



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.[MD].Nos.17284 and 18439 of 2016

and

W.M.P. (MD) .Nos.12559 and 12561 of 2016 in W.P. (MD) .No.17284 of 2016

and

W.M.P. (MD) .Nos.13292 and 13293 of 2016 in W.P. (MD) .No.18439 of 2016

W.P. (MD) .No.17284 of 2016:

Mathiya Manila Arasu SC (Arunthathiyar)

Ooliyar Kootamaipu, rep. by its
President, K.Veerappan S/o.M.Karuppan,
C-53, Annai Indira Nagar,
Palayamkottai,
Tirunelveli - 627 002.

.. Petitioner

Vs.

1.The Vice Chancellor,
Manonmaniam Sundaranar University,
Tirunelveli - 627 012.

2.Manonmaniam Sundaranar University,
rep. by its Registrar,
Tirunelveli - 627 012.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned advertisement on the file of the Respondent No.2, dated 22.07.2016 published in the official website of the 2nd respondent University and quash the same as illegal in so far earmarking a new category of Schedule Caste (Priority) SC (P) in the place of Scheduled Caste (Arunthathiyar) SC(A) and for a direction forbearing the respondents from filling up the posts of Assistant Professors, Associate professors, Professors reserved for SC (A) Category with the persons not belonging to Scheduled Caste (Arunthathiyar) category and for a direction, directing the respondents to follow the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including private Educational Institutions and of appointments of posts in the services under the State within the Reservation for the Scheduled Castes Act, 2009 and Rules notified in G.O.Ms.no.65, Personal and Administrative Reforms (K) Department, dated 27.05.2009 in true letter and spirit in the Recruitment for the post of Professors, Associate Professors and Assistant Professors in the 2nd respondent University.



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For Petitioner	: Mr.T.Lajapathi Roy
For 1 st respondent	: No appearance
For 2 nd respondent	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates

W.P. (MD) .No.18439 of 2016:

Marutham Nala Sangam,
rep. by its President,
S.Chandrasekaran,
No.48, 6th Main Road,
Kamatchi Nagar,
K.T.C. Nagar,
Tirunelveli - 627 011.

.. Petitioner

Vs.

- 1.The Secretary,
Higher Education Department,
Chennai - 600 009.
- 2.The Secretary,
Adidraavidar Welfare Department,
Chennai - 600 009.
- 3.The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent pertaining to the impugned Advertisement No.Nil, dated 22.07.2016, Advertisement No.Nill, dated 26.07.2016 and Advertisement No.Nil dated 03.08.2016 issued by the 3rd respondent and quash the same as illegal and arbitrary and consequently direct the third respondent to invite the fresh applications as per the reservation policy within the time that may be stipulated by this Court.

For Petitioner	: Mr.A.D.Ganeshamoorthy
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For 3 rd respondent	: Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
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**O R D E R**

[Order of the Court was made by **S.NAGAMUTHU, J.**]

These two Writ Petitions challenged the advertisement made by the Manonmaniyam Sundaranar University inviting applications from the eligible candidates for various posts in the University Departments. But, these two Writ Petitions have been filed on different grounds.

2.W.P.(MD)No.17284 of 2016 has been filed expressing the grievance that in the impugned advertisement, it is mentioned as though apart from the Scheduled Caste (Arunthathiyar), there is another category as Scheduled Caste (Preferential). It is the contention of the petitioner in the said Writ Petition that there can be a reservation only for Scheduled Caste (Arunthathiyar) and there cannot be a separate reservation for Scheduled Caste (Preferential).

3. In this regard, today the University has filed a counter affidavit, wherein it is stated that there is no such special classification or reservation as Scheduled Caste (Preferential) and what is mentioned in the advertisement is that the reservation for Scheduled Caste (Arunthathiyar) itself is Preferential reservation. In other words, according to the counter affidavit, the vacancies earmarked for Scheduled Caste (Arunthathiyar) shall be filled up only by the candidates from the said community and in the event, sufficient number of candidates are not available to fill up the said vacancies from out of the Scheduled Caste (Arunthathiyar), then the claim of the Scheduled Caste (General) candidates will be considered.

4.Mr.Lajapathi Roy, learned counsel for the petitioner, would submit that it has not been so clearly made in the advertisement and therefore, it may be clarified that there is no such special classification as Scheduled Caste (Preferential), but what is meant in the advertisement is only reservation for Scheduled Caste (Arunthathiyar).

