

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No. 20559 of 2018

And

W.M.P.No. 24158 of 2018

R.seenivas (Minor)

... Petitioner

Vs.

1. The Government of Puducherry
Rep. by under Secretary
Department of Education
Puducherry.
 2. The Union Territory of Puducherry
Rep. by
Centralised Administration Committee - UG 2018-19
Pondicherry Engineering College Campus
Puducherry 605 014.
 3. The Principal
Rajiv Gandhi Engineering College,
Cuddalore Main Road
Puducherry.
 4. The Principal
The Government Pondicherry Engineering College
Puducherry.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to process and consider the application No. 72717 of the petitioner's son under the category scheduled caste community and make appropriate allocation in accordance with reservation policies and allot a seat to the petitioner at the fourth respondent college on the basis of merit and under the reserved category of scheduled caste and also by considering the representation dated 05.08.2018.

For Petitioner :: Mr. G.Rajan

For RR 1 & 2 :: Mr.C.T.Ramesh
Additional Government Pleader

ORDER

This Writ Petition has been filed by the petitioner, who is a minor, represented by his father. The petitioner's father belongs to Schedule Caste community and the petitioner's father was born in Madurai and belongs to Arundhadhiyar Community, which is a Schedule Caste Community. The petitioner after completing his Diploma in I.T.I course in the year 1984 - 86 stated to have obtained employment in the Electricity Department of Puducherry Government on 02.08.1988. The petitioner was born in Puducherry and completed her school only in Puducherry. The petitioner secured 938 marks in +2 and applied for B.Tech / B.E., and other allied courses to the second respondent. Since the petitioner was not recognised as a candidate belonging to Schedule Caste Community, the petitioner has approached this Court for issuance of a Writ of Mandamus seeking the above said reliefs.

2. The short question arises for consideration in this Writ Petition is whether the candidate belongs to schedule caste in the State of Tamilnadu can get the benefit of reservation in the Union Territory of Puducherry by virtue of his/her residence in Union Territory of Puducherry for more than 15 years.

3. Though the answer to this question has been answered in several precedents, every year the issue is raised by virtue of some developments or on the interpretation of some orders or circulars, which are being issued from time to time.

4. The petitioner, who is a minor, is stated to be the resident of Puducherry. The petitioner admits that he is the native of the State of Tamilnadu and belongs to Arundhadhiyar Community, which is recognised as schedule caste in the State of Tamilnadu.

5. The case of the petitioner is that he is entitled to all the benefits of scheduled caste both in the State of Tamil Nadu and in the Union Territory of Puducherry as 'Arundhadhiyar Community' is a declared scheduled caste both in the State of Tamil Nadu and in the Union Territory of Puducherry.

6. It is the further case of the petitioner that the migration of the petitioner from State of Tamilnadu to Union Territory of Puducherry will in no way change his caste status

since both places the petitioner's community is recognised as a scheduled caste as per S.C and S.T Orders (Amendment) Act, 1976. It is further stated that the petitioner is having a resident certificate of Union Territory of Puducherry and that therefore, he cannot be denied admission by treating his as a candidate belongs to scheduled caste. Surprisingly, the petitioner after referring to the Government Order wherein the benefit of status of scheduled caste is specifically denied to migrants, who are seeking admission to professional colleges, states that such Government Order affects the right of the petitioner under Article 19 to reside and settle in any part of India.

7. The Hon'ble Supreme Court in the case of Marri Chandra Shekhar Rao Vs. Dean, Geth G.S. Medical College and others reported in (1990) 3 SCC 130 has held that a candidate, who is recognised as a member of SC/ST in his original State, on his migration to another state is not entitled to get the benefit of reservation of seats in the medical college. It was further held that the legislature however can make appropriate legislation to effectively deal with the situation where migration is involuntary by force of circumstances.

8. In the case of Action Committee on Issue of Caste Certificate to Schedule castes and scheduled tribes in the state of Maharashtra and another Vs. Union of India, and another reported in (1994) 5 SCC 244, the Hon'ble Supreme Court has held that a person belonging to SC/ST in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to any other State on his migration to that State either for the purpose of employment or for education. It is further clarified that the permanent residence of a person should be considered on the basis of residence of that person as on the notification of the presidential order scheduling his caste or community in relation to that locality.

9. In the case of S.Pushpa and Others Vs. Sivachanmugavelu and others reported in (2005) 3 SCC 1, the Hon'ble Supreme Court has observed that the decision in Marri Chandra Shekhar Rao's case cited supra cannot be made applicable in the Union Territory of Puducherry as it is not a State, following another Judgement of the Hon'ble Supreme Court in the case of T.M.Kanniyan's case reported in AIR 1968 SC 637. The Hon'ble Supreme Court then observed that if a State or Union Territory makes a provision where-under the Benefit of reservation is extended only to such SC/ST which are recognised as such in relation to that Union Territory then such a provision would be valid. It was further observed that there would be no infraction of Clause 4 of Article 16 of our Constitution by virtue of its peculiar geographical position being Governed by the President as laid down in Article 239 extends the benefit of

reservation even to such migrant schedule castes or schedule tribes who are not mentioned in the schedule to the Presidential order issued for such Union Territory.

