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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.12.2021
Pronounced on	06.01.2022

CORAM :

The Honourable Mr.Justice M.DURAI SWAMY
and
The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

Writ Appeal No.1656 of 2016
and
C.M.P.No.20502 of 2016

A.Chandirakala ... Appellant/Petitioner

vs.

1. Director of Collegiate Education,
Chennai - 600 006.
2. Secretary,
Kandaswami Kandar's College,
Velur (Namakkal) - 638 182,
Namakkal District.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 23.11.2016 made in W.P.No.2261 of 2016 and allow the present Writ Appeal.

Prayer in W.P.No.2261 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India praying to for a Writ of certiorarified Mandamus calling for the records pertaining to the notification issued by the 2nd respondent as published in New Indian Express dated 23.12.2015 and quash the same and direct the respondents to fill up the vacancies of Assistant Professor applying the roster for each department separately.

For Appellant : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondent -1 : Mr.Vadivelu Deenadayalan,
Special Govt. Pleader

For Respondent -2 : Dr.R.Gowri



JUDGMENT

The Writ Appeal No.1656 of 2016 is directed against the order dated 23.11.2016 passed by the learned Single Judge in W.P.No.2261 of 2016, dismissing the Writ Petition.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. The facts of the case in a nutshell:

The appellant was appointed as Lecturer (Tamil) in the second respondent college and worked there from 01.07.2003 to 30.12.2005. Thereafter, the appellant worked as Lecturer in Vivekananda Arts College, Thiruchengode between 2005 and 2006. The second respondent issued a notification dated 23.12.2015 calling for applications to fill up the post of Assistant Professor in various discipline. In response to the above notification, the appellant submitted her application for the post of Assistant Professor (Tamil) and after submitting the application, the appellant came to know that while issuing the notification dated 23.12.2015, the second respondent did not follow the communal rotation in respect of the vacancies which were sought to be filled up department-wise, rather, the second respondent clubbed all the posts of Assistant Professor and applied the roster system, which is illegal. Only on this ground, the appellant has challenged the notification dated 23.12.2015 issued by the second respondent by filing the subject matter Writ Petition.

4. The learned counsel for the appellant contended that the Rule of reservation is a Constitutional mandate which has to be followed by the second respondent while filling up the vacancies. The Government has also made an amendment in respect of the roster, reserving vacancies for B.C.(Muslim) and B.C. (Christian) and the second respondent ought to have followed the roster system from the last appointment in the second respondent college. The last recruitment was made by the second respondent in the year 2013, in which the last roster candidate was from Scheduled Caste Community.

5. The learned counsel for the appellant further contended that the second respondent ought to have issued the notification commencing the roster from M.B.C. because in the previous turn the last candidate was appointed from Scheduled Caste community. Therefore, the second respondent ought to have followed the roster system from Most Backward Class, Backward Class, General Turn, Scheduled Caste etc., If the roster system is followed properly, the appellant, who belongs to Most Backward Class, would have got the chance of getting selected and appointed to the post of Assistant Professor (Tamil) and non-adherence to the



roster system has deprived the appellant's employment opportunity.

6. The learned Special Government Pleader appearing for the first respondent contended that in S.L.P(C).No.4466 of 1992 filed against the order made in Writ Appeal No.1296 of 1991 (University of Madras Vs. Madras University Teacher's Association), the Apex Court upheld the decision of the High Court that the roster system should be followed treating each department of the University as a Single Unit. In the case of Aided colleges, the Post of Assistant Professors were being filled by direct recruitment. Therefore, the roster system has been followed taking into consideration the whole college, comprising of all departments, as a single unit. Hence, there is no chance to defeat the reservation policy of the Government and also denial of fundamental rights. In respect of the departments in each college, it cannot be considered as a single unit for the purpose of recruitment, since, it would affect the reservation policy within a college as a whole and practically the same is not feasible. If each department in Aided colleges are considered as a single unit, very few posts in each department would suffer communal rotation. Therefore, if a person gets appointed in each department treating the department as a single unit, the fourth and fifth level rosters (considering three posts are filled in a single occasion by treating each department as a single unit) will not get a chance for an appointment. On the contrary, if the college on the whole is treated as a single unit, clubbing all the departments, all the communities in the 200 points roster system will have more chances of getting an appointment. For example, if a college is permitted to appoint three posts in one department, as per the G.O.Ms.No.55, Personnel and Administrative Reforms Department dated 08.04.2010 schedule III, the candidates belonging to the following communities mentioned in the rotations will be appointed:

- (i) General Turn
- (ii) Scheduled Caste (Arunthathiyars on preferential basis)
- (iii) Most Backward Classes and Denotified Communities

Hence, the fourth rotation being Backward Classes (other than Backward Class Muslims) and fifth rotation general turn and so on will be loosing their chance. Therefore, it is better to club all the departments in Aided Colleges as a single unit while filling very few number of Assistant Professor posts in each department which will be more beneficial to all sections of communities and genders.

7. The learned Special Government Pleader further contended that on the above mentioned facts the roster system



followed in the University, department wise, cannot be applicable to Aided Colleges treating each Department in the college as a unit as there are many entry level posts in each departments of Universities, so that all the communities will have a chance of getting appointment, while treating each department as a single unit. Therefore, the policy of implementing roster system in the second respondent college, treating all the departments as a single unit is maintainable under law.

