



W.P.(MD)No.16450 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.12.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16450 of 2014

and

M.P.(MD)No.1 of 2014

G.Afrin Fathima

... Petitioner

Vs.

1. The Secretary to the Government,
Backward Classes and Most Backward Classes and
Minority Welfare Department,
Fort St.George,
Chennai – 600 009.
2. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai – 600 003.
3. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai – 600 003.



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4. The Joint Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai – 600 003.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in his Letter No.5842/PiNaSiPi/2014-1 dated 11.09.2014 and quash the same and to direct the respondents to treat the petitioner as B.C.M quota and to appoint the petitioner as Typist as per the memorandum No. 4404/PSD-B/PSD-1/2014 dated 31.07.2014 issued by the second Respondent and to issue posting orders and pass such further or other orders.

For Petitioner : Mr.A.S.Mujibur Rahman

For R1 : Mr.R.Suresh Kumar
Additional Government Pleader

For R2 to R4 : Mr.V.Panneer Selvam



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ORDER

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This writ petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 11.09.2014 and to direct the respondents to treat the petitioner as B.C.M quota and to appoint the petitioner as Typist as per the proceedings dated 31.07.2014.

2. The brief facts are that the petitioner had passed M.Com. in second class and Typewriting (English) Senior Grade and Typewriting (Tamil) Senior Grade in second class. On seeing the notification No.9/13 dated 14.06.2013, the petitioner applied for the TNPSC Group-IV services. Originally the petitioner belongs to Vellala Chettiar which comes under Backward Community. In the year 2007, the petitioner embraced Islam and changed her name through the Gazette Publication dated 17.10.2007 and married one Mr.A.Meera Mohideen and the marriage was solemnized in the year 2007. The Community Certificate earlier was issued in the name of Anna Gomathi stating that the petitioner's community as Vellala Chettiar. The Controller of



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Examination has issued Hall Ticket and the examination was conducted on 25.08.2013 and the results were published on 28.07.2014. The petitioner was directed to appear for counselling and the certificate verification was held from 18.08.2014 to 21.08.2014. After verification, it was informed that the petitioner is not entitled to the benefits under backward community, since the petitioner was converted into Islam. The contention of the petitioner is that the similar issue was raised in W.P.No.4209 of 2013 and this Court, vide order, dated 09.04.2014 has held as under:

51.(xiii) The Apex Court also noted in paragraph 15 of Valsammappaul's case that in Khazan Singh vs. Union of India, AIR 1980 Del 60, a Single Judge of Delhi High Court had held that a Jat boy, on adoption into a Scheduled Caste family, is entitled to the benefit of reservation under Article 16(4) of the Constitution . In paragraph 37 of the judgment in Valsamma Paul's case, it is categorically held that the judgment in Khazan Singh's case did not lay the law correctly.

Based on the above judgment, the petitioner submitted a representation to serve a copy of G.O.Ms.No.85, Backward Classes, Most Backward



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Classes and Minorities Welfare Department, dated 29.07.2008. The respondent, vide reply, dated 11.09.2014 informed that there is no Government Order to the effect that the converted Muslims to be treated as B.C.M and therefore they will be treated as other classes. Aggrieved over the said communication, the petitioner has preferred this writ petition.

3. The respondents No.2 to 4 have filed a counter affidavit stating that at the time of Certificate Verification, the candidate has produced all the certificates in the name of G.Anna Gomathi, except her Community Certificate. The petitioner got her Community Certificate in the name as Afrin Fathima, w/o A.Meera Mohideen belonging to BC (Muslim) from the Special Deputy Tahsildar, Tirunelveli. Further the candidate has also submitted the Gazette copy for notifying the change of her name from Anna Gomathi to Afrin Fathima. It is further submitted that there is no Government Order regarding the status of converted Muslims till date. Hence, based on the Government Letter No.11373/PNCN/2009, dated 04.02.2010, the converted Muslims are classified



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under “others” category. While considering the candidate as “others category”, the petitioner was over aged i.e., 32 years (OC-Maximum age limit 30 years) and her date of birth is 26.04.1981. Hence, the application of the candidate, which was considered under “others” category has been rejected for the post of Typist included in Group-IV Services, due to over age. Hence, the petitioner was not allowed to attend the counselling held on 21.08.2014 and the respondents prayed to dismiss the writ petition.

4. Heard Mr.A.S.Mujibur Rahman, learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Counsel appearing for the first respondent, Mr.V.Panneerselvam, learned Counsel appearing for the respondents No.2 to 4 and perused the records.

