



W.P.No.2106 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.2106 of 2023

R.R.Noor Mohammed

..

Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Principal Secretary
Backward Classes, Most Backward Classes
and Minority Welfare Department
Fort St. George, Chennai 600 009.

2. Tamil Nadu Waqf Board
rep. by its Secretary
No.1, Jaffar Sarang St.
Vallal Seethakathi Nagar
Seethakadi Nagar, George Town
Chennai 600 001.

3. A.B.Rafiulla

4. Abdur Rahman

5. Vaseer Ahmed Labbai

..

Respondents



W.P.No.2106 of 2023

WEB COPY

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Declaration declaring that the appointment of the fifth respondent as Secretary-in-charge of the second respondent Board from 21.03.2022 under the G.O.(Rt.) No.40, Backward Classes, Most Backward Classes and Minority Welfare Department dated 21.03.2022 and the appointment of the fourth respondent as Secretary of the second respondent Board under the G.O.(2D) No.5, Backward Classes, Most Backward Classes and Minority Welfare Department dated 21.04.2022, confirmed by the Principal Secretary of the first respondent under Lr.No.2847404/T1/2022-01 dated 21.10.2022 are liable to be declared as unconstitutional and ultra vires of Section 23 of the Waqf Act, 1995 and the Rules framed thereunder.

For the Petitioner : Mr.M.Ramamoorthi

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for Respondent-1

Mr.V.Lakshmi Narayanan
Standing Counsel
for Respondents 2 to 5

ORDER

(Made by the Hon'ble Acting Chief Justice)

This writ petition has been filed seeking a declaration declaring the appointment of the fifth respondent as Secretary-in-charge of the second respondent Board from 21.03.2022 under the G.O.(Rt.) No.40, Backward Classes, Most Backward Classes and Minority Welfare Department dated 21.03.2022 and the appointment of the fourth



W.P.No.2106 of 2023

WEB COPY

respondent as Secretary of the second respondent Board under the G.O.(2D) No.5, Backward Classes, Most Backward Classes and Minority Welfare Department dated 21.04.2022, as unconstitutional and ultra vires of Section 23 of the Waqf Act, 1995 and the Rules framed thereunder.

2. Mr.M.Ramamoorthi, learned counsel appearing for the petitioner contended that when the first respondent is taking action against the delinquent employees of the Waqf Board, pursuant to the order dated 16.08.2021 made in W.P.No.17148 of 2021 directing the respondents 1 to 3 to conduct elaborate enquiry into the allegations raised by the petitioner in his representation dated 07.05.2021 and the consequential notice dated 10.07.2021, the fourth respondent is derailing the enquiry against the delinquents, who are having links with radical groups.

3. Learned counsel further contended that the appointment of the third respondent to the post of Chief Executive Officer and Ex-Officio Secretary of the Waqf Board has been made overlooking



W.P.No.2106 of 2023

Section 23(1) of Waqf Act, 1995, as he is neither competent nor qualified to hold the said post and therefore, the impugned order deserves to be set aside.

4. Mr.V.Lakshmi Narayanan, learned Standing Counsel for the respondent Board submitted that the petitioner has come to this Court without verifying as to whether the post held by the third respondent is equivalent to the rank of Deputy Secretary or not, as the third respondent is presently serving as Joint Director of Agriculture and therefore, the contention of the petitioner is liable to be rejected.

5. In view of the submissions made on behalf of both the parties, it would be appropriate to refer Section 23(1) of the Waqf Act, 1995, reads as under:

"23. Appointment of Chief Executive Officer and his term of office and other conditions of service.-

(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall also not be below the rank of Deputy Secretary to the



W.P.No.2106 of 2023

WEB COPY

Government and in case of non-availability of a Muslim Officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation."

6. A reading of the above would make it clear that the full-time Chief Executive Officer shall be a Muslim and shall not be below the rank of Deputy Secretary to the State Government. Admittedly, the third respondent was holding the post of Joint Director of Agriculture, which is equivalent to the post of Deputy Secretary to the State Government. Further, four Muslim Officers who are holding the post of Deputy Secretary are unwilling to be appointed as the Chief Executive Officer of the respondent Board. Thus, we do not find any ground to declare the appointment of the third respondent as the Chief Executive Officer of the respondent Board as unconstitutional or ultra vires. Accordingly, the writ petition is dismissed. There will be no order as to costs. Consequently, WMP No.2192 of 2023 is also dismissed.

(T.R., ACJ.) (D.B.C., J.)
31.01.2023

Index : Yes/No
Neutral Citation : Yes/No
kpl



W.P.No.2106 of 2023

WEB COPY

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W.P.No.2106 of 2023

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

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W.P.No.2106 of 2023

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