



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.11492 of 2017

and

W.M.P. (MD)Nos.8847 of 2017 and 12712 of 2019

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... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Secretary,
P & AR Department,
Fort St.George, Chennai.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai-3.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to consider the petitioner's candidature under the Backward Classes Muslim Category (BCM) and permit the petitioner to participate in the further course of selection in connection with a recruitment to the post of Typist subject matter of the notification of the second respondent in notification No.15/2016 dated 09.08.2016, in the light of the decision of this Court in the case of **TNPSC vs. M.Younus** reported in **[2014 1 MLJ 232]**.

For Petitioner	: Mr.M.Mahaboob Athiff
For R1	: Mr.A.Karthick
	Government Advocate
For R2	: Mr.D.Sivaraman

O R D E R

This writ petition has been filed for a direction to the second respondent to consider the petitioner's candidature under the Backward Classes Muslim Category (BCM) and permit the petitioner to participate in the further course of selection in connection with the recruitment to the post of Typist.

2. The case of the petitioner is that she belongs to Nadar Community and she is a graduate in education. While so, she fell in love with one Mr.S.Syed Jahangir, who married the petitioner in the year 2005. Subsequently, she converted to Islam, on her own volition, on 17.01.2005. The Tahsildar, Ramanathapuram has also



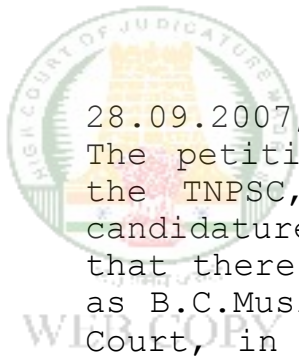
issued a community certificate on 28.09.2007, certifying that she belongs to Backward Class community. The second respondent issued a Notification dated 09.08.2016, calling for applications to various posts in the year 2015 - 2016. The petitioner has applied for the said post under Backward Class Muslim Community and she secured an overall rank in TY 2853 and she was in 36th place. She attended the certificate verification on 10.05.2017. However, the second respondent verified the petitioner's certificate and stated that the petitioner would be considered only as a candidate under the OC Community. Hence, the petitioner has made a representation to the second respondent on 19.05.2017, requesting him to permit the petitioner to participate in further course of selection and to consider her candidature as she belongs to BCM category. Despite receipt of the same, till date no order was passed. Hence, the petitioner has filed the present writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner submits that the issue involved in the present writ petition is no more *res integra* and the very same issue was considered by this Court, in the case of the ***Chairman, TNPSC v. M.Younus*** reported in ***(2014) 1 MLJ 233***, wherein, this Court has held that once the petitioner obtained valid community certificate issued by the competent authority certifying that he belongs to Muslim and further, the petitioner secured the required cut off marks for selection, under the quota reserved for BC (Muslim), the candidature cannot be rejected on the ground that he belongs to B.C. Hindu or B.C. (Muslim). Hence, he prayed for allowing of this writ petition.

4. The learned Standing counsel appearing for the second respondent submits that as per the Government Letter, dated 22.08.2012, regarding the entitlement of reservation to candidates converted from Hinduism to Islam, the petitioner was not considered for reservation as BC Muslim, but treated as "Others". In such a backdrop, she became ineligible for the age concession applicable to BC as she has crossed the maximum age limit prescribed for "Others" category i.e., 30 years as mentioned in the Commission's Notification, dated 09.08.2016. Hence, her application was rejected as over aged. As per the clarification received from the Government, the petitioner has been treated under "Others" category. Hence, he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned counsel for the respondents and perused the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the petitioner belongs to Hindu Nadar Community and she converted to Islam on 17.01.2005. To that effect, the Tahsildar, Ramanathapuram has also issued a Community Certificate, on



28.09.2007, certifying that she belongs to Backward Class Community. The petitioner has produced the said community certificate before the TNPSC, while participating in the recruitment. However, her candidature was rejected, based on the Government Letter, stating that there is no Government Order available to treat the petitioner as B.C.Muslim. However, the very same issue was considered by this Court, in the case of the **Chairman, TNPSC v. M.Younus** reported in **(2014) 1 MLJ 233**, wherein, in Paragraph Nos.5, 6, 7, 8 and 9, this Court has held as follows:

"5. The learned single Judge, taking note of the undisputed fact of conversion of first respondent from Hinduism to Islam, as well as issuance of community certificate to the first respondent certifying that the first respondent is a Muslim Lebbai, allowed the writ petition stating that the TNPSC is bound by the community certificate issued by the competent authority. The said order is challenged in these appeals contending that conversion to another religion forfeits the reservation benefits. The learned single Judge considered the issue and gave a finding that conversion of the first respondent from Hinduism to Islam having not be disputed and the competent authority having issued community certificate, TNPSC cannot ignore the community certificate issued by the competent authority.

6.The issue as to the validity of the community certificate issued by the competent authority was considered in the decision reported in *R.Kandasamy v. The Chief Engineer, Madras Port Trust*, 1997 WLR 806. In the said decision it was held that so long as the community certificate issued by the competent authority is not cancelled, the authorities cannot decline to take into consideration the same and insist upon fresh community certificate from the Revenue Divisional Officer.

7. In the decision reported in *Punit Rai v. Dinesh Chaudharay*, AIR 2003 SC 4355 : (2003) 8 SCC 204: LNIND 2003 SC 682 it is held that the question whether a person belongs to a particular caste or not has to be determined by the statutory authority.

8.In view of the above decision and as the first respondent is having valid community certificate issued by the competent authority concerned certifying that he belongs to Muslim Lebbai, and the first respondent having secured the required cut off marks for selection under the quota reserved for BC (Muslim), the learned single Judge was right in allowing the writ petitions."

7. A perusal of the above said decision makes it clear that the Public Service Commission have no jurisdiction to go into the genuineness of the community certificate, which was issued by the



competent authority, and the same was considered by the Full Bench of this Court.

8. Admittedly, the petitioner obtained the community certificate from the competent authority and the same was produced before the Public Service Commission. However, without accepting the said certificate, the Public Service Commission has conducted a roving enquiry, which is not sustainable one. In such view, non-consideration of the petitioner's candidature is incorrect. Hence, this Court directs the second respondent to consider the petitioner's candidature for the above said post of Typist, if otherwise eligible.

9. Accordingly, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Secretary,
State of Tamil Nadu,
P & AR Department,
Fort St.George, Chennai.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town, Chennai-3.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-11643[F] dated 17/03/2021)
+1 CC to M/s.SPL GP (SR-11873[F] dated 17/03/2021)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12290[F] dated 18/03/2021)

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