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W.A.Nos.307 and 421 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.307 and 421 of 2016
and
C.M.P.No.s4831, 6159, 7148 and 7273 of 2016

W.A.No.307 of 2016 :

The Government of Tamil Nadu,
Rep. By its Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town, VOC Nagar,
Chennai – 600 003.

... Appellant

Vs.

T.Mohammed Thajudheen

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 21.07.2015 in W.P.No.19535 of 2015.

For Appellant : Mrs.G.Hema

For Respondent : Notice served
No appearance



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W.A.No.421 of 2016 :

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The Government of Tamil Nadu,
Rep. By its Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Park Town,
VOC Nagar, Chennai – 600 003.

... Appellant

Vs.

R.Ayesha

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 05.06.2015 in W.P.No.1048 of 2015.

For Appellant : Mrs.G.Hema

For Respondent : Mr.S.V.Karthikeyan

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

Since the issue raised in these two writ appeals is one and the same, with the consent of the learned counsel appearing for both sides, these appeals were heard together and are disposed of by this common order.



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2. The contesting respondent viz., T.Mohammed Thajudheen and R.Ayesha in both the writ appeals had applied pursuant to the notification issued by the appellant TNPSC on 14.06.2014 for Combined Group IV Examination of 2013-2014 recruitment.

3. Based on the examinations cut off marks would be provided and based on the cut off mark, the eligible candidates would be called for certificate verification and after certificate verification, selection would be made, this is the selection method to be adopted by the TNPSC.

4. Insofar as these two candidates are concerned, they applied for the Group IV post viz., Junior Typist where they were able to get 153 marks out of 300 marks, by securing the said marks they come under the zone of consideration as Backward Class candidates, therefore they were called for certificate verification.

5. The candidate viz., T.Mohammed Thajudheen in W.A.No.307 of 2016 was called for certificate verification on 16.06.2015 and candidate R.Ayesha who is the contesting respondent in W.A.No.421 of 2016 was called for certificate verification on 20.08.2014.



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6. Only at the time of certificate verification it was found according to the TNPSC that, these candidates had converted from Hindu to Muslim and after verification though they had obtained community certificate quoting their community as Muslim (Labbai) comes under the Backward Class communities, insofar as those converted Muslims are concerned, whether the benefit to the Backward Class community candidates to be extended or not is yet to be decided and in this regard, there has been no Government Order issued, therefore the two candidates could not be considered as Backward Class candidates.

7. Insofar as their candidature whether to be considered as Open Competition candidates even in that category since the Muslim age limit prescribed was only 30 years and by that time already they crossed 30 years, on the basis of age criteria they would not be eligible to be considered under OC category also, therefore in both the categories since they could not be considered, their candidature were rejected and they are not selected.

8. Assailing the non selection that has been made insofar as these candidates are concerned, they approached the Writ Court and filed



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respective writ petitions and those writ petitions were allowed by the learned Single Judge who passed orders against which these intra Court appeals have been directed.

9. Supporting the appellant, Ms.G.Hema, learned Standing Counsel appearing for the appellant TNPSC would contend that, insofar as the communal reservation and the benefit to be extended to the Backward Class candidates are concerned, that would be given to only those who are the Backward Class candidates for whom certificates are given by the concerned authority as Backward Class candidates. Insofar as the candidates who converted from Hindu to Muslim or Hindu to Christian are concerned, what is the status of those converted candidates whether to be considered as Backward Class candidates or others are yet to be decided and in this regard, since there has been no Government Order passed and the issue is under the consideration of the Government, the Service Commission is not empowered to consider them into Backward Class community category and therefore these two candidates though were eligible to call for certificate verification after obtaining 153 marks in the written examination, at the time of certificate verification only, it came to know that, they were converted to Muslim and in support



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of which, though their certificates of Backward Class Muslim i.e. Muslim (Labbai) community as a Backward Class community were produced, that cannot be accepted by the TNPSC.

10. Insofar as the consideration of these candidates as OC candidates also since the age criteria prescribed by the notification is the Muslim 30 years for OC candidates and by that time they have crossed the 30 years, therefore even under that category also, they could not be considered, therefore the candidature were rejected of course rightly.

