



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2016
Delivered on : 06.10.2016

CORAM :

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.954 of 2013 against
WP(MD)No.12849 of 2013
& M.P(MD)No.1 & 2 of 2013 and 1 of 2014

S.Visalakshi : Appellant/Writ Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department, Secretariate,
Fort St. George, Chennai - 5.
2. The Teacher Recruitment Board,
Department of Collegiate Education,
College Road, Chennai - 6. : Respondents / Respondents

Appeal filed under Clause 15 of Letters Patent praying to set aside the order passed by the Hon'ble Court in W.P.(MD) No.12849 of 2013 dated 01.08.2013 and allow the above writ petition.

Prayer in WP(MD). 12849/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, in the nature of writ by calling for the records relating to the notification issued by the 2nd respondent as published in Thina thanthi dated 28.05.2013 and quash the same and further direct the respondents to implement and follow the policy of the Government by giving priority and fixing quota for the legal heirs of freedom fighters, in recruitment for the posts of Assistant Professors for the colleges and permitting the petitioner to apply under the said quota and to consider and select the petitioner and pass such further or other orders.

For Appellant : Mr.S.Natarajan

For Respondents : Mr.VR.Shanmuganathan
<https://hcservices.ecourts.gov.in/hcservices/>
Special Government Pleader.

JUDGMENTS. S. SUNDAR, J.

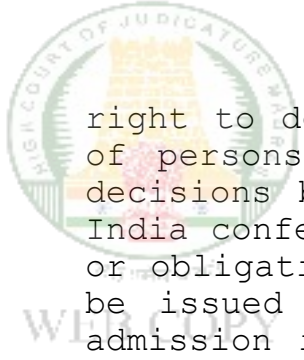
The unsuccessful petitioner in the writ petition in W.P. (MD) No. 12849 of 2013 is the appellant in the above writ appeal.

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2. The case of the writ petitioner / appellant is that she is a grand-daughter of Late Subramania Pillai, who was a freedom fighter. Though the Government of Tamil Nadu has enumerated various schemes to give benefit to the freedom fighters and their legal heirs, by providing reservations for the descendants of the freedom fighters for certain Government posts, such a reservation was not provided when the second respondent issued a notification for the recruitment of Assistant Professors in Tamil Nadu Collegiate Educational Service for appointment in Government Arts and Science Colleges. The notification is for filling up of 1093 vacancies in various subjects. The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the notification issued by the second respondent as published in Thina thanthi dated 28.05.2013 and quash the same and further direct the respondents to implement and follow the policy of the Government by giving priority and fixing quota for the legal heirs of freedom fighters in recruitment for the posts of Assistant Professors for the colleges and permitting the petitioner to apply under the said quota and to consider and select the petitioner and pass such further or other orders.

3. Though the contentions of the writ petitioner / appellant are manifold, the prime case of the writ petitioner / appellant is that it is the policy decision of the State Government to give priority to the legal heirs of the freedom fighters and Tamil Scholars in the matter of appointment of posts in various civil services under the State Government. Despite announcing the policy and providing reservations in the appointments of several posts in Government departments and undertakings, the Teachers Recruitment Board, Chennai, the second respondent herein, has adopted a different yardstick in the matter of recruitment of Assistant Professors in Government colleges and the notification issued by the second respondent is in violation of the policy decision and amounts to discrimination. It was further contended that the policy decision of the Government have to be scrupulously followed and the second respondent, a nodal agency for the Government, cannot ignore the said policy. The learned counsel also urged before the learned Single Judge that a direction should be issued to the respondents to fix quota for the legal heirs of the freedom fighters. All the contentions of the writ petitioner / appellant were dealt with elaborately by the learned Single Judge of this Court and the writ petition filed by the writ petitioner / appellant was dismissed.

4. Sum and substance, the learned Single Judge, after referring to several judgments of the Hon'ble Supreme Court, came to the conclusion that the writ petitioner / appellant has no legal



right to demand the Government to fix quota for a particular class of persons. The learned Single Judge has referred to catena of decisions before holding that Article 15(4) of the Constitution of India confers a discretion and does not create a constitutional duty or obligation of the Government and that therefore, no mandamus can be issued either to provide reservation either in the matter of admission in Colleges or in the matter of employment in Government posts. Since claiming quota / reservation for the legal heirs of the freedom fighters is not based on any constitutional provision or a statute or a legal right, the learned Single Judge was of the opinion that the writ of certiorari/fixed mandamus cannot be issued in favour of a person who has no right to enforce.

