

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 23-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 2261 of 2016

and

W.M.P. Nos. 1952 and 1953 of 2016

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Dr. Tmt. A. Chandirakala

.. Petitioner

Versus

1. Director of Collegiate Education
Chennai - 600 006

2. Secretary
Kandaswami Kandar's College
Velur (Namakkal) 638 182
Namakkal District

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the notification issued by the second respondent, as published in New Indian Express dated 23.12.2015 and quash the same and direct the respondents to fill up the vacancies of Assistant Professor by applying roaster for each department separately.

For Petitioners : Mr. P. Ganesan
for M/s. C.S. Associates

For Respondents : Mr. S. Gunasekaran
Additional Government Pleader for R1

Mr. M. Govindaraj for R2

ORDER

The petitioner calls in question the notification dated 23.12.2015 issued by the second respondent to fill up the vacancies that existed in their college in the post of Assistant Professors for various departments.

2. The petitioner was appointed as Lecturer (Tamil) in the second respondent college where she worked from 01.07.2003 to 30.12.2005. Thereafter, the petitioner worked as Lecturer in Vivekananda Arts College, Thiruchengode between 2005 and 2006. When the petitioner was anticipating employment opportunity, the second respondent issued the impugned notification dated

23.12.2015 calling for applications to fill up the post of Assistant Professor in various discipline. In response, the petitioner also submitted her application for the post of Assistant Professor (Tamil). After submitting the application for appointment of the post of Assistant Professor (Tamil), the petitioner came to know that while issuing the notification dated 23.12.2015, the second respondent did not follow the communal rotation in respect of the vacancies which are sought to be filled up department-wise, rather, the second respondent clubbed all the posts of Assistant Professor and applied the roaster system, which is illegal. It is on this ground the petitioner has challenged the notification dated 23.12.2015 issued by the second respondent.

3. When the writ petition was taken up for admission, by order dated 22.01.2016, this Court granted an order of interim stay and it was extended from time to time.

4. The learned counsel appearing for the petitioner would contend that Rule of reservation is a constitutional mandate which has to be followed by the second respondent while filling up the vacancies. The Government of Tamil Nadu issued order shifting the roaster from 100 point to 200 point. Even thereafter, the Government has made amendment in respect of roaster reserving vacancies for B.C. (Muslim) and B.C. (Christian). According to the learned counsel for the petitioner, the second respondent ought to have continued the roaster system from the last appointment in the second respondent. The last recruitment was made by the second respondent in the year 2013 in which the last roaster was only Schedule Caste. Therefore, the second respondent management ought to have issued the impugned notification commencing the roaster from M.B.C. because in the previous turn, the last candidate was appointed from Schedule Caste. Therefore, the second respondent ought to have followed the roaster system from Most Backward Class, Backward Class, general turn, Schedule Caste and Most Backward Class etc., If the roaster system is followed properly, the petitioner, who belongs to Most Backward Class, would have got the chance of getting selected and appointed to the post of Assistant Professor (Tamil) and non-adherence to the roaster system has deprived the petitioner of an employment opportunity. Therefore, the learned counsel for the petitioner prayed this Court to allow the writ petition as prayed for.

5. The learned counsel for the petitioner relied on the decision rendered by this Court in (The Madras University Teachers Association, rep. by its General Secretary Dr. V. Karupiah vs. The University of Madras, rep. by its Registrar, University Building, Chepauk, Chennai - 600 005) reported in 1992 Writ Law Reporter Page No.41 wherein it was held that even

if there is only one post, the Rule of reservation has to be followed in letter and spirit.