10. Subsequently, in the case of Subhash Chandra and another Vs. Delhi Subordinate Services Selection Board and others reported in (2009) 15 SCC 458, the Hon'ble Supreme Court has held that the candidate belongs to SC & ST, who migrates to another State or Union Territory cannot be given the benefit of reservation. It is further held that presidential orders preclude Union and States from framing policies concerning reservation and that it cannot be said that the principles laid down in Marri Chandra Shekhar Rao's case cited supra does not apply to Union Territory. Observing that the Hon'ble Supreme Court in S.Pushpa's case has erroneously proceeded on the basis that Marri Chandra Shekhar Rao's case would have no application in relation to Union Territory, the Hon'ble Supreme Court held that the Judgement in S.Pushpa's case is per incurrium. Subsequently, the Hon'ble Supreme Court in State of Uttaranchal Vs. Sandeep Kumar Singh and Others reported in (2010) 12 SCC 794 found that the decision in Subhash Chandra's case by a two Judge Bench holding the larger bench Judgement in S.Pushpa's case as obiter and per incurrium is improper and the matter was also referred to the Hon'ble Chief Justice of India for being assigned to appropriate Bench. The question referred to larger Bench of Hon'ble Supreme Court does not affect the Judgement that was pronounced by the Hon'ble Supreme Court in the first two cases cited above viz., (1990) 3 SCC 130 and (1994) 5 SCC 244.

11. The point in issue was considered directly by a Division Bench of this Court in the case of Pondicherry Scheduled Caste People's Welfare Association Vs. Union of India reported in 2015(6) CTC 418. In the Writ Appeal and Writ Petition, the association and a candidate challenged the policy of Government of Union Territory of Pondicherry extending reservation benefit in educational institution only to the scheduled caste persons belonging to Union Territory of Pondicherry. The learned Single Judge of this Court dismissed the Writ Petition and the Writ Petitioner has preferred an appeal before the Division Bench. The Hon'ble Division Bench of this Court in the said case held that the Writ Petitioners having all the benefit of reservation in Government Service on account of the concession given by the Government of Puducherry cannot seek extension of such benefits for getting admission in educational Institution, which is ear marked exclusively for the scheduled caste of the Union Territory. The Division Bench

further held that the scheduled caste person, who has migrated from another State or Union Territory, cannot claim the status as scheduled caste in Union Territory of Pondicherry.

12. In view of the legal position on the scope of presidential orders and the position that the migrants from other State or Union Territory cannot claim the status of scheduled caste in the Union Territory of Pondicherry, this Court cannot entertain the Writ Petition.

13. As a result, this Writ Petition is dismissed. In view of the above Judgement of Hon'ble Division Bench of this Court following several binding precedents of Hon'ble Supreme Court cited above, the claim of the petitioner is unsustainable in law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Government of Puducherry under Secretary
Department of Education
Puducherry.
2. The Union Territory of Puducherry
Centralised Administration Committee - UG 2018-19
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Puducherry 605 014.
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4. The Principal
The Government Pondicherry Engineering College
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+1cc to Mr.G.Rajan, Advocate Sr.59525

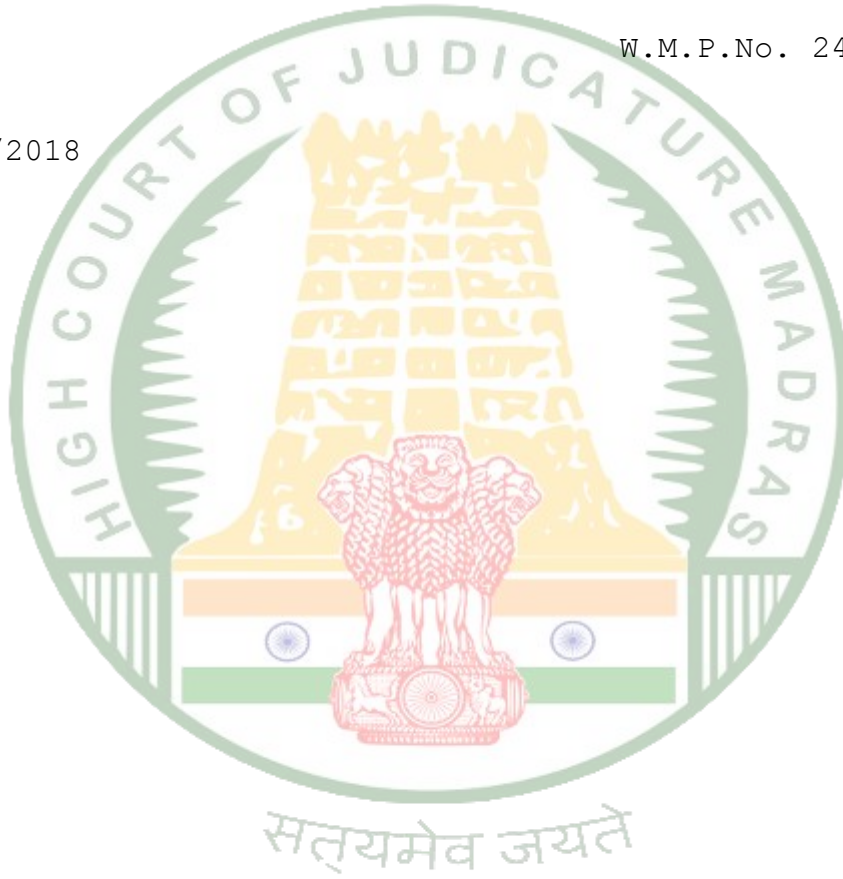
+1cc to the Government Pleader-cum-Public Prosecutor for
Puduchery , Sr.59851

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srg 24/09/2018



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