11. These aspects, according to the learned Standing Counsel for Service Commission, have not been considered in proper perspective by the learned Judge and therefore the orders impugned passed by the learned Judge in the Writ Court, which are impugned in these appeals, cannot be sustained, hence the learned Standing Counsel seeks indulgence of this Court to allow these writ appeals.

12. We have also heard the learned counsel appearing for the contesting respondent [in W.A.No.421 of 2016] i.e. the candidate who would submit that, insofar as the original community of these candidates



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are concerned, they were under the Backward Class community and after conversion also, they have been treated only as Backward Class community for which the competent authority already issued the certificate to that effect. When that being so, either the community that was originally these candidates belong shall be taken into account otherwise after conversion also, if these candidates come under the Backward Class community, that should have been taken up by the TNPSC, but they cannot refuse to either of the communities and therefore that attitude on the part of the Service Commission cannot be approved, this aspect since has been taken into account in proper perspective and therefore since the writ petitions were allowed by the learned Judge, those orders which are impugned herein in these appeals cannot be found fault with, therefore the learned counsel appearing for the contesting respondent seeks indulgence of this Court to dismiss these writ appeals.

13. We have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as these two candidates are concerned, their original



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community is not disputed. Insofar as the candidate viz., Mohammed Thajudheen is concerned, he belongs to Hindu Vellalar community while before conversion and that community also comes under the category of Backward Class to that effect certificate was issued by the competent authority after which he has converted into Muslim, therefore Muslim (Lubbai) community certificate was given which is also a Backward Class community.

15. Insofar as the candidate viz., R.Ayesha is concerned, she was originally belonged to Hindu Yadava community which is one of the Backward Class community and after conversion she has also been given a Muslim (Lubbai) community certificate which is again a Backward Class community.

16. When that being so, these two candidates before conversion and also after conversion belong to a Backward Class community.

17. If at all the TNPSC was not in full agreement to accept the community of these candidates as Backward Class community by taking into account of the community certificate issued by the competent



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authority as Backward Class Muslim (Labbai) community atleast the community certificate issued by the competent authority to these candidates before their conversion can be accepted. However, the TNPSC takes a stand that, the candidates have converted from Hinduism and converted to Muslim religion and therefore they lost the status of Backward Class community and insofar as the converted religion and community is concerned, though that has been considered by the competent authority to issue a certificate as a Backward Class community to that extent since the Government has not passed any order, it cannot be accepted as a Backward Class candidate, therefore the TNPSC had taken a stand that, the candidates neither here nor there, therefore at any stretch of imagination, their claim to consider them as Backward Class candidates cannot be considered.

18. The said stand taken by the TNPSC already been considered by this Court exhaustively in a similar circumstances in W.A.(MD)No. 1313 of 2016, where a Division Bench of this Court at Madurai Bench on 16.06.2023, where, one of us (RSKJ) is a party, has passed the following order:

“18. We have perused the order impugned passed by



the learned Judge, recorded the factual matrix where the first respondent originally belonged to Christian Community which is included in the list of Backward Class and thereafter, later only, he converted to Muslim Religion where a Community Certificate as Muslim Labbai was given by the second respondent, who is the Competent Authority and the said Community Certificate has been in tact and has never been modified or changed or canceled.

19. The learned Judge has recorded this factual matrix and also has considered the judgment of another learned Judge made in W.P(MD).No.21864 of 2010 dated 20.01.2011, where a similar plea raised by the Service Commission was negated and the plea raised by the candidate concerned was accepted.

20. The learned Judge also has relied upon two other decisions in the case of *Tamil Nadu Public Service Commission vs. V.Theivanaivalli and others* reported in 2010 (2) CWC 475 and in the case of *Tamil Nadu Service Commission vs. R.Manikandan and others* reported in 2011 (5) CTC 1. Having considered all these legal positions, where the law is well settled by more than one judgment, the learned Judge has come to a conclusion that the candidate must either be considered as a Muslim Labbai Community candidate based on the Community Certificate that has been



issued in his favour, or assuming that the Government has not given so far any clarification as to the erstwhile community of the candidate from where only he has converted, the candidate must be considered only as a Backward Class community candidate and therefore, at any cost, the consideration that has been shown by the Service Commission by treating him as “others” category is unlawful and unjustifiable. Therefore, on that ground, the learned Judge was pleased to allow the writ petition.

