

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.14531 of 2020 and
W.M.P.Nos.18027 & 18028 of 2020

R.S.Poorvi

... Petitioner

Vs

1.The District Collector
Chennai District
Singaravelar Maligai
Rajaji Salai
Chennai - 600 001

2.The Revenue Divisional Officer
Central Chennai Division
Ambattur, Chennai - 600 053

3.The Tahsildar
Egmore Taluk
Egmore, Chennai - 600 008

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records of the rejection order of the 3rd respondent Tahsildar, Egmore, Chennai made in the petitioner's application No.TN-8620200912127 dated 12.09.2020 for EWS certificate of the year 2020-2021 and quash the same as illegal and consequently direct the 3rd respondent to issue EWS certificate to the petitioner for the year 2020-2021.

For Petitioner : Ms.Sudarsana Sundar
for Mr.S.Vijayakumar

For Respondents: Mr.V.Shanmugasundar,
Special Govt. Pleader

O R D E R

In the Indian Higher Education, a percentage of seats is reserved for students, who belong to Scheduled Castes,

Scheduled Tribes, Backward Class and Socially and Educationally Backward Categories. A family having a gross annual income below Rs.8.00 Lakhs, are to be identified as Economically Weaker Sections, for the benefit of reservation. The said reservation, sometimes, affects the basic right of a person, which is freedom of choice, i.e. it forces a deserving student, to opt for a course, which is not his/her priority choice. The petitioner herein, is one such person, who could successfully complete her MBBS degree course, fighting against many odds on her way, now she is in pursuit of PG Medical Course.

2. According to the petitioner, she had applied for a certificate under the category of Economically Weaker Section, to enable her to secure a seat in the Post Graduate Medical Course, wherein 10% is reserved for Economically Weaker Sections in the General Category. The criteria for getting a certificate as Economically Weaker Section (EWS) is prescribed in clause 4 of the Office Memorandum No.36039/1/2019-Estt (Res), Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated 31.01.2019. A person, whose family, has gross annual income below Rs.8.00 Lakhs would be identified for the benefit of the said reservation. The said income would also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.

3. The criteria also excludes persons from being identified as EWS irrespective of the family income, if the family owns or possess 5 acres of agricultural land and above, residential flat of 1000 sq.ft. and above, residential plot of 100 sq. yards and above in notified municipalities, residential plot of 200 sq. yards and above in areas other than the notified municipalities, as defined under the criteria.

4. The petitioner, has stated that, her mother was suffering from cancer and succumbed to death on 30.11.2019, after a battle of five years. The father has got no definite income, as he was not on a permanent job. She has further stated that her family had struggled hard to save the life of petitioner's mother and lost even the little resources possessed by the family. After the completion of the medical course, the petitioner had applied for E.S.I.C. Medical College & Hospital, E.S.I. Corporation, K.K.Nagar, Chennai - 78 and was appointed as a Junior Resident in the Department of Orthopaedic on tenure basis for a period of one year from 16.8.2019 to 15.8.2020 with a basic pay of Rs.56,100/-. The petitioner has also filed all the payslips issued to her by the E.S.I. Corporation from 01.08.2019 to 31.03.2020 along with Income Tax Returns filed by her. Her father has been

working as an Assistant to an Advocate and has not been having a regular income. Petitioner has a younger sister pursuing her education by getting scholarship.

5. According to her, she had earlier applied for EWS certificate for the year 2019-2020 and the same has been issued by the Tahsildar, Egmore/3rd Respondent, on 30.09.2019 in Certificate No.C3/4000/19 dated 25.09.2019. As the mother of the petitioner passed away, she could not participate in the entrance examination, that was held during December 2019 and therefore, the petitioner could not get into a Master's degree course for the academic year 2019. Despite getting the above EWS certificate, the same could not be used for the reasons stated above. As the said certificate was valid for one year, the petitioner had applied once again for the same for the year 2021 before the third respondent. However, the same was rejected on 23.09.2020.

6. The order of rejection only states that the applicant family has income of more than Rs.8.00 Lakhs and hence cannot be considered. Therefore, the only question that has to be considered is, whether petitioner's family has got an income of less than 8.00 lakhs and fulfil the other criteria as per the Memorandum?

7. Admittedly, the petitioner was working with E.S.I.C. Hospital, K.K.Nagar, Chennai from 16.08.2019 to 15.08.2020 and she has also produced her salary slips. As per the official memorandum, the above said income slab of Rs.8.00 Lakhs is for the financial year prior to the year of her application. The petitioner has applied for the certificate on 18.08.2020 and again on 12.09.2020. Therefore, the previous financial year from the date of application would be April, 2019 to March, 2020. Admittedly, the petitioner had joined with E.S.I.C. Hospitals from August 2019 for one year tenure basis. Therefore, the cut-off month would be March 2020 for the previous financial year. Computing her salary from August, 2019 to March, 2020, her gross income would be Rs.7,37,877/-, which is certainly less than Rs.8.00 Lakhs. As per her income tax returns for the Assessment Year 2020-2021, the gross salary is shown as Rs.6,37,226/-.

8. Similarly, she had also filed the Income Tax Returns of her father for the Assessment Year 2020-2021, which is "Nil". Therefore, the gross salary to be computed as per the official memorandum is Rs.7,37,887/-, which is less than Rs.8.00 Lakhs.

9. Admittedly, the petitioner's family does not own any agricultural land or a residential flat of 1,000 sq.ft. and above or a residential plot of 100 or 200 yards and above. The petitioner has disclosed the income of the family, which includes that of her father and her younger sister, who is

still a student, without any income. While so, the third respondent, with non-application of mind, has wrongly computed that the family income exceeds more than Rs.8.00 Lakhs and has rejected the application for EWS. Having issued a certificate for the previous year, which was, in fact, valid till 29.09.2020, the third respondent, ought to have verified any improvement in the income of the family afterwards, to dis-entitle her for the certificate.