6. Opposing the writ petition, the learned counsel appearing for the second respondent, by relying on the counter affidavit of the second respondent, would contend that in the notification dated 23.12.2015, it was clearly indicated that the post of Assistant Professor (Tamil) is earmarked for a candidate belonging to General Turn. On going through the advertisement, the petitioner submitted her application and thereby subjected her to the selection process. A call letter dated 12.01.2016 was also issued to the petitioner calling upon her to attend the interview on 25.01.2016 wherein it was clearly indicated that the post of Assistant Professor (Tamil) is earmarked for a candidate belonging to General Turn. Therefore, having applied for the post knowing fully well that it is meant for a candidate from general turn, the petitioner is not entitled to file the writ petition. In any event, the notification dated 23.12.2015 was issued by strictly following the guidelines issued in G.O. Ms. No.55, Personnel and Administrative Reforms Department dated 27.05.2007. Even otherwise, the candidate who is presently selected by the second respondent belonged to a Most Backward community and therefore, the petitioner may not have any grievance over such selection. The learned counsel would further contend that Rule 11 of the Tamil Nadu Private Colleges (Regulations) Rules, 1976 specifies that every college by itself is an unit. Rule 11 (4) stipulates that if an educational agency establishes and administers more than one college, then the Colleges under the control of that educational agency shall be treated as one unit. The learned counsel further brought to the notice of this Court that Rule 11 (4) (ii) the posts lying vacancy shall be filled up by promotion or direct recruitment. Therefore, while resorting to the selection process, the second respondent college considered the claims of the qualified in-service candidates in the college, meaning thereby the college by itself is a single unit. The learned counsel for the second respondent drew an analogy that in the case of University, there may be several departments and each such department will have separate cadre strength, but the selection process resorted to by an University cannot be compared with that of the second respondent college. Further, the selection committee has taken note of the fact that the posts of Principal, Physical Education Teacher, Language Professor and Professors are all comes within a single unit. In such case, if department-wise roster is followed, it will pave way for monopoly of open category and all other categories will have their turn only after the retirement of the newly appointed Assistant Professors thereby defeating the object and purpose of reservation. In any event, the petitioner failed in her attempt to get selected. The petitioner attended the interview on 29.01.2016. The selection process was completed and the selected candidates have also

joined the post on 27.01.2016. However, on 27.01.2016, at the instance of the petitioner, this Court granted interim stay. Even though the interim order has not been communicated to the second respondent, on being informed about the interim stay granted by this Court, the second respondent has withheld the selection process without sending it for approval to the first respondent. According to the learned counsel for the second respondent, the appointments have been made in a transparent manner by following the Rules of reservation. In such circumstances, the learned counsel for the second respondent prayed for dismissal of the writ petition.

7. On the above contention, this Court heard the submissions of the learned Additional Government Pleader appearing for the first respondent who would only contend that the first respondent has not so far approved the appointment made by the second respondent to the post of Assistant Professor (Tamil) in view of the interim stay granted by this Court on 27.01.2016 in this writ petition.

8. I heard the learned counsel on either side and perused the material records placed. The short point arise for consideration in this writ petition is whether the notification dated 23.12.2015 issued by the second respondent is required to be interfered with for non-adherence of roaster system by the second respondent during the selection process.

9. The grievance of the petitioner is that the selection process resorted to by the second respondent is not department-wise and it offends the 200 point roaster system introduced by the Government. The further grievance of the petitioner is that the second respondent ought to have continued the roaster system from the last appointment in the second respondent college made in the year 2013 in which the last roaster was only Schedule Caste. Therefore, the second respondent management ought to have issued the impugned notification commencing the roaster from M.B.C. because in the previous turn, the last candidate was appointed from Schedule Caste.

10. At the outset, it has to be mentioned that the petitioner participated in the selection process resorted to by the second respondent and also attended the interview. After attending the interview, the petitioner has filed this writ petition on the ground that the roaster system has not been followed by the second respondent in letter and spirit while filling up the vacant posts department-wise. Therefore, this Court holds that the petitioner is not entitled to file the present writ petition after subjecting participating in the interview conducted by the second respondent for filling up the post of Assistant Professor (Tamil).