5. The learned Counsel appearing for the respondents No.2 to 4 and the learned Additional Government Pleader submitted that the issue was already considered by this Court in W.P.No.1019 of 2022, vide order, dated 01.12.2022. The learned Single Judge has held that the



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Government of Tamil Nadu had issued as many as four letters whereby laid down guidelines stating that the candidates who have converted to Islam from other religion will be considered only under “others category” and the relevant portion is extracted hereunder:

The Government of Tamil Nadu had in as many as four letters laid down that the candidates who have converted to Islam from other religion will be considered only as “others category” (vide Lr No. 11373/Bc-MBCs/09-01 dated 04.02.2010, Lr No. 11373/BC-MBCs/09-02 dated 22.08.2012, Lr.No. 6907/BC_MBCs/2015-01 dated 04.05.2017 and Lr.No.587/BC_MBCs/2019 dated 17.05.2019). ”

Based on the letters, the petitioner is not entitled to the said certificate which she was obtained prior to conversion. In a Public Interest Litigation, the Hon’ble First Bench has considered the issue in W.P. (MD)No.1009 of 2013 in M.K.Muzibur Ragman vs. UOI and others and disposed of the writ petition as follows:

2. It is pointed out to us by the Learned Additional Advocate General that the very issue has been referred to a Larger Bench by the Honourable Supreme Court in Centre, Public Interest Litigation & Another V. Union of India (Writ Petition (Civil) No.180 of 2004 vide order dated 21.01.2011).



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3. *In view of the aforesaid facts and circumstances, we see no purpose in entertaining the petition, as the very question is under the consideration before the Supreme Court and the law laid down would be applicable to all.*”

11. *When another Hon'ble Division Bench subsequently took a contra view, the Government of Tamil Nadu filed SLP challenging the same. The Hon'ble Apex Court directed that till the next date of hearing, the status quo shall be maintained (vide order dated 24.09.2018 in SLP (Civil) Diary No. 2841/2018).*”

6. Considering all these factors, the learned Single Judge has held as under:

12. *The issue can be approached from another angle. It is not as if all Muslims have been recognized as belonging to Backward Class in Tamil Nadu. G.O.Ms.No.85 BC, MBC and Minorities Welfare (BCC) Department, dated 29.07.2008 catalogues only the following list of Backward Classes (Muslims): “1.Ansar, 2.Dekkani Muslims, 3.Dudekula, 4.Labbais including Rowthar and Marakayar (whether their spoken language is Tamil or Urdu), 5.Mapilla, 6.Sheik, 7.Syed.” The petitioner has enclosed the certificate issued by the Kazi of Tamil Nadu Government for Ramanathapuram District on 25.12.2012. It reads that Sathiyamoorthy S/o.Lakshmanan had embraced Islam on his own volition and that he has joined the Muslim Jamat as a Member and that he is following Islamic norms and principles. This certificate declaring the petitioner's conversion only states that the petitioner has become a Muslim and nothing more.*



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G.Michael judgment of the Madras High Court also states that when a Hindu gets converted to Islam, he becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. When the Kazi does not declare that the converttee is to be treated as belonging to the group of Labbais, I fail to understand as to how a revenue authority of a secular government can fix the converted individual in a particular slot or pigeon-hole. If as in S.Ruhaiyah Begum, a Hindu belonging to the “others category” gets converted to Islam and manages to obtain certificate as if he or she belongs to one of the aforesaid notified groups, the very purpose of social justice can be defeated by such clever stratagems. The learned Senior Counsel submitted that only if the converttee is already enjoying the benefit of reservation prior to his conversion, then and then alone he can be considered as BC (Muslim). As held in S.Ruhaiyah Begum, that exercise will have to be undertaken only by the Government.

13.As observed in S.Yasmine case, a person cannot carry his community of birth even after conversion. Whether such a person should be given the benefit of reservation even after conversion is a question that is pending adjudication before the Hon'ble Supreme Court. When the Hon'ble Supreme Court is seized of the matter, it is not for this Court to uphold the claim of the petitioner. It is for this reason, I am not persuaded by the precedents cited by the learned Senior Counsel appearing for the petitioner. The stand taken by the second respondent Commission is correct. It does not warrant any interference.

14.The writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

7. Following the said judgment, this Court is of the considered opinion that the claim of the petitioner cannot be entertained. Moreover,



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the issue is pending before the Supreme Court. At this stage, if any order is passed granting the BC Certificate as if the petitioner belongs to Vellala Chettiyar will amount to interfering in the judicial process that is pending before the Supreme Court.

8. Hence, for the reasons stated above this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2022

Index : Yes / No
Internet : Yes / No
jbr



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S.SRIMATHY, J

jbr

Order made in
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