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W.P.No.26945 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.26945 of 2021

M.Vembadiyan

... Petitioner

Vs.

1. The District Collector
Chennai District
Chennai-600 001.
2. The Home Secretary
Government of Tamil Nadu
St.George Fort
Chennai-600 009.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the request of the petitioner for the post of Special Public Prosecutor for SC/ST Atrocity Act, 1989 in the City Civil Court or District Courts in conformity of Article 14, 16 and 21 of the Constitution of India based on the seniority cum merits in order to ensure special status and reservation formula in accordance with forthcoming vacancies as per guidelines



W.P.No.26945 of 2021

given in the G.O.(D) No.1322 Home (Courts VIA) Department dated 16.11.2021.

For Petitioner : Mr.R.Karunakaran
For Respondents : Mr.S.Silambanan
Additional Advocate General
assisted by
Mr.T.Arunkumar
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking to issue a writ of Mandamus or any other appropriate direction to the respondents to consider the request of the petitioner to include his name in the panel of Special Public Prosecutor under 'the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989' [hereinafter 'SC/ST Act'] in the City Civil Court or District Courts in conformity with Articles 14, 16 and 21 of the Constitution of India based on the seniority-cum-merits in accordance with the guidelines given in the G.O.(D) No.1322 Home (Courts VIA) Department dated 16.11.2021.

2. The petitioner is a Senior Advocate and he is practicing in the Madras High Court. The petitioner claims that his family is lawyer's



W.P.No.26945 of 2021

family. The petitioner, his son and his daughter-in-law have rich experiences in various kinds of litigations and they have applied for the post of Additional Government Pleader and Assistant Public Prosecutor as per the advertisement of the first respondent dated 30.06.2011 but they were not considered.

3. Mr.R.Karunakaran, learned counsel for the petitioner drew the attention of this Court to G.O(D)No.1322 Home (Courts VIA) Department dated 16.11.2021. The said GO speaks about the preparation of panel of eminent Senior Advocates in accordance with Rule 4(1) of 'the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016' [hereinafter 'SC/ST Rules 2016'] as well as in compliance with the order dated 25.02.2020 of the Madurai Bench of Madras High Court made in W.P.(MD) No.8172 of 2008.

4. Mr.S.Silambanan, learned Additional Advocate General for the respondents submitted that a Public Interest Litigation vide W.P.No.14582 of 2017 was filed before the First Bench of this Court



W.P.No.26945 of 2021

seeking a direction to frame a new rule to ensure the transparency for the purpose of accommodating fair representation to Women, SC/STs and Minorities and public notification for inviting applications from all eligible advocate candidates in the appointment of Law Officers but the said writ petition has been dismissed on 07.12.2023. It has been observed by the Hon'ble Division Bench that the Law Officers engagement by the Government do not hold a civil post and there is no relationship of master and servant between the Government and Law Officers. It is learned that Article 16(4) of the Constitution of India is not applicable and the criterion to apply the reservation policy cannot be attracted. It is further observed that the engagement is only a professional engagement and it is terminable at any point of time because it is not an appointment to any post. It is worthwhile to extract Paragraph Nos.12, 13 and 19 of the order dated 07.12.2023 in W.P.No.14582 of 2017 for better appreciation.

5. Paragraph Nos.12, 13 and 19 of the order dated 07.12.2023 in W.P.No.14582 of 2017 read as follows:



W.P.No.26945 of 2021

WEB COPY

'12. The relationship between an advocate and his client is uberrima fides i.e., one of active confidence and trust. The Government is the custodian of public interest. It is the obligation and the duty of the Government to protect the public interest to its optimum extent and in the best possible manner. This duty mandates the Government to engage the most proficient, competent and capable persons to represent it, inter alia, the public interest. Ergo, in the selection of Law Officers, the Government is duty bound to make earnest efforts to choose the best. In view of that, while selecting the Law Officers, merit ought to be the sole consideration. The methodology adopted for selecting the Law Officers naturally has to be transparent and the invitation of the applications should be broad-based, so as to enable the Government to select the most competent, capable and meritorious lawyers to represent it as Law Officers. Eventually, they would be safeguarding the public interest.