11. Before dealing with the rival contentions, it is necessary to look into Rule 11 of the Tamil Nadu Private Colleges (Regulations) Rules, 1976 (hereinafter referred to as The Rules) deals with conditions of service etc., of teachers and other persons of a college in a college. Rule 11 (4) (ii) of the Rules deals establishment of a committee which shall fill up the posts either by promotion or by direct recruitment. Such committee shall, while making promotion, consider the claims of all the qualified teachers in that college. If, however, none of the qualified teachers in the college is found suitable for promotion, the vacancy shall be filled up by direct recruitment by calling applications from qualified persons from open market. The explanation to Rule 11 (4) says that for purposes of this Rule, if an educational agency has established and administered more than one college, then the colleges under the control of that educational agency shall be treated as one unit. Therefore, the contention of the counsel for the petitioner has to be rejected.

12. By relying on Rule 11 (4) of the Rules, the learned counsel for the petitioner would contend that the second respondent is one unit as defined in explanation to Rule 11 (4) of the Rules it is contended on behalf of the petitioner that the Government has made amendment in respect of roaster reserving vacancies for B.C. (Muslim) and B.C. (Christian). Therefore, the second respondent ought to have continued the roaster system from the last appointment in the second respondent college. The last recruitment was made by the second respondent in the year 2013 in which the last roaster was only Schedule Caste. Therefore, the second respondent management ought to have issued the impugned notification commencing the roaster from M.B.C. because in the previous turn, the last candidate was appointed from Schedule Caste.

13. A perusal of the impugned notification would indicate that the post of Assistant Professor (Tamil) is earmarked for a candidate belonging to General Turn. According to the respondents, even in the call letter issued to the petitioner, it was indicated that the post of Assistant Professor (Tamil) is earmarked for a candidate belonging to General Turn. The learned counsel for the second respondent would further contend that the appointments have been made in a transparent manner by following the Rules of reservation. It is further submitted that even before the interim stay was communicated to the second respondent, they have selected a candidate from Most Backward community. This only indicate that the second respondent has followed the roaster system in accordance with law and by following the guidelines laid down passed by the Government in G.O. Ms. No.55, Personnel and Administrative Reforms Department dated 27.05.2007. Further, it is evident that the second respondent college has considered the claim of the in-service candidates as well as contemplated under

Rule 11 (4) of the Rules, which would only goes to show that the second respondent college itself is a single unit and the plea of the petitioner to select and appoint the candidate department-wise does not arise.

14. The learned counsel for the petitioner relied on the decision of this Court in the case of (The Madras University Teachers Association, rep. by its General Secretary Dr. V. Karuppiiah vs. The University of Madras, rep. by its Registrar, University Building, Chepauk, Chennai - 600 005) reported in 1992 Writ Law Reporter Page No.41. The ratio laid down in this case cannot be made applicable to the facts of the present case. In that case, the Association representing the various teaching staff in the University has filed the writ petition challenging the advertisement issued by the respondents/University in inviting application for filling up the posts of Professors and Readers. . The learned single Judge of this Court held that all the posts of Professors and Readers exist in the University should not be clubbed together for the purpose of applying communal roaster system inasmuch as each and every one of the departments of University is a unit by itself. In para No.8 of the order, it was held as follows:-

"8. The plea put forward by the petitioner is based on the decision of the Supreme Court in Chakradhar vs. State of Bihar. The plea is that all the posts of Professors or Readers in various departments should not be clubbed together for the purpose of applying communal roaster system. It is submitted that each department has its own separate cadre strength of Professors, Reader, etc., and therefore in respect of that cadre strength alone the communal roaster could be applied and not by clubbing together the various posts in all departments. It is not in dispute that if a person is appointed as a Professor or Reader in one department he has to serve that department and his post is not transferrable to any other department. The cadre strength of each department is separate. If communal rotation were to be applied it can be applied only to cadre strength of that separate department....."

15. Challenging the above order passed by the learned single Judge, an appeal was preferred by the University before the Division Bench of this Court in W.A. No. 1296 of 1991. The Division Bench of this Court, by an order dated 24.10.1991, dismissed the appeal by confirming the order passed by the learned single Judge mentioned supra. While dismissing the appeal, the Division Bench held as follows:-

"What the appellants did, came within the mischief of the ratio of Supreme Court in Chakradhar vs. State of Bihar (AIR 1988 SC 959). The ratio has

been summed up in the order of the learned single Judge as follows:-

"No reservation could be made under Art. 16 (4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in ARTs. 16 (1) and 16 (2) wholly meaningless and illusory. If there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Art. 16 (4) pre-supposes the availability of atleast more than one post in that cadre.

