

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYNARAYANAN

WP.No.34470/2015

S.Kandeeban

...Petitioner

Versus

1. The Secretary to Government
State of Tamilnadu,
Employment Services Department,
Fort St George
Chennai - 9.
2. The District Collector
Chennai District, Singaravelar Maligai
Rajaji Salai, Chennai 600 003.
3. The Deputy Director,
Professional and Executive Employment Office
Opposite to Govt. Girls ITI, Near TANSI
Guindy, Chennai-32.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 3rd respondent in respect of the impugned order dated 09.09.2015 passed vide proceeding bearing A1/2637/2015 based on the Government Letter No.4920/B1/87-3 dated 29.02.1988 and quash the same and consequently direct the 3rd respondent to register the Preference Certificate dated 05.08.2002 issued by the Special Tahsildar Land Acquisition Adi-Dravida Welfare Scheme, Periyakulam.

For Petitioner : Mr.A.Palaniappan

For Respondents : Mr.V.Subbiah, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner would state that the land comprised in S.No.10/3B admeasuring to an extent of 2.80 acres situated in Kothapatti village, Periyakulam Taluk, originally belong to his father, namely Tiru.T.Suruliraj. The Government of Tamil Nadu, for the purpose of providing burial ground to the Adi Dravidar people, had acquired 20 cents of lands out of the said extent and Award in Award No.11/78-79 was also passed on 12.05.1979, to provide compensation and it is further stated that the Personnel and Administrative Reforms Department of the Government of Tamil Nadu has passed G.O.Ms.No.188 dated 28.10.1988 providing certain guidelines for the order of priority in respect of recruitment through Employment Exchanges and as per Group II Clause [6] in the Annexure to the said Government Order, "members of the family [including members of Scheduled Caste/Scheduled Tribe] whose lands have been acquired for Government purposes as well as projects of the Public Sector Undertakings, subject to the condition that the preference should be given to those who are dependent for their livelihood, primarily or wholly on the lands acquired and from among them to the members of Scheduled Castes/Scheduled Tribes, who may be eligible for employment". In the light of the said clause, the petitioner claims that he is entitled to get priority in the matter of recruitment to the civil post. In this regard, the petitioner has submitted a representation dated 18.04.2015 and since it was not disposed of, he filed WP.No.18187/2015 and the said writ petition was disposed on 24.06.2015 by directing the 2nd respondent to consider and dispose of the said representation and accordingly, the 2nd respondent has rejected the representation vide the impugned order dated 09.09.2015 stating that since the petitioner is already married, in the light of the administrative instructions in Letter No.4920/B1/87-3 dated 29.02.1988 of the Employment Services Department, he is not eligible and challenging the legality of the said order, the petitioner came forward to file this writ petition.

3 Learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 01.07.2013 made in WP.No.17586/2013 [P.Thirumal Vs. State of Tamilnadu and others] reported in 2013 [7] MLJ 656 and would submit that the said letter was also considered by this Court in the above

cited judgment and it has been held that it is highly arbitrary and in violation of Article 14 of the Constitution of India and the impugned order therein was struck down with a further direction, directing the 3rd respondent therein to register the Preference Certificate. It is the submission of the learned counsel that in the light of the above said order, the impugned order is to be quashed and prays for appropriate orders.

4 Per contra, Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents would submit that G.O.Ms.No.188, P&AR Department, dtd 28.12.1976 was clarified and subsequent Government Letter dated 29.02.1988 came to be issued stating that the said Government Order is applicable only to unmarried children and since the petitioner is married, he is not eligible to get the benefit of the said Government order and prays for dismissal of the writ petition.

5 This Court carefully considered the rival submissions made on either side and also perused the materials placed before it.

6 In the decision reported in 2013 [7] MLJ 656 [cited above], this Court found that the prescription of the clause that the preference in employment can be given to unmarried children is wholly violative of Article 14 of the Constitution of India. The learned Special Government Pleader is unable to put forth any submission as to the clarification issued in the subsequent Government Letter dated 29.02.1988 as to the reason for putting forth such a condition. Assuming for the sake of argument that at the time of giving preference to employment, if a person remains unmarried and after getting Preference Certificate, if he/she gets married, whether the effect of the Certificate given, will be taken away or not, is also not explained by the learned Special Government Pleader. In the considered opinion of this Court, the above said Judgment is fully applicable to the facts of this case.

7 In the result, the writ petition is allowed and the impugned order dated 09.09.2015 in No. A1/2637/2015 passed by the 3rd respondent, is set aside and the 3rd respondent is directed to register the Preference Certificate dated 05.08.2002 issued by the Special Tahsildar [Land Acquisition], Adi Dravidar Welfare, Periyakulam, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

8 The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
State of Tamilnadu,
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1 CC to Mr.A.Palaniappan, Advocate SR.No. 58920

1 CC to the Government Pleader, SR.No. 59264

WP.No.34470/2015

MSM (CO)
PSI (05.11.2015)

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