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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 1.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

W.P. (MD)No.10872 of 2015

C.kaleeswari

... Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 09.

2.The Director of Medical Education,
Kilpauk, Chennai - 10.

3.The Secretary,
Selection Committee (M.B.B.S / B.D.S),
162, Periyar E.V.R.High Road,
Kilpauk, Chennai - 10.

... Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to provide reservation for the sons and daughters of Inter-Caste marriage in the admission to the Medical Course (M.B.B.S / B.D.S) in Tamil Nadu.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.M.C.Selvaraj,
Spl.Govt.Pleader

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Public Interest Writ Petition has been filed, seeking for a Mandamus, directing the respondents to provide reservation (M.B.B.S / B.D.S) in Tamil Nadu, for the sons and daughters of Inter-Caste marriage in admission to the Medical Course

2.Earlier such reservation was provided. Pursuant to the Full Bench decision of this Court in *M.Aarth (Minor), etc./others Vs. The State of Tamil Nadu & Others* reported in (2002 4.LW. 469), reservation for admission to Medical Courses in Tamil Nadu, to the sons and daughters of Inter-Caste marriage couple, has been deleted. Relevant portion of the Judgment reads as follows:-



19. The executive power of the State under Article 162 of the Constitution is co-extensive with the legislative power and when the field of law is occupied by a legislative Act, the exercise of executive power is not available. There is no dispute about the State's power to provide reservation even by executive order under Article 162 of Indian Constitution. But such power can be exercised only in the absence of a legislative Act. Of course, if an aspect is not covered by the legislative Act, then the executive power can be resorted to. To put it precisely, if the power of reservation is exhausted under Tamil Nadu Act 45 of 1994, then no power exists to invoke the executive power under Article 162 of the Constitution. The special reservation, which has been provided for the children born of inter-caste marriage is one traceable to Article 15 (4) on the ground of social and educational backwardness. That power has already been exhausted by the State by enacting the Tamil Nadu Act 45 of 1994. We are unable to accede to the contention that the special reservation provided for the children of inter-caste marriage is not traceable to Article 15 (4) but to Article 15 (1) or Article 14 or Preamble of the Constitution. The very basis of reservation for inter-caste children is based on their social and educational backwardness and is only traceable to Article 15 (4) and when the State had already exhausted that power of reservation by enacting Act 45 of 1994, there is no other reason for invocation of Article 162 of the Constitution. In fact, the State did not even invoke such power under Article 162 of the Constitution, obviously, for the reason of its exhaustion of power under Tamil Nadu Act 45 of 1994. A reading of G.O. Ms.No.477, Social Welfare Department, dated 27.6.1975, on the basis of which this special reservation for the children born of inter-caste marriage has been provided, makes it clear that the State did not venture to carve out any special reservation as pleaded by the parties. In fact, this was never taken note of in HARI GANESH's case (cited supra) or SONA RAJAN's case (cited supra). We feel it apt to extract the same.:

SOCIAL WELFARE DEPARTMENT

G.O.Ms.No.477 Dated: 27.06.1975

ORDER:- The Government have been extending certain concessions to the members of Scheduled Tribes, Scheduled Castes and Backward Classes from time to time. A question has arisen about the determination of the community of the children born of inter-caste marriages.

2. The Government after carefully examining the question, direct that the children born of inter-caste marriages, that is marriages -



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(i) between a person of a Scheduled Tribe and another of a Scheduled Caste or Backward Class or Forward Class;

(ii) between a person of a Scheduled Caste and another of a Backward Class or Forward Class; and (

iii) between a person of a Backward Class and of a Forward Class

shall be considered to belong to either the community of the father or the community of the mother according to the declaration of the parents regarding the way of life in which the children are brought up and that the declaration in respect of one child will apply to all children.

The above Governmental Order wants to clear the confusion of the status of the children born of inter-caste marriage stating that they can adopt the caste of either of their parents and as they are brought up by their parents. Admittedly, the petitioner s 1 to 3 as also respondents 4 to 10 have been brought up as Scheduled Castes and pursuant to the above Government Order, they obtained certificates to the effect that they belong to Scheduled Castes community and necessarily, they have to only fall with in the category of Scheduled Castes and competing within 18% allocated to them. 12 seats reserved in M.B.B.S. under sub-clause (viii) of Clause 13 of the Prospectus leads them nowhere and in fact, it has got no Constitutional or legal basis. It is not out of place to mention that 71 seats have been carved out and separated from the computation of 1255 seats in Medicine and only 1184 seats have been computed for the purpose of applying the categories of reservation conforming to 69% and 31% in OC category. This is clearly illegal and unconstitutional. The judgment rendered by the Supreme Court in [ANIL KUMAR GUPTA v. STATE OF U.P.](#) (1995) 5 S.C.C. 173) is an authority for this proposition. Reservations of several kinds like widows, deserted women and any candidate, whose parent has suffered for the cause of development of Tamil and contributed towards the protection etc., are quite untenable. They do not have any constitutional or legal sanction. But we are not dwelling on that as they have not been questioned here and as the admissions to that category have already been completed. Other than the reservation in [Tamil Nadu Act 45 of 1994](#), what is permissible is only for Physically Handicapped, Eminent Sportsmen, children of freedom fighters and Children of Ex-servicemen being horizontal reservation and not vertical. The State has to bear this in mind in future."



3. Mandamus cannot be issued to provide reservation. Reference can be made to the following decisions:-

Comptroller and Auditor General of India, Gyan Prakash Vs. K.S.Jaganathan reported in 1986 (2) SCC 679); Superintending Engineer, Public Health Vs. Kully Singh reported in (1997 (9) SCC 199); Post Graduate Institute of Medical Education and Research, Chandigarh and Others Vs. K.L.Narasimhan and Another reported in (1997 (6) 283); Union of India v. Rajeshwaran and Another reported in (2003 (9) SCC 294) and Gulshan Prakash (Dr) and Others Vs. State of Hariyana and Others reported in (2010 (1) SCC 477). Moreover, with reference to the prayer sought, A full Bench has already considered the issue.

4. In the Light of of the decisions and for the reasons stated supra, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 09.
- 2.The Director of Medical Education,
Kilpauk, Chennai - 10.
- 3.The Secretary,
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+1CC TO SPECIAL GOVERNMENT PLEADER SR NO.35435

mpk:

sdr:28.07.2015 :4p/5c

W.P. (MD) No.10872 of 2015
1.07.2015