



W.P(MD)No.26526 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.26526 of 2022

and

W.M.P.(MD)Nos.20709 & 20710 of 2022

P.Selvi

... Petitioner

**Vs.**

1.The Commissioner,  
Office of the Commissioner,  
HR & CE Department,  
119, Uthamar Gandhi Salai,  
Chennai-600 034.

2.The Joint Commissioner,  
Office of the Joint Commissioner,  
HR & CE Department,  
Madurai-625 001.

3.The District Collector,  
Office of the District Collector,  
Virudhunagar District.

4.The Assistant Commissioner / Executive Officer,  
Mariamman Temple,  
Irukkangudi,  
Sattur Taluk,  
Virudhunagar District.

... 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 connected with the Impugned Notification in Na.Ka.No. 816/2022/A2



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dated 27.07.2022 on the file of the Respondent No.4 and quash the same and consequently direct the respondents to conduct the said recruitment in transparent manner in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani  
For R1 & R3 : Mr.J.Ashok  
Additional Government Pleader  
For R2 & R4 : Mr.V.R.Shanmuganathan

### **ORDER**

Heard the learned counsel on either side.

2. The fourth respondent has issued employment notice dated 27.07.2022 inviting applications for filling up a number of vacancies in various posts by way of direct recruitment.

3. The petitioner questions the same on the ground that there is no reservation for SC & ST candidates.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

5. I am called upon this Court to set aside the impugned notification.

6. The learned Additional Government Pleader appearing for R1 to R3 brought to my notice the decision of the Hon'ble Division Bench reported in **2011 3 MLJ 112 (R.Thangapandian Vs. The Commissioner)**. The Hon'ble



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Division Bench held as follows:-

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“10. The learned counsel appearing for the petitioner as well as respondents submitted that Arulmigu Thandayudhapani Swamy Temple, Palani is coming within the purview of the HR & CE Act, 1959 and the respondents are controlling its administration. For appointment of the Officers and Servants of the temple and to its Institutions, the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964, was enacted which was amended recently vide G.O.Ms.No.255 Tamil Development, Religious Endowments and Information Department, dated 28.6.2010. The said rule was framed under sub-section (2) of section 116 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. In the said rule, the following categories of employees of the religious institutions are listed.

Senior Grade Temples - Outdoor Servants .. 83 categories

Incorporated and unincorporated

Devaswoms - Outdoor Servants .. 17 categories

Technical staff .. 44 categories

Medical Staff .. 14 categories

Education staff .. 5 categories

Senior Grade Temples -

Ulthurai (Indoor) servants .. 75 categories

Religious Institutions other than Senior Grade Temples both

Outdoor and Indoor servants .. 17 categories

Indoor servants .. 31 categories

Archaka Training Institute .. 7 categories

Rule 3 states that every Officer or servant of a religious institution shall profess the Hindu religion and shall cease to hold office as such officer or servant when he ceases to profess that religion. Physical fitness, age and certain grounds of disqualifications are mentioned in Rule 4, 5 and 6 respectively. No provision is made to reserve any post to any caste or community. The said rule is a special rule applicable for appointment of Officers and Servants in Hindu Religious Institutions. The State and Subordinate Service Rules provides for reservation to



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several categories of persons like BC, MBC, SC & ST as vertical reservation and reservation to women, physically challenged, etc. However, the said rule states that it can be applied only subject to the special rules. In the absence of providing reservation in the special rules, the petitioner cannot blame the second respondent for not reserving any seat for SC & ST candidates or to any other category. Article 16(4) of the Constitution of India is an enabling provision to the State Government to reserve posts.

11. Similar issue was considered by the Supreme Court in the decision reported in (2010) 1 SCC 477 (Dr.Gulshan Prakash V. State of Haryana) in respect of reservation of seats to post graduate medical course which was claimed under Article 15(4) of the Constitution of India. The Supreme Court in the said decision held that the Court cannot compel the Government/authorities to provide for reservation for SC & ST candidates in the absence of any specific statutory rule framed. In the said decision the Supreme Court held as follows: "22. In *Ajit Singh (II) v. State of Punjab* ((1999) 7 SCC 209) a Constitution Bench of this Court in para 28 has held that Article 16(4) is only an enabling provision which reads as under:

"28. .... On the face of it, the above language in each of Articles 16(4) and 16(4-A) is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963."

25. .... the State Government is the competent authority to decide the reservation in the State. The State Government did not prescribe any reservation for SC/ST and Backward Classes, due to which it was not included in the prospectus. They also clarified that the petitioners before the High Court were on the wrong impression that the Government of Haryana has already taken a decision to make a reservation in admission to MD/MS/PG diploma and MDS courses for SC/ST category. It was clarified that the Government of Haryana has never granted the benefit of reservation to SC/ST category in admission to MD/MS/PG diploma and MDS courses.

27. Though, even at the postgraduate level, reservation for SC/ST/Backward community is permissible, in view of the specific decision by



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the State of Haryana not to have reservation for Scheduled Castes and Scheduled Tribes at the postgraduate level, there cannot be any mandamus by this Court as claimed by the appellants.

29. .... As the State Government is competent to make the reservation to a particular class or category, until it is decided by the State, as being a policy matter, there cannot be any direction to provide reservation at the PG level. ...."

12. Applying the principle laid down in the said judgment to the facts of this case and in the absence of any provision to reserve seats in the Special Rules, we are of the view that the petitioner is not entitled to claim reservation for SC & ST candidates in the notified vacancies. This Court cannot compel the Government to reserve seats to SC & ST candidates. It is made clear that this order will not stand in the way of the State Government in deciding the issue of reservation by appropriately amending the Special Rules, bearing in mind the provision contained in Article 16(4) of the Constitution of India. The writ petition is dismissed with the above observations. No costs. Connected miscellaneous petitions are also dismissed."

7. Though the aforesaid Division Bench decision refers to an earlier rules, the present 2020 Rules are also on the same lines.

8. Respectfully applying the aforesaid ratio, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**24.11.2022**

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Internet : Yes/ No  
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**G.R.SWAMINATHAN, J.**

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To

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