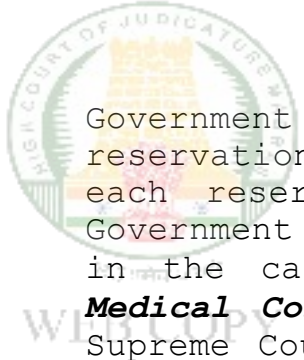
5. Though the writ petitioner / appellant relied upon G.O.Ms.No.59, Labour and Employment Department, dated 04.05.1999, giving priority to legal heirs of freedom fighters and argued that the failure to provide reservation for legal heirs of freedom fighters in the matter of recruitment of Assistant Professors would amount to discrimination, the learned Single Judge made a distinction that the Government Order is applicable to appointments through employment exchanges and that the nodal agencies, namely, Tamil Nadu Public Service Commission or Teachers Recruitment Board, Chennai or the Tamil Nadu Uniformed Service Recruitment Board, as the case may be, may have an obligation to give priority to various categories while recruiting persons through employment exchanges but not in the present case. The learned Single Judge further held that the recruitment rules cannot be expected to be uniform for all the posts, in all the departments under the Civil Services of State Government and hence, the policy of the Government as spelt out in G.O.Ms.No.59, Labour and Employment Department, dated 04.05.1999, giving priority to the legal heirs of the freedom fighters and Tamil Scholars cannot confer any vested or indefeasible right to any person belonging to the various categories to fix any quota or priority over others in all the cases of recruitment to all other posts in the services of the State irrespective of the mode of recruitment. The learned Single Judge also considered the contention of the writ petitioner / appellant based on another recruitment notification issued by the Tamil Nadu Public Service Commission dated 07.09.2012 for the post of Labour Officer giving reservation to freedom fighters and members of their families and held that there is no discrimination or violation of Article 14 of the Constitution. The learned Single Judge further held that unless the recruitment rules mandate reservation or priority to be given to a particular category of persons, it cannot be contended that the Teachers Recruitment Board, Chennai, the second respondent herein, has to adopt the same reservation in all cases. Since reservation of posts in Government service is a matter of policy decision of the Government, the learned Single Judge dismissed the writ petition after holding that the Court cannot issue any direction either to the Government or to the second respondent to provide reservation for the legal heirs of the freedom fighters. Aggrieved by the judgment of the learned Single Judge, this Appeal has been



preferred.

6.Mr.S.Natarajan, learned counsel for the writ petitioner / appellant has reiterated the same contentions that were raised before the learned Single Judge. The crux of the argument advanced by the learned counsel for the writ petitioner / appellant is to the effect that the policy of the Government is evident from the policy announced by the Government issued by the Finance Department of the State Government for the year 2013-2014 and 2014-2015 and hence, the failure to provide reservation to the legal heirs of the freedom fighters is against the policy decision of the Government and that the conclusion of the learned Single Judge in rejecting the writ petition on the ground that Court in exercise of power under Article 226 of the Constitution of India, cannot interfere with the policy decision of the Government. The contention of the writ petitioner / appellant is wholly misconceived as erroneous. The learned counsel relied upon the policy note of the Finance Department for the year 2013-2014 and 2014-2015 which only enumerates the concession and other benefits that were extended to freedom fighters or their legal heirs. It is true that the policy note indicates that priority is given for the legal heirs of the freedom fighters when their names are sponsored by the employment exchanges to the Government departments and undertakings. As rightly pointed out by the learned Single Judge, this policy of the Government is only to give priority to the legal heirs of Freedom Fighters only when their names are sponsored by Employment Exchanges to Government departments and undertakings. In other words, this policy of Government does not speak of recruitment through the second respondent or other nodal agencies in the matter of recruitment to various other posts.

7.The learned counsel for the writ petitioner / appellant contended that the Government has taken a policy decision in the matter of reservation for the legal heirs of freedom fighters in Government services and hence, the impugned notification, without reservation for freedom fighters, is liable to be quashed. The contention of the learned counsel for the writ petitioner / appellant has no legal force. The policy is a course or principle of action adopted or proposed by Government. Only when it is adopted by some legislation or executive action, it will be taken as a binding decision. When the Government proposes to adopt a policy no one can claim any right to challenge the action of the Government on the ground that the State's action does not reflect the policy which they purport to adopt earlier. Any legislation or executive action, cannot be tested for its validity on the ground that it is being contrary to the policy announced by the Government. Even the Directive Principles which are fundamental in the governance of the country and have been regarded as a duty of the State Government are not directly enforceable by any Court. Similarly, the Court exercising the power under Article 226 of the Constitution of India cannot out step its limit by unwanted judicial activism by directing the Government to legislate on the basis of announcement of a policy of the State. The reservation for any class of persons in



