of 2010, by G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, called the Tamil Nadu Appointment on preferential basis, in Services, under the State of Persons Studied in Tamil Medium Rules, 2010. As per definition 2(b) of the said Rules, "Persons studied in Tamil medium" means "persons, who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil Medium of instruction". As per Rule 3 of the said Rules, 20% of all vacancies in the appointment in the services under the State, which are to be filled through direct recruitment, shall be set apart, on preferential basis to persons who studied in Tamil medium, as illustrated in the Government Order.

7.The qualifications prescribed in the Notification No.4 of 2013, dated 28.05.2013, for the post of Assistant Professor in Government Arts and Science Colleges, under Tamil Nadu Collegiate Educational Service, 2013, are, "a pass in Post Graduate degree and a pass in UGC/CSIR/JRF/NET/SLET/SLST or Ph.D., degree in the relevant subject".

Admittedly, the petitioner has studied Post Graduate degree only in English medium and therefore, when she applied for the post of Assistant Professor, her candidature cannot be considered under the Tamil medium, preferential quota.

8.Though the petitioner has contended that the impugned Government Order, does not serve the purpose for which it has been notified, and further contended that when the Government or Universities do not impart any Post Graduate Course in Tamil Medium, so as to enable such of those candidates to apply for the selection, as against 20% of the vacancies, in State Services, and therefore, Para 2, Clause (b) of G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, has to be struck down, on the grounds of arbitrariness or malafide, this Court is not inclined to accept the said contentions, for the reason that providing reservation, in Services to a category of candidates, is purely the prerogative of the Government. Contention of the petitioner that the rules do not serve the Post Graduates, in the matter of following the reservation, against 20% of vacancies earmarked for the candidates, who have studied in Tamil medium, though a fact to be admitted, but that cannot be a ground to quash Para 2 of the Clause (b) of G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010. Though the said Government Order is not beneficial to the post graduate candidates, who have undergone their Post Graduate Course in English medium, the educational qualification prescribed by the Government, for recruitment to the posts notified, it is certainly beneficial, upto the level of Under Graduate candidates, where some degree level courses are imparted in Tamil Medium and which may be the educational qualification prescribed for the posts under direct recruitment in the Service rules or regulations or orders applicable to appointment, under the State. The matter requires to be addressed only by the Government. Court

cannot add, Post Graduate candidates, who have studied their Under Graduate courses, in Tamil Medium and lateron, pursued their Post Graduation, in English Medium, also to be considered, for selection, as against 20% of vacancies earmarked for the candidates, who have studied in Tamil medium or for that matter, strike down Clause 2(b) of G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, as arbitrary. Certainly, if there are no eligible candidates with Post Graduate qualification in Tamil medium, the agency who conducts the examination or appointing authority, as the case may be, has to consider only the General candidates, as against 20% of vacancies. Concession extended to those, who have obtained their educational qualification, in Tamil medium upto certain level, as stated supra, and if the same does not sub-serve Post Graduates, in the matter of recruitment, for the post of Assistant Professor or any other posts, for which, Post Graduation qualification is a requirement, then, it is for the petitioner to address the Government, for necessary amendments to Rule 2(b) of the Tamil Nadu Appointment on preferential basis in the Services under the State of Persons Studies in Tamil Medium Rules, 2010. Court cannot decide, as to who is eligible to claim preferential treatment, concession or reservation, as the case may be.

9.As per the counter affidavit, filed in W.P.No.700 of 2015, petitioner has studied Post Graduate Degree course in English Medium and therefore, her candidature was not considered under Tamil preferential basis. From the reading of the Government Order, it is manifestly clear that the intention of the Government, to provide, reservation of 20% vacancies is only to those who have studied the prescribed educational qualifications, for the post in Tamil Medium and not to all. Court cannot interpret the intention of the Government, to extend G.O.Ms.No.145, P & AR (S) Department, dated 30.09.2010, to all the services under the State.

10.For the reasons stated supra, this Court is not inclined to strike down Rule 2(b) of the Tamil Nadu Appointment on preferential basis, in the Services under the State of Persons Studies in Tamil Medium Rules, 2010. However, considering the submissions of the learned counsel for the petitioner that the Government of Tamil Nadu or the Universities, as the case may be, do not impart any Post Graduate Course, in Tamil medium other than language and, so as to enable the candidates, to pursue their Post Graduate course of study in Tamil and thereby, seek for extension of benefits against 20% of vacancies earmarked for appointment in services under the State, we only wish to state, it is for the petitioner to address the Government, for amendment, if required. At this juncture, we only wish to state that it is the prerogative of the Government to fix the qualifications and extend reservation, Court has no powers to extend reservation to all, dehorse the statutory rules, prescribed.

With the abovesaid observations, this Writ Petition is dismissed.
Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mps

To

1.The Secretary,
State of Tamil Nadu,
P&AR (S) Department,
Higher Education,
Fort St. George,
Chennai-9.

2.The Chairman,
Teacher Recruitment Board,
DPI Compound,
IV Floor, EVR Smpath Maligai,
College Road,
Chennai-600 006.

+1 cc to Mr.S.Srinivasu Advocate sr.42529/15

सत्यमेव जयते

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and M.P.Nos.1 and 2 of 2015

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