



W.P.No.9448 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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MFL BC/MBC/OBC Employees Welfare Association
Reg.No.1/2018

Rep. by its General Secretary T.Muthukumaran

Flat No.F1, Block 'A', Plot No.40

Jaya Nagar, Korattur North

Kolathur Post, Chennai 600 099.

.. Petitioner

Vs.

1. Union of India

Rep. by its Secretary to Government

Ministry of Law and Justice

Shastri Bhavan, New Delhi 110 001.

2. The Secretary to Government

Department of Fertilizers

Ministry of Chemicals and Fertilizers

Government of India, Shastri Bhavan

New Delhi 110 001.

3. The Secretary to Government

Ministry of Skill Development and Entrepreneurship

Kaushal Bhawan, B-2, Pusa Road

Near Karol Bagh Metro Station, Pillar No.95

New Delhi, Delhi 110 001.



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4. The Director General/AS
Directorate General of Training
CIRTES Building, Pusa (Beside ITI Pusa)
New Delhi, Delhi 110 012.

5. Union of India
Rep. by its Secretary to Government
Department of Higher Education
122-C, Shastri Bhawan
New Delhi 110 001.

6. The Director of Training
Regional Central Apprenticeship Advisor
Board of Apprenticeship Training
Southern Region, Ministry of Education
Government of India
Department of Higher Education
4th Cross Road, CIT Campus
Taramani, Chennai 600 113.

7. The Chairman and Managing Director
Madras Fertilizers Ltd., Manali
Chennai 600 068.

8. The General Manager-P & A
Madras Fertilizers Ltd.
Manali, Chennai 600 068.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that Rule 3 Sub-Rule 2 of Apprenticeship Rules, 2015 inserted in Rule 5 of the Apprenticeship Rules, amended on 16.06.2015 and its consequential selection of Apprenticeship trainees dated 16.03.2021 issued by the 6th respondent based on the said rules are illegal, unconstitutional and against Section 3B(2) of Apprenticeship Act, consequently, direct the respondents to follow Section 3B Clause 2 of the Apprentices Amendment Act 2007 in all apprenticeship recruitments, having regard to the population of the other Backward Classes in the state concerned.



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For the Petitioner : Mr.M.R.Jothimanian

For the Respondents : Mr.R.Rajesh Vivekananthan
Deputy Solicitor General
for Respondents 1 to 6

Ms.N.Varsha
For M/s.Aiyar & Dolia
for Respondents 7 & 8

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.M.R.Jothimanian, learned counsel for the petitioner, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor-General for the respondents 1 to 6 and Ms.N.Varsha, learned counsel for the respondents 7 and 8.

2. Learned counsel for the petitioner submits that the petitioner is restricting this petition qua challenge to Rule 3(2) of the Apprenticeship (Amendment) Rules, 2015 and is not challenging the decision taken by the respondents.

3. We asked learned counsel for the petitioner once again whether he wants to maintain the challenge to Rule 3(2) of the



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Apprentice (Amendment) Rules, 2015 only and does not want to proceed ahead with challenge to the decision of the respondents of reserving 27% for Other Backward Classes. Learned counsel for the petitioner submitted that the petitioner is not challenging the decision reserving 27% seats for OBC.

4. According to learned counsel for the petitioner, Sub-rule (2) to Rule (3) of the Apprenticeship (Amendment) Rules, 2015 is contrary to Section 3B of the Apprentices (Amendment) Act, 2007. According to learned counsel, Section 3B(2) provides that the number of training places to be reserved for the Other Backward Classes under Sub-section (1) shall be such as may be prescribed, having regard to the population of the Other Backward Classes in the State concerned. Whereas, Rule 3(2), as amended, does not provide for filling up of the post from the Other Backward Classes commensurate with the population in the State. In view of that, the same is illegal.

5. Before we proceed to deal with the submissions made by learned counsel for the petitioner, it would be appropriate to refer to



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Section 3B of the Act and Rule 3(2) of the Rules. The same are reproduced as under:

Section 3B:

3B. (1) In every designated trade, training places shall be reserved by the employer for the Other Backward Classes and where there is more than one designated trade in an establishment, such training places shall be reserved also on the basis of the total number of apprentices in all the designated trade in such establishment.