10. The learned Special Government Pleader, who appeared for the respondents, had furnished a typed set of papers, wherein, he has produced the statement given by the petitioner on 30.09.2019, which is for the previous academic year and based on which, the third respondent himself has issued a certificate. For the present year, there is no statement recorded by the third respondent. However, he himself has computed income of the petitioner and added father's income as Rs.1,50,000/-, in the absence of any evidence or enquiry, to make it come above Rs.8.00 lakhs and rejected her application. The very purpose of keeping the validity of the Income Certificate for an year is to assess the rise or fall in income in an year of the family. In such a situation, merely because a person earned some amount in a financial year without any substantive material, the authorities cannot negative their request for Income Certificate.

11. It is the specific case of the petitioner that, after the death of her mother in the month of November, 2019, her father has not been going for any work, as he is mentally disturbed. Therefore, in the absence of any evidence, the Revenue Inspector has presumed that the income of the family is above Rs.8.00 Lakhs and rejected the application of the petitioner.

12. From the affidavit of the petitioner filed in support of the writ petition, it could be seen that the petitioner is a hard working student and having secured a seat in the Government Medical College, Chennai, she deserves for a certificate to be issued considering the economic conditions of the family.

13. The petitioner, who is otherwise competent, is in financially disadvantageous position. The policy of the government is to give a push to such persons, who hail from the disadvantageous group. That is the reason why, it is made clear that the reservation not only include backward class, but also the financially backward people. Though the petitioner belongs to a forward community, as she is economically backward, even as per the policy of the government, she has to be given the certificate of economically weaker section, to enable her to pursue her higher education.

14. Reservation in higher education has become a serious issue now. It has created differences between different sections of the society. Knowledgeable and deserving students are not able to avail the opportunity in education. However, students who could not make it to the merit but belong to the reserved category enjoy the opportunities. Due to this many students are unable to chase their dreams and get success. No doubt, it is true that the depressed and oppressed people should be given an opportunity for upliftment, without any compromise in quality in higher education. Similarly, merely persons are from forward community, but financially backward, their due place should not be denied on account of reservation, which is the object of introduction of EWS reservations. Persons like the petitioner, who have scored well in the exams, by their hard work are given a feeling of that they are not given the same treatment and criteria of selection though they are belonging to economically weaker section. As the petitioner is a meritorious candidate and also has established that her income is less than Rs.8.00 Lakhs, satisfying the criteria fixed for getting the Economically Weaker Section certificate, she should have been issued the certificate.

15. In the light of the above discussion, rejection order dated 12.09.2020 passed by the third respondent, is not sustainable and hence the same is set aside. Accordingly, the third respondent, namely the Tahsildar, Egmore Taluk, Chennai, is directed to issue a fresh Economically Weaker Section certificate to the petitioner herein, forthwith, to enable her to pursue her higher education.

16. With the above direction, the writ petition is disposed of. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

To

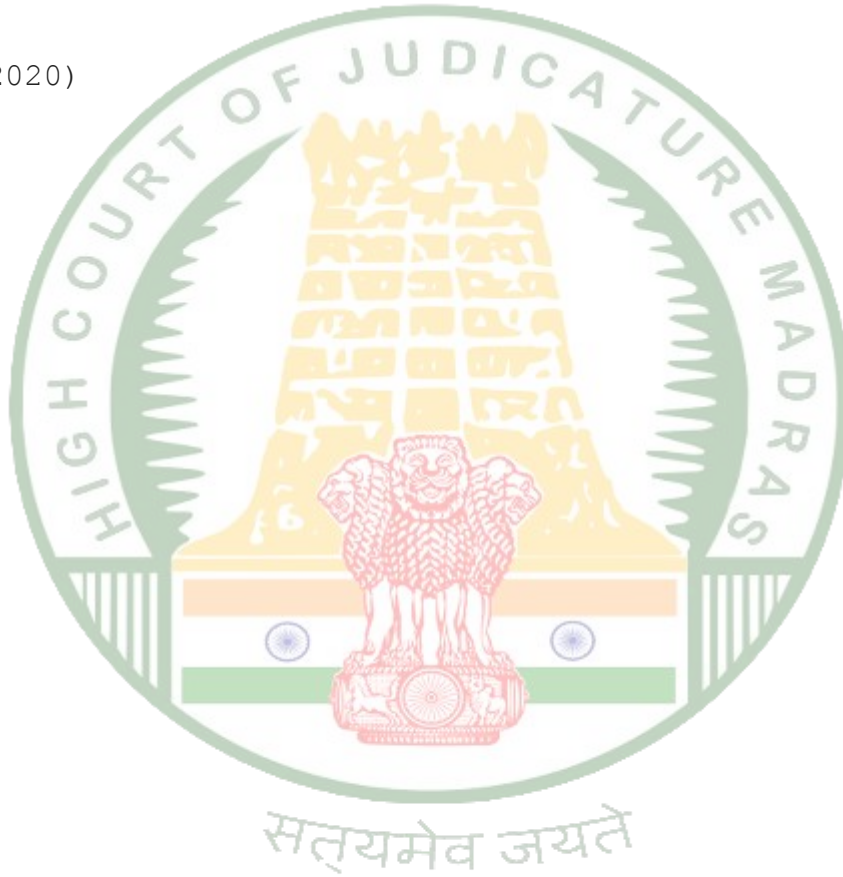
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SAI (CO)
CB(23/11/2020)



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