8. The learned counsel appearing for the second respondent college contended that it is clearly indicated in the notification dated 23.12.2015 that the post of Assistant Professor (Tamil) is earmarked for a candidate belonging to General Turn. Therefore, the appellant having applied for the post knowingly well that it is meant for a candidate from general turn cannot have any grievance. The notification dated 23.12.2015 was issued by strictly following the guidelines issued in G.O.Ms.No.55, Personnel and Administrative Reforms Department dated 08.04.2010. Even otherwise, the candidate who is presently selected by the second respondent college belongs to a Most Backward Class Community and therefore, the appellant may not have any grievance over such selection.

9. The Learned counsel for the second respondent further contended that Rule 11 (4) of the Tamil Nadu Private Colleges (Regulations) Rules, 1976 stipulates that if an educational agency establishes and administers more than one college, then the colleges under the control of that educational agency shall be treated as one unit. The learned counsel also brought to the notice of this Court that as per Rule 11 (4) (ii) the posts lying vacant shall be filled up by promotion or direct recruitment. Therefore, while resorting to the selection process, the second respondent college considered the claims of the qualified in-service candidates in the college, meaning thereby, the college by itself is a single unit.

10. The learned counsel also drew an analogy that in the case of University there may be several departments and each such department will have separate cadre strength, but the selection process resorted to by an University cannot be compared with that of the second respondent college. Further, the selection committee has taken note of the fact that the posts of Principal, Physical Education Teacher, Language Professor and professors all comes within a single unit. In such case, if department-wise roster is followed, it will pave way for monopoly of open category and all other categories will have their turn only after the retirement of the newly appointed Assistant Professors, thereby defeating the object and purpose of reservation. In any event, the appellant failed in her



attempt to get selected. The petitioner attended the interview on 25.01.2016. The selection process was completed and the selected candidates have also joined the post on 27.01.2016. The appointments have been made in a transparent manner by following the Rules of reservation.

11. It is seen from the communication dated 18.05.2016 sent by the Joint Director of Collegiate Education, Trichy, that as far as the Government Aided Colleges are concerned, for the post of Lecturers, communal roster is being applied by clubbing all the departments as a single unit and it is also informed that the approval of the appointment is being made by the Joint Director of Collegiate Education Department, Trichy. The Lecturers appointed in the Government Aided Colleges in the Trichy Zone for the Academic Year 2014-16, were not selected under department wise communal roster system. At the time of appointment to the post of Assistant Professors, all the departments have been clubbed as a single unit and the roster system was being followed and the appointments have been made only in accordance with the roster system.

12. In the letter dated 02.06.2016 issued by the Public Information Officer and Assistant Director (G.A.C), Directorate of Collegiate Education, Chennai, to the second respondent college, it has been mentioned that as far as the Government Aided Colleges are concerned, each and every college is treated as a separate unit.

13. From the letter (2D) No.58, Higher Education (H1) Department dated 19.04.2002, it is seen that the Tamil Nadu Private Colleges (Regulations) Rules, 1976 clearly specifies that every College by itself is a single unit and under Rule 11, it reserves percentage of communal reservation for respective categories under Rule 11 (4), it goes further on to explain that "if an educational agency has established and administered more than one college, then the colleges under the control of that educational agency shall be treated as one Unit". For example, the Pachaiappas College Trust administers 6 colleges and all these colleges are treated as one unit. Under Rule 11(4)(ii), the posts shall be filled up by promotion or direct recruitment. The committee, while making promotion, shall consider the claims of all the qualified teachers in that college, treating the college by itself as a single unit. The college shall be taken as one unit, unlike departments in Universities of the Government Colleges. The situation in Aided colleges is different from departments in a University. In the University, there are several departments and each department will have separate cadre strength on its own. In the University, by direct recruitment, Professors, Readers, Associate Professors and Assistant Professors are being selected. But in an aided



college, Assistant Professor is the only entry grade and recruitment to all other posts is only by promotion. Therefore, each department in a University is considered as unit and appointments are made department-wise.

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14. On a perusal of the materials available on record, it is clear and evident that the instruction of the first respondent is strictly followed by the second respondent college, otherwise the appointments will not be approved by the first respondent. Hence, there is no chance of violating the roster at any point of time by any Government Aided Colleges. The roster system followed in the University, department wise cannot be made applicable to the Aided Colleges, treating each department in the college as a single unit, since there are many entry level post in each department of the Universities. In such case all the communities will have a chance of getting appointment while treating each department as a single unit. Therefore, the policy of implementing roster system in the second respondent college, treating all the department as a single unit is proper under law.

15. The Apex Court in the case of S.L.P(C).No.4466 of 1992, (University of Madras Vs. Madras University Teacher's Association), directed the Universities to follow the roster system taking each department as an individual unit for each cadre and not pooling each cadre for the whole University together. Therefore, each department in the Aided colleges cannot be considered as a single unit for the purpose of recruitments since, it would affect the reservation policy within the college as a whole. Further, if each department has been considered as a single unit in Aided colleges, communal roster can be followed as per rules. The Judgment made in W.A.No.1296 of 1991, which was also confirmed by the Hon'ble Supreme Court in S.L.P(C) No.4466 of 1992, is in respect of Madras University and not in respect of Government Aided Colleges. Hence, the ratio laid down in the said judgment is not applicable to the case on hand.

16. Considering the above facts and circumstances of the case, the order dated 23.11.2016 passed in W.P.No.2261 of 2016 by the learned Judge is hereby confirmed. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



1. The Director of Collegiate Education,
Chennai - 600 006.

2. The Secretary,
Kandaswami Kandar's College,
Velur (Namakkal) - 638 182,
Namakkal District.

+1cc to M/s.C.S.Associates for Mr.P.Ganesan, Advocate, S.R.No.946

+1cc to the Government Pleader, S.R.No.1654 [29/04/2022]

W.A.No.1656 of 2016

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