21. In addition to the said reasons stated by the learned Judge in the impugned order, we find one more reason stating that even in the letters that have been very much relied upon by the learned Standing Counsel appearing for TNPSC, starting from 04.02.2010 till 04.05.2017, it has been stated that those who have converted from Hindu community to Islam whether can be treated as Backward Class Community or not, was the question which is lingering at an appropriate level to take a decision for several years. Therefore, the Government says that a decision would be taken and communicated to the Service Commission.

22. Here, the question is entirely different. The candidate has not converted from Hindu Religion to Islam Religion. He has converted from Christian Religion to Islam Religion and the Christian religion where he belongs to a



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Community has already been declared as a Backward Class Community from where he has converted into Community in an Islam religion that has also been declared to be a Backward Class Community and to that effect, a Backward Class Certificate also has been given.

23. Therefore, these clarifications that have been pending before the Government as reflected in those orders or letters would not stand in the way to safely conclude that the candidature of the first respondent can very well be accepted as a Backward Class candidate either under his own community from where he has converted or in the converted community as per the Community Certificate. Therefore, at any cost, treating him as “others” or Open Competition candidate is thoroughly unjustifiable and not based on any materials. Therefore, we feel that the approach of the learned Single Judge and the conclusion reached by him in the order impugned is to be fully acceptable and justifiable. Hence, the said order which is impugned herein is to be sustained.

24. In the result, the following orders are passed in this writ appeal:

(i) that the order passed by the learned Judge which is impugned herein is to be sustained and accordingly, it is sustained. Therefore, this Writ Appeal fails and hence, it is



liable to be dismissed.

(ii) as a sequel, since the first respondent has already superannuated on 31.07.2022, he shall be regularized in his service where he was originally appointed in the year 2003 as for the said exercise of regularization only, the limited competitive examination in the year 2007 was conducted by TNPSC, where admittedly, the first respondent since has become successful, such a needful action shall be undertaken by the appellant/TNPSC and a communication to that effect shall be given to the parent Department where the first respondent was working and retired. Such a communication shall be sent by the appellant within a period of four weeks from the date of receipt of a copy of this judgment.

(iii) on receipt of such communication from TNPSC, the employer Department where the first respondent worked and retired on 31.07.2022, shall pass necessary orders absorbing or regularizing the services of the first respondent with effect from his initial appointment (i.e.,) in the year 2003. It is needless to mention that consequently, he shall be entitled to get all service benefits including pensionary benefits, if any, under the relevant provisions of law which are in vogue. The needful shall be undertaken by such Department within a period of 12 weeks thereafter (i.e.,) on receipt of the communication from TNPSC.

25. With these directions, this Writ Appeal is



dismissed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

19. In the said judgment, the exact situation now projected before this Court has been confronted by the Division Bench where a decision was made.

20. After having gone through the said judgment, we are of the view that, the present facts of the case also is squarely covered by the judgment of the Division Bench dated 16.06.2023 in the matter of ***Chairman, Tamil Nadu Public Service Commission Vs. D.Rahamatulla and another.*** In the said judgment the very same Service Commission was the appellant, therefore it is binding the parties including the Service Commission, therefore the Service Commission in these cases cannot take a different stand and therefore what stand they have taken in the said case since having been considered was negatived, the same approach alone has to be adopted in these cases also.

21. In view of the above, we feel that the stand taken by the



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TNPSC to assail the order passed by the Writ Court successfully cannot be accepted and hence the appeals naturally have to fail. In the result, both the writ appeals fail and therefore they are liable to be dismissed accordingly are dismissed.

22. In view of the dismissal of the writ appeals, the appellant TNPSC is hereby directed to select these two candidates who are the contesting respondents in these appeals, as stated supra, to the respective post, for which they are entitled to get selected as they applied and become eligible otherwise considering them as Backward Class candidates.

23. In this regard on 03.08.2016 itself in respect of R.Ayesha a communication had been sent by the TNPSC stating that, she has been selected however it has provisionally been withheld subject to final outcome of the writ appeal filed in this regard i.e. the present writ appeal in W.A.No.421 of 2016.

24. In view of the same, the needful as indicated above shall be



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undertaken by the Service Commission within a period of eight weeks from the date of receipt of a copy of this judgment.

25. With this direction, both the Writ Appeals are dismissed.

However there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

(R.S.K., J.) (K.B., J.)

31.07.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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And
K.KUMARESH BABU, J.

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