The learned single Judge also took note of the fact that the disciplines are different, distinct and separate and there can be no grouping of the post. Thus, the learned single Judge quashed the impugned advertisement leaving it open to the appellants to invite fresh applications in accordance with law. We cannot take exception to the view of the learned single Judge. This writ appeal directed against the order of the learned single Judge is dismissed. No costs.

16. Thus, it is evident that with reference to the filling up of the posts in the University, department wise roster system can be followed inasmuch as each and every department is an unit by itself. However, in the present case, the second respondent need not adopt department wise roster system and the second respondent college, in itself, is an unit. Further, during the pendency of the writ petition, the second respondent has selected a candidate for the post of Assistant Professor (Tamil) however in view of the interim stay granted by this Court, the selected candidate was not permitted to join duty. In any event, I am of the view that the notification issued by the second respondent on 23.12.2015 does not suffer from any illegality and I do not see any reason to interfere with the same.

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17. In the result, the writ petition is dismissed. No costs. Consequently, connected W.M.P. Nos. 1952 and 1953 of 2016 are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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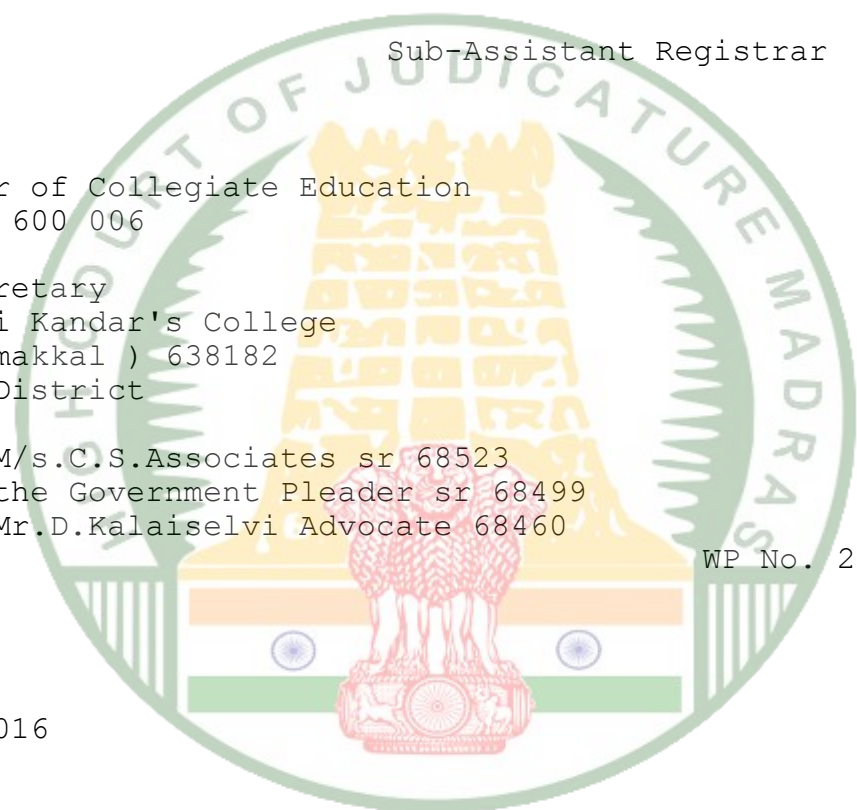
1. Director of Collegiate Education
Chennai - 600 006

2. The Secretary
Kandaswami Kandar's College
Velur (Namakkal) 638182
Namakkal District

+1 cc to M/s.C.S.Associates sr 68523
+1 cc to the Government Pleader sr 68499
+1 cc to Mr.D.Kalaiselvi Advocate 68460

WP No. 2261 of 2016

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