

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.32083 of 2019

and

W.M.P.Nos.32342 & 32343 of 2019

S.Jemesha

... Petitioner

Vs.

1.The Secretary to Government,
Home Department,
Secretariat, Chennai - 600 009

2.The Additional Chief Secretary to Government,
Home (Courts-VIA) Department,
Secretariat,
Chennai - 600 009

3.The District Collector,
District Collectorate office,
Coimbatore

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Ref.No.5431/2018/E1 dated 02.07.2019 and quash the same as illegal, arbitrary and non est in law and consequently direct the respondent to issue fresh notification within the ambit of Section 32(2) of POCSO Act.

For Petitioner : Mr.G.Mohammed Aseef

For Respondents : Mr.R.S.Selvam,
Government Advocate

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O R D E R

By consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner is practicing as an Advocate for more than seven years with the Coimbatore Bar and his Enrolment No.M.S.No.2266 of 2012 and with lot of aspiration he entered into the legal profession. Apart from practising as an Advocate, he is also preparing for judicial exams and also for Assistant Public Prosecutor exams. While being so, the third respondent issued notification for panel of advocates for appointment to the post of Special Public Prosecutor on tenure basis for conducting prosecution

cases involving sexual assault and sexual harassment of children registered under Protection of Children from Sexual Offences Act, 2012 in the notified Mahila Courts of Coimbatore District. In the notification they fixed 10 years experience as eligibility criteria for making application, which is contrary to Sections 24 (7), (8), (9) of CrPC and POCSO Act. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the minimum eligibility for Public Prosecutor as per Section 24 of CrPC is seven years experience and also under POCSO Act. Contrary to the said statutory provisions, the third respondent has fixed the eligibility criteria as 10 years experience, which is impermissible and unsustainable.

4.Considering the facts and circumstances, it has been mentioned in the impugned order that Section 24 of the Code of the Criminal Procedure stipulates that an Advocate who has been in the practice for not less than seven years may be appointed as Public Prosecutor or an Additional Public Prosecutor and not less than ten years may be appointed as Special Public Prosecutor. In the present case, no records have been produced by the petitioner showing that the third respondent has malafidely fixed the eligibility criteria.

5.It is the absolute discretion of the State to fix eligibility criteria for the appointment of Public Prosecutor or Additional Public Prosecutor who will be conducting POCSO cases. In Section 24 of CrPC and Section 32(2) of POCSO Act, only the minimum eligibility criteria for such appointment has been mentioned, that does not mean only the said criteria should be fixed. Further, the third respondent is well within the power to fix the eligibility criteria as either seven years or ten years.

6.In the present case, they called for application for conducting POCSO cases, for which they fixed eligibility criteria for making application as ten years experience. Since the State has every right to fix the eligibility criteria, this Court cannot interfere with the eligibility criteria fixed by the third respondent unless it is contrary to law.

7.With the above observations, the writ petition is dismissed. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home Department,
Secretariat, Chennai - 600 009

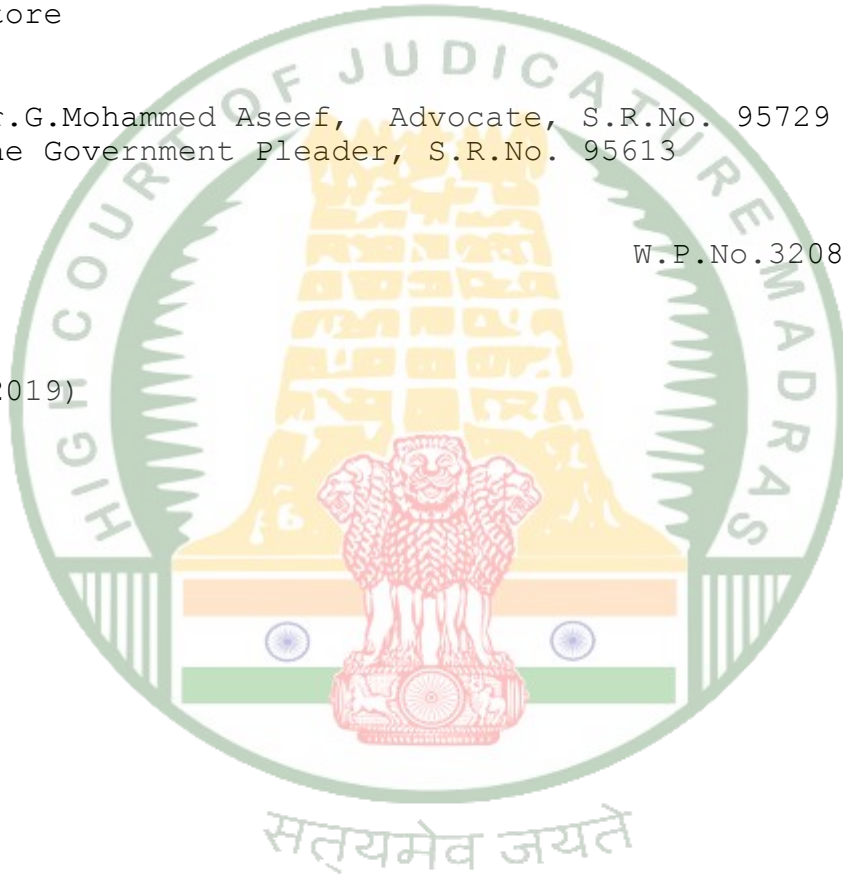
2.The Additional Chief Secretary to Government,
Home (Courts-VIA) Department,
Secretariat, Chennai - 600 009

3.The District Collector,
District Collectorate office,
Coimbatore

+1cc to Mr.G.Mohammed Aseef, Advocate, S.R.No. 95729
+1cc to the Government Pleader, S.R.No. 95613

W.P.No.32083 of 2019

PP (CO)
GN (25/11/2019)



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