Government service cannot be uniform and the manner in which the reservation should be provided and the identification of posts for each reserved category are within the exclusive domain of the Government / the executive authority of the State. In the judgment in the case of **State of Himachal Pradesh vs. Student's Parent Medical College, Shimla** reported in **AIR 1985 SC 910**, the Hon'ble Supreme Court has held that the High Court has no jurisdiction to direct the State to introduce a particular legislation in implementation of the recommendation of a committee appointed by the High Court in the matter of ragging in educational institutions though the issue had some public importance. In another judgment of the Hon'ble Supreme Court in the case of **State Fishery Officers' Association vs. State of W.B. and another** reported in **(1997) 9 SCC 65**, the Hon'ble Supreme Court considered the scope of an agreement entered into between the Government and employees association regarding service conditions. It was noticed that the financial department of the Government was not a party to the agreement. Later the Government issued orders giving all the benefits in accordance with the agreement except the monetary benefits. Though the refusal of monetary benefits to the employees was challenged on the ground that the Government was bound by the agreement, the Hon'ble Supreme Court refused to accept the binding nature of agreement and described the subsequent decision of the Government as a policy decision taken by Government and further held that such decision cannot be tested for its arbitrariness in Court. The learned counsel for the writ petitioner / appellant relied upon paragraph 20 of the judgment in the case of **Comptroller and Auditor General of India, Gian Prakash, New Delhi and another vs. K.S. Jagannathan and another** reported in **(1986) 2 SCC 679**, which is extracted hereunder:

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or

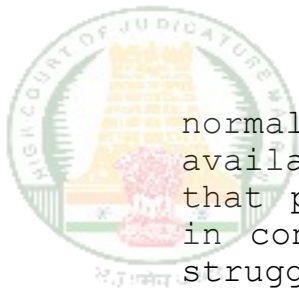


given had it properly and lawfully exercised its discretion."

8. That was a case where Selection Grade Auditors are required to pass the Subordinate Accounts Service Examinations (SAS), before promotion. The two respondents before the Supreme Court belonged to Scheduled Castes and were working as Selection Grade Auditors. An office memorandum dated 21.01.1977 issued by the Department of Personnel and Administrative Reforms envisaged suitable relaxation in the qualifying standard, in such qualifying examination in the case of SC/ST candidates. The respondents though secured the minimum number of marks in each individual subject which was 40%, failed to secure the aggregate minimum which was 45%. The respondents filed a writ of mandamus directing the appellant to declare them as having passed in the examination after making suitable relaxation for them in the qualifying standard of marks obtained by them in accordance with the office memorandum dated 21.01.1977. Though the writ petition was dismissed, writ appeal filed before the Division bench of Madras High Court was allowed directing the appellants to give suitable relaxation to the respondents on the criteria envisaged in the office memorandum dated 21.01.1977. While upholding the judgment of this Court, the Hon'ble Supreme Court, analysed the scope of issuing direction under Article 226 of the Constitution and held that the High Court has power under Article 226 of the Constitution to give direction when the Government has failed to exercise the discretion in accordance with a statute or a rule or a policy decision. This has no application to the present case as the direction there was found warranted in view of the policy decision by issuing office memorandum.

9. The learned counsel for the writ petitioner / appellant also relied upon the judgment of the Hon'ble Supreme Court in the case of **D.N.Chanchala vs. State of Mysore** reported in **1971 (2) SCC 293**. In that case setting out a particular number of seats in favour of dependants of political sufferer was challenged on the ground of discrimination and violative of Articles 14 and 15(4). In that context, the Hon'ble Supreme Court in paragraph 43 of the judgment has stated as follows:

"43. ... The principle underlying Art. 15 (4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be impro- per if that principle were also to be applied to those who are handicapped but do not fall under Art. 15(4). It is on such a principle that reservation for children of Defence personnel and Ex-Defence personnel appears to have been upheld. The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a disadvantage in giving, education to their children since they had to live, while discharging their duties, in difficult places where



normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of 'political sufferer' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view, neither of the two contentions raised by counsel for the petitioner can be accepted, with the result that the writ petition fails and is dismissed."

10.The above judgment is not helpful to the writ petitioner / appellant in advancing her case that the recruitment notification without reservation for legal heirs of freedom fighters is illegal. We are also of the view that reservation in public employment is a matter of informed choice within the exclusive domain of the Government and the Court cannot interfere with the wisdom of Government or give directions for framing Recruitment Rules in a particular manner.

11.The learned counsel for the writ petitioner / appellant further relied upon a judgment of the Hon'ble Supreme Court in the case of **M.Satyanarayana vs. State of Karnataka and another** reported in **(1986) 2 SCC 512** . The Hon'ble Supreme Court in the case cited by the counsel for the writ petitioner / appellant had an occasion to interpret Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission) Rules, 1984. The decision of the Hon'ble Supreme Court on the interpretation of the rule has no application to the facts of this case.

12.We are fully in agreement with the decision of the learned Single Judge on all the issues raised by the writ petitioner / appellant. The contentions of the writ petitioner / appellant in support of the prayer in the writ petition are wholly unsustainable and we find no merit in this appeal and hence, this appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Records)

/True Copy/



To

1. The Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George, Chennai - 5.

2. The Teacher Recruitment Board,
Department of Collegiate Education,
College Road, Chennai - 6.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 60523
+ 1 CC TO Mr.S.NATARAJAN, ADVOCATE IN SR No. 60063

SRM

TE/KM : 09/11/2016 : 8P/5C

Pre-Delivery Judgment made in
Writ Appeal (MD) No.954 of 2013 against
WP(MD)No.12849 of 2013 and
& M.P(MD)No.1 & 2 of 2013 and 1 of 2014
06.10.2016