(2) The number of training places to be reserved for the Other Backward Classes under sub-section (1) shall be such as may be prescribed, having regard to the population of the Other Backward Classes in the State concerned."

Rule 3(2):

The training places for the Other Backward Classes in designated trades shall be reserved by the employer according to the prescribed norms followed in the respective State or Union territory and if training places can not be filled from the Other Backward Classes, then the training places so lying unfilled may be filled by persons not belonging to the Other Backward Classes.



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6. The Rules are a piece of subordinate legislation. There is a presumption in favour of the constitutionality and/or validity of a subordinate legislation. The subordinate legislation and/or delegated legislation can be challenged on the same grounds the statutes passed by the legislature are assailed. The challenge to the subordinate legislation can be on the following grounds:

- (i) lack of legislative competence;
- (ii) violation of any provision of the Constitution of India;
- (iii) failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the statute; and
- (iv) manifestly arbitrary and/or unreasonable.

7. The power to make a subordinate legislation is derived from the enabling Act and it is the cardinal principle that the delegate to whom such a power is conferred has to act within the realm of the authority conferred by the Act.



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8. The Rules may supplement the parent statute, however it cannot supplant the Act. The Rules and the Act will have to be read harmoniously and in a manner that the Rules sub-serve the intent, purpose and object of the Act.

9. It is on the touchstone of the aforesaid principles the challenge to Rule 3(2) of the Apprenticeship (Amendment) Rules, 2015 will have to be tested.

10. Sub-rule (2) of Rule 3 of the Rules and Section 3B of the Act merely provide that number of training places to be reserved for the Other Backward Classes under Sub-section (1) shall be such as may be prescribed, having regard to the population of the Other Backward Classes in the State concerned. The contention of learned counsel for the petitioner is that in the State of Tamil Nadu, the Other Backward Classes population comprises 76% and it is the policy of the State Government to provide 50% reservation to the Other Backward Classes.



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11. Rule 3(2) provides that the training places for the Other Backward Classes in designated trades shall be reserved by the employer, according to the “prescribed norms” followed in the respective State or Union Territory and if training places cannot be filled from the Other Backward Classes, then the training places so lying unfilled may be filled by persons not belonging to the Other Backward Classes. Rule 3(2) very succinctly provides that the training places for the Other Backward Classes in the designated trade shall be reserved by the employer, according to the prescribed norms followed by the respective State or Union Territory. The prescribed norms followed in the respective State have to be adhered to while reserving the training places for the Other Backward Classes for designated range. Section 3B(2) also states that number of training places to be reserved for the Other Backward Classes under Sub-section (1) shall be as may be prescribed, having regard to the population of the Other Backward Classes in the State concerned.

12. Section 3B(2) and Rule 3(2) read in juxtaposition do not



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appear to run counter to each other. Under Section 3B(2), the number of training places are to be reserved for the Other Backward Classes as may be prescribed. Under Rule 3(2), the reservation for the training places for the Other Backward Classes has to be as per the prescribed norms in the respective State. Even remotely, Rule 3(2) cannot be said to be contrary to Section 3B(2). Both suggest to adhere to the norms prescribed by the respective State. The State has already prescribed the norms.

13. In the light of the that, Rule 3(2) of the Apprenticeship Rules, 1992, as amended in 2015, does not suffer from the vice of illegality nor can it be said to supplant the statute.

14. In view of the above, the writ petition stands dismissed. There will be no order as to costs. Consequently, W.M.P.No.10042 of 2021 is also dismissed.

(S.V.G., CJ.)

(D.B.C., J.)

16.11.2023

Index : Yes
Neutral Citation : Yes
kpl



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Ministry of Law and Justice
Shastri Bhavan, New Delhi 110 001.
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Department of Fertilizers
Ministry of Chemicals and Fertilizers
Government of India, Shastri Bhavan, New Delhi 110 001.
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Kaushal Bhawan, B-2, Pusa Road
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