13. The relationship between the Government and the Law Officer is purely a professional relationship and not that of a master and servant. The Law Officers engaged by the Government, during their performance of the duty, are not holding any civil post. They are also not Government servants and / or Government employees. The appointment of these Law Officers is at the pleasure of the Government. The sine qua non is that the Law Officers selected by the Government should be duly qualified, competent and worthy to represent it. The determination of their engagement is also at the pleasure of the



WEB COPY



W.P.No.26945 of 2021

Government. So also, the Law Officer engaged by the Government has a right to terminate his services with the Government. It cannot be said that their appointment is a tenure appointment.

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19. In view of the aforesaid discussion, it cannot be held that reservation - vertical and / or horizontal needs to be provided while appointing the Law Officers by the Government. The procedure is laid down. The procedure laid down does not suffer from the vice of arbitrariness, nor it can be said that the procedure is not transparent.'

6. The above judgment had approved the existing engagement of Law Officers and therefore, does not suffer from any arbitrariness or that the procedure cannot be blamed as non-transparent.

7. The learned counsel for the petitioner submitted that the Hon'ble Division Bench of Madurai Bench of Madras High Court has already issued a direction that the Government has to frame appropriate



W.P.No.26945 of 2021

guidelines for eminent Senior Advocates for special purpose of trial under SC/ST Act and 'the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1955' [hereinafter 'SC/ST Rules 1955']

8. No doubt, the above judgment directs the Government to frame the guidelines. However, the subsequent judgment dated 07.12.2023 made in W.P.No.14582 of 2017 held that the guidelines already in force has been approved to be sufficient and are competent to serve the purpose. Even the petitioner did not challenge the guidelines in this writ petition. The petitioner's only grievance is that his name was not considered despite, he possessed sufficient qualification to be engaged as Senior Advocate for conducting cases falling under SC/ST Act. Rule 4(1A) of SC/ST Rules 1955 is a source of power for the Government to appoint the Public Prosecutors and Exclusive Special Public Prosecutors for conducting cases in in the Special Courts and Exclusive Special Courts as the case may be. Rule 4(1A) of SC/ST Rules 1955 reads as follows:

'4. Supervision of Prosecution and submission of report:



WEB COPY



W.P.No.26945 of 2021

(1)

(1A) The State Government in consultation with the Director Prosecution or in charge of the prosecution, shall also specify a panel of such number of Public Prosecutors and Exclusive Special Public Prosecutors, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts, as the case may be.'

9. The Government has got an authority to choose between several applicants and take a decision as to who are all to be included in the panel. It cannot be challenged by a person with regard to appointment made to any particular post. There cannot be any due with the engagement of the Advocate either for the Government or for the Bench as it is only on temporary basis for a specific object and not a posting which would go in tune with the Service Rules. It is obviously, for that reason, the Hon'ble Division Bench has observed that there is no master and servant relationship between the counsel and his client, but the relationship is purely on the basis of trust and preponderance. While such is the parameter and nature of the engagement, no one can claim parity without superiority in the matter of engagement by stating or



W.P.No.26945 of 2021

construing that such engagement is a matter of right.

WEB COPY

10. Though the petitioner, his son and his daughter-in-law or any of their friends are free enough to make applications to be included in the panel of Advocates, it is the object of the Government to choose among the different applicants, whoever suit the purpose or sometime even their convenience. When it is accepted that the engagement is purely at the discretion of the Government, no one can dictate any terms for picking up some one suitable for engaging as Government counsel or dropping someone as not suitable. In such circumstances, non-inclusion of the petitioner in the panel does not mean that he is not suitable for the post, but it is only the discretion of the Government to choose any applicant. However, it is open to the petitioner to apply whenever the Government calls for the application, but no one including the petitioner can compel the respondents to include the petitioner or anyone else in the panel. Therefore, this Court is of the view that the relief sought for by the petitioner cannot be issued. Hence, this Writ Petition is liable to be dismissed.



WEB COPY



W.P.No.26945 of 2021

R.N.MANJULA, J.

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11. In the result, this Writ Petition is dismissed. There shall be no order as to costs.

15.12.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking

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To

1. The District Collector
Chennai District
Chennai-600 001.
2. The Home Secretary
Government of Tamil Nadu
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W.P.No.26945 of 2021