



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MS.JUSTICE P.T.ASHA

Writ Petition No.19617 of 2019

R.Nirmala

....Petitioner

Vs

1.Union of India represented by the
Government of Puducherry through
the Secretary to Government for Health
and Family Welfare Services,
Chief Secretariat,
Puducherry.

2.The Director,
Directorate of Health and Family Welfare Service,
Puducherry.

3.K.Sippy

4.P.Sakthiraj

5.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

.... Respondents

Writ Petition filed under Article 336 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the fifth respondent in respect of order in O.A.No.499 of 2019 dated 8.4.2019 and to quash the same and consequently direct the second respondent to appoint the petitioner to the post of Staff Nurse under the scheduled Tribe quota with retrospective effect and to grant other consequential reliefs with effect from the date on which the other selected candidates are appointed.



For Petitioner : Mr.V.Ajayakumar
For Respondents : Mr.Syed Mustafa
Special Government Pleader

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O R D E R

(Order of the Court was delivered by K.K.SASIDHARAN, J.,)

The notification issued by the Government of Union Territory of Pondicherry, calling for applications to the post of Staff Nurses was challenged by the petitioner before the Central Administrative Tribunal, Madras Bench in O.A.No.499/2019 on the ground that reservation was not given to the Schedule Tribe community, inspite of the notification issued by the Government of India in G.S.R.1167(E) dated 22.12.2016.

2. The Tribunal, without adjudicating the issue on merits, found a short cut method by directing the first respondent to dispose of the representation in accordance with law. The said order is under challenge in this writ petition.

3. Since the petitioner has taken up a substantial question of law with regard to the failure on the part of the Union Territory of Puducherry to make reservation for the members of the Schedule Tribe community, we directed the learned Special Government Pleader, Puducherry, to take instructions.

4. The learned Government Pleader, by producing a copy of the written instruction received from the Directorate of Health and Family Welfare Services, Puducherry, submitted that the Law Department has advised the Government that the petitioner has to take a fresh community certificate as the certificate taken by her was before 22.12.2016 indicating that she is a migrant. The learned Government Pleader has also produced a copy of the Government Order in G.O.Ms.5/2019/Wel.(SCW.II)2326, Puducherry dated 8th March 2019, giving reservation for the Schedule Tribe for appointment to the post of Group-C and Group-D.

5. The Government Order in G.O.Ms.5/2019/Wel.(SCW.II)2326, Puducherry dated 8th March 2019, per se would go against the spirit of the presidential notification indicated in G.S.R.1167(E) dated 22.12.2016.

6. It is a matter of record that the Union Territory has reserved posts for appointment even in Group-B in addition to Group-C and Group-D. When it comes to Schedule Tribe, the Government has taken a very strange decision that only for appointment for the posts in Group-C and Group-D the Schedule Tribes would be given reservation.



7. We are not in a position to agree with the views expressed by the Government in G.O.Ms.5/2019/Wel.(SCW.II)2326, Puducherry dated 8th March 2019. Even the opinion given by Law Department is against the spirit of the Constitution. Since on the date on which the presidential notification dated 22.12.2016 was issued, the petitioner was a resident of Puducherry, she would qualify for the status of Schedule Tribe in relation to Pondicherry.

8. Since a substantial question of law was raised by the petitioner, the Tribunal ought to have decided the matter on merits, instead of relegating the matter to the Government. It is not for the Government to interpret on the presidential notification.

9. We are informed that out of 50 staff nurses selected, 4 are yet to join, meaning thereby, four posts of staff nurses are vacant. We direct the Government of Puducherry to reserve one post of staff nurse till a decision is taken by the Tribunal in O.A.No.499/2014.

10. The order passed by the Tribunal dated 08.04.2019 is set aside. The O.A.No.499/2019 is remitted to the file of the Madras Bench of Central Administrative Tribunal. The Tribunal is directed to address the issue raised by the petitioner and pass a speaking order on merits and as per law. The interim order granted by this Court directing the respondents to reserve one post vacant would be in operation till a decision is taken one way or the other by the Tribunal. Since the selection process is in mid way, we direct the Tribunal to dispose of the Original Application as expeditiously as possible and preferably within a period of two months from the date of receipt of a copy of this order.

11. The writ petition is allowed as indicated above. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsi.



To

1. Secretary to Government
Union of India
Health and Family Welfare Services,
Chief Secretariat,
Puducherry.

2. The Director,
Directorate of Health and Family Welfare Service,
Puducherry.

3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

+1cc to Mr.V.Ajayakumar Advocate, S.R.No.61513
+1cc to the The Public Prosecutor(Pondy), S.R.No.61667

SVI (CO)
CB(06/09/2019)

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