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W.P.No.27295 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27295 of 2022

S.Varsha

.... Petitioner

-Vs-

1.The Secretary
Health and Family Welfare Department
Secretariat, Chennai 600 009.

2.Directorate of Medical Education
Chetpet, Chennai 600 031.

3.The Selection Committee
Directorate of Medical Education
Kilpauk, Chennai 600 010.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents / authorities to allot a medical seat to the petitioner by considering the petitioner's representation dated 23.09.2022 in the light of G.O.Ms.No.438 of 2020 within such time as may be stipulated by this Hon'ble Court.

For Petitioner : Mr.A.V.Raja

For Respondents : Mr.P.Muthu Kumar, Government Pleader
Assisted by Mr.Stalin Abhimanyu-for R1 & R2
Ms.M.Sneha,
Standing Counsel – for R3



W.P.No.27295 of 2022

ORDER

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The prayer sought for herein is for a Writ of Mandamus directing the respondents / authorities to allot a medical seat to the petitioner by considering the petitioner's representation dated 23.09.2022 in the light of G.O.Ms.No.438 of 2020 within such time as may be stipulated by this Court.

2. The petitioner claims that, she belongs to a very poor family as her father is working as Night Watchman in a private mill. With that background, the petitioner was able to secure 472 out of 500 marks in the academic year 2018-19 in 10th Standard (SSLC). Subsequently, in the year 2020-21 she was able to secure 490 out of 600 marks in the +2 Higher Secondary examination. Despite the good performance made by the petitioner, she could not achieve her desire to get a seat in Medicine course.

3. Subsequently, she joined in some paramedical course in Critical Care Technology with the help of a private NGO. In this context, it is the grievance of the petitioner that, for the last two years the petitioner has attempted to write NEET examination for joining Medicine course. Last year she was able to score 210 marks in NEET and this year she was able to score 259 marks and despite that, the petitioner could not secure a seat even under the 7.5% reservation provided to the students who studied in Government schools as the petitioner



W.P.No.27295 of 2022

studied in a private aided school. If it is extended to the students who studied in private aided schools also, the petitioner would have been in a position to reach the zone of consideration for getting admission in the Medicine course. Only in that context, after having given a representation to that effect to the respondents on 23.09.2022, since the same has not been considered, she has approached this Court by filing the present writ petition.

4. Heard Mr.A.V.Raja learned counsel for the petitioner, who after having reiterated the aforesaid facts, would seek the indulgence of this Court.

5. Heard Mr.P.Muthukumar, learned Government Pleader assisted by Mr.Stalin Abhimanyu, learned Additional Government Pleader appearing for respondents 1 and 2, and Ms.M.Sneha, learned Standing Counsel for the third respondent.

6. Learned Government Pleader submits that, the issue as to whether the benefit given to the students who studied in the Government schools ie., 7.5% reservation in educational institutions for higher courses including Medicine to be extended to the students studied in private aided schools also, is no more *res integra*, as that issue has been raised in a batch of writ petitions, where the validity of the Act itself was questioned. A Division Bench of this Court, by order



W.P.No.27295 of 2022

dated 07.04.2022 inter alia has decided the said issue in the following terms.

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"11.10. Upon consideration of the material on record, firstly, we find that the arguments as to pre-conceived notion as unacceptable. Even though at the time of referring the matter to the Commission, specific reference was not made to the Aided Schools, nevertheless, the Commission has gone into the factors about the Aided Schools also. Once the report was laid, the Government has applied its mind and has taken a decision. Therefore, we do not see any pre-conceived notion in leaving out the aided schools.

11.11. As against the submission that the Aided Schools are similarly placed to that of the Government School students, it is submitted by the respondent State that even though Aided School students are also in a disadvantageous position, they are still better than that of the Government School and that they have taken the degree of harm and upon considering a scientific report of the Commission, they have not included the Aided Schools. The learned Senior Counsel sought to factually assail the report of the commission. This Court cannot step in and render factual findings as to the equality as if it is an Appellate authority and neither there is any wherewithal in the form of evidence nor it can make such an inquiry while exercising the jurisdiction of judicial review examining the constitutionality of the provisions and therefore, we are unable to accept the contention of the learned Counsel for the petitioners. Hence the ground of attack of the impugned



W.P.No.27295 of 2022

legislation of discrimination fails and therefore, the Writ Petitions which attack the constitutionality of the impugned legislation on the ground of the non-inclusion of the Aided Schools are bound to fail and are dismissed accordingly.”

7. By relying upon this decision, the learned Government Pleader would contend that, since the same issue as has been raised in this writ petition, was already considered and rejected by the Division Bench, the question of seeking for extension of such benefit to the students studied in the private aided schools also does not arise. Therefore, on that premise the petitioner cannot seek the indulgence of this Court after giving a representation to the respondents and therefore the writ petition deserves to be rejected, he contended.

8. As has been rightly pointed out by the learned Government Pleader, the issue raised in this writ petition has already been considered by the Division Bench in the judgment referred to above dated 07.04.2022 (**Preethika -vs- State of Tamil Nadu and Others**) in **W.P.Nos.20083 of 2021 etc., batch**, where the First Bench of this Court has held in unequivocal terms that, those writ petitions which attack the constitutionality of the impugned legislation on the ground of non-inclusion of the Aided Schools are bound to fail and are dismissed. Therefore, the plea raised in this writ petition since has already been decided in a batch of cases cited supra, the relief sought for by the petitioner



W.P.No.27295 of 2022

cannot be granted. Therefore, no mandamus can be issued to the respondents to consider the petitioner's representation dated 23.09.2022. Hence, the writ petition fails and therefore it is liable to be dismissed.

9. However, before parting with the case, this Court wants to observe that, despite the dismissal of this writ petition as well as the law having been declared by the Division Bench of this Court as referred to above by the order dated 07.04.2022 in **(Preethika -vs- State of Tamil Nadu and Others)**, it is open to the State Government to re-visit this issue of extending the benefit of reservation of 7.5% also to the students who studied in the private aided schools.

10. The reason being that, insofar as the private aided schools are concerned, in those schools also, majority of the students are from non-affluent families and the entire aid is being paid by the Government. Therefore, insofar as the economic criteria or social backwardness are concerned, there are many similarities between the students who study in the Government schools as well as the private aided schools.

11. The Government Schools may form a category of its own, however the same criteria can be invoked for the schools which are being aided fully by the State Government because, several crores of rupees are being spent from the



W.P.No.27295 of 2022

State Exchequer as 'aid' to these institutions. Only based on this aid provided by the Government these schools are being run, where they impart education to majority of the students belonging to non-affluent socio-economic background and therefore, the benefit of 7.5% reservation can be extended to these kind of students also, who study in the aided schools. However, it is purely a policy decision to be taken by the State Government. Therefore, this Court's observation can only be taken as a further aid to re-visit the issue.

12. With these observations, this writ petition is dismissed. No costs.

13.10.2022

Index : Yes

Internet : Yes

KST

Note : Issue order copy tomorrow (14.10.2022)

To

1.The Secretary, Health and Family Welfare Department
Secretariat, Chennai 600 009.

2.Directorate of Medical Education, Chetpet, Chennai 600 031.

3.The Selection Committee, Directorate of Medical Education
Kilpauk, Chennai 600 010.



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R. SURESH KUMAR, J.

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