5.Having considered these submissions, we clarify that every vacancy for Scheduled Caste (Arunthathiyar) as notified in the impugned advertisement shall be filled up only by the candidates from Scheduled Caste (Arunthathiyar) community and in the event, suitable candidates are not available from the Scheduled Caste (Arunthathiyar), the same shall be filled up from the Scheduled Caste (General) category. W.P.(MD).No.17284 of 2016 is, accordingly, disposed of. No costs. Consequently, connected miscellaneous petitions are closed.



6.W.P(MD).No.18439 of 2016 has been filed with the grievance that there is no seat earmarked in the impugned advertisement for Scheduled Caste (General). It is the contention of the petitioner that the University has not followed the roster system, which is evident from the fact that there is no seat earmarked for Scheduled Caste (General) in the advertisement.

7.Mr.Ajmal Khan, learned senior counsel appearing for the University, referring to the counter affidavit filed by the University, would submit that these vacancies have been notified based on 200 point roster system maintained by the University. As per the said roster, the seats earmarked for Scheduled Caste (Arunthathiyar) have been notified.

8.At this juncture, the learned counsel for the petitioner would submit that in the advertisement made on 31.08.2010, the post of Assistant Professor in the Department of Statistics was notified for Scheduled Caste (Arunthathiyar) and again in the impugned notification also the post of Assistant Professor in the Department of Statistics has been earmarked for Scheduled Caste (Arunthathiyar). The learned counsel would submit that this would indicate that the roster system has not been strictly followed.

9. But, the learned senior counsel Mr.Ajmal Khan would submit that it is true that in the notification dated 31.08.2010, one post of Assistant Professor in the Department of Statistics was notified for Scheduled Caste (Arunthathiyar) community, but in the said process, the said post was not filled up and so, the said vacancy has been carried forward and that is how for the very same post, which has been carried forward, this year the impugned notification has been issued notifying the said vacancy for Scheduled Caste (Arunthathiyar). We find force in the said argument of the learned senior counsel and we agree with the same.

10. Having heard the learned senior counsel for the University, the learned counsel for the petitioner would submit that if it is a case that in the event, a candidate belonging to the Scheduled Caste (Arunthathiyar) is not available, then the claim of Scheduled Caste (General) would be considered, the same ought to have been clearly mentioned in the advertisement, but the same has not been done so. We find force in the said argument. The impugned notification does not clearly specify that the candidates belonging to the Scheduled Caste (General) category can also make application as against the seats notified for Scheduled Caste (Arunthathiyar) and making it further clear that the claim of the candidates belonging to the Scheduled Caste (General) would be considered in the event there are no sufficient number of qualified candidates for Scheduled Castes (Arunthathiyar). In our considered view, because of the said defect in the notification, many candidates, who belong to



Scheduled Caste (General), would not have made application under the misconception that they are not eligible to make application, because the notification mentioned only about the Scheduled Caste (Arunthathiyar).

11. When this was pointed out, the learned senior counsel would submit that the University is prepared to issue a corrigendum and also to extend the last date for receipt of applications. In our considered view also, issuing corrigendum and calling for applications from the Scheduled Castes (Arunthathiyar) as well as Scheduled Caste (General) category would be doing justice to the candidates. Therefore, we agree with the said submission made by the learned senior counsel appearing for the University.

12. In the result, W.P.(MD).No.18439 of 2016 is disposed of in the following terms;

(i) The Manonmaniyam Sundaranar University shall issue a corrigendum to the advertisement dated 22.07.2016, calling for the applications from the Scheduled Caste (General) category candidate also as against the vacancies earmarked for Scheduled Caste (Arunthathiyar). (ii) The University is further directed to extend the last date for receipt of the applications by 15 days from the date of the corrigendum.

(iii) The University shall clarify that the claim of the Scheduled Caste (General) category candidates will be considered, if only there are no sufficient qualified candidates from the Scheduled Caste (Arunthathiyar) to fill up the vacancies.

(iv) The University shall also clarify in the notification that there is no separate category as Scheduled Caste (Preferential) and what is meant by Scheduled Caste (Preferential) is Scheduled Caste (Arunthathiyar) reservation itself is a preferential reservation.

13. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(T&P)

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Sub Assistant Registrar



To

1. The Secretary,
Higher Education Department,
Chennai - 600 009.

2. The Secretary,
Adidraavidar Welfare Department,
Chennai - 600 009.

+2ccs to M/S.Ajmal Associates, Advocate in SR.Nos.57815, 57814
+1cc to Special Government Pleader in SR.No.58294
+1cc to M/S.A.D.Ganeshamoorthi, Advocate in SR.No.57660

Common order made in
W.P.[MD].Nos.17284 and 18439 of 2016
30.09.2016

gcg

PA/GSV-PM/SAR III/07.10.2016/6P/7C