



W.P.No.32379 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.32379 of 2023

M.Sasikala

.. Petitioner

Vs.

1. Union of India
Rep. by Secretary to Government
Ministry of Home Affairs
North Block, New Delhi – 110 001.
2. State of Tamil Nadu
Rep. by Chief Secretary
State of Tamil Nadu
Fort St. George
Chennai – 600 009.
3. Election Commission of India
Nirvachan Sadan, Ashoka Road
Pandit Pant Marg Area
New Delhi, Delhi – 110 001.
4. Chief Electoral Officer
State of Tamil Nadu
(Public) Election Department
Fort St. George, Chennai – 600 009.



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5. State Election Commission
No.208/2, Jawaharlal Nehru Salai
(Opp. To Koyambedu Bus Terminus)
Arumbakkam, Chennai – 600 106.

6. National Commission for Women
Plot-21, Jasola Institutional Area
New Delhi – 110 025.

7. State Commission for Women
No.377J+7J5, PWD Estate
Chepauk, Triplicane
Chennai – 600 005.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the respondents 3 to 5 herein not to employ women above fifty years of age in election works relating to Legislative Assembly, Parliament and Local Body and to provide safety, security and basic amenities to the women employed, who are all less than fifty years of age.

For the Petitioner : Mr.Venkatasamy Babu
for Mr.D.Baskar

For the Respondents : Mr.Rajesh Vivekanandan
Deputy Solicitor General
for R1

Mr.P.Muthukumar
State Government Pleader
for R2 and R4

Mr.Niranjan Rajagopalan
for R3

Mr.S.Sivashanmugam
for R5



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ORDER

(Made by the Hon'ble Chief Justice)

Heard Mr.Venkatasamy Babu, learned counsel for Mr.D.Baskar, learned counsel for the petitioner, Mr.Rajesh Vivekanandan, learned Deputy Solicitor General for respondent 1, Mr.P.Muthukumar, learned State Government Pleader for respondents 2 and 4, Mr.Niranjan Rajagopalan, learned counsel for respondent 3 and Mr.S.Sivashanmugam, learned counsel for respondent 5.

2. The present petition is filed in the nature of a public interest litigation.

3. Prayer is made to issue a writ of mandamus, directing respondents 3 to 5 herein not to employ women above fifty years of age in election works relating to Legislative Assembly, Parliament and Local Body and to provide safety, security and basic amenities to the women employed, who are all less than fifty years of age.



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4. Learned counsel for the petitioner submits that the petitioner was earlier employed with the Municipal Corporation and attended election duty during the Covid time. She is aware of the difficulties faced in the election duty. Learned counsel submits that women above the age of fifty years suffer from various ailments such as Diabetes, Hyper Tension and other Co-morbidities. Difficulties are faced in reaching polling booths in remote areas, which lack security and medical facilities. The plight of such women employed, who are above fifty years of age, has to be considered by the respondent authorities. It is further submitted that basic amenities are required to be provided and the same are not available.

5. The petitioner is not required for election duty, as the petitioner is a practising advocate. The petition is not filed by the one who is required to attend election duty or is aged fifty years and above. The petitioner, in such case, certainly ought not to have filed the present petition.



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6. Be that as it may, under Article 324 of the Constitution of India, the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections are vested with the Election Commission. The directions issued by the Election Commission have statutory force. Directions issued by the Election Commission are not the subject matter of challenge in the present petition. Policy is also framed for requisition of staff of Persons with Disabilities (PwD) and women, so also exemptions have been granted to certain categories of persons. The same can be enlisted as under:

“9.Requisition of staff in category of PwDs and women:

9.1. Considering the nature of duty and to avoid causing hardship to such employees, the Commission is of the view that the employees under PwD category “persons with benchmark disability” as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 should not be deployed on election duty unless required for deployment at PwD-managed Polling Stations.



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9.2 However, if any such person is required to be used on election duty, prior approval of the General Observer may be obtained giving full details and justification. The DEO and the RO shall make personal efforts to identify such individuals and appreciate their nature of disabilities and discuss their limitations. Appropriate facilities and assistance should be provided, if deployed for election duty.

9.3 It shall be ensured that they should invariably be posted in proximity to their residence. If any PwD is inadvertently deputed to any difficult location, the Returning Officer should be able to make necessary changes in deployment manually in consultation with the General Observer.

9.4 All such women personnel who are in advance stage of pregnancy (whether are on maternity leave or not) or on medical advice being unfit for any rigorous or hazardous work or lactating women shall be exempted from being requisitioned for election duty.



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9.5 Further, every woman employee called for election duty shall be informed, in advance, of arrangements of transport and appropriate stay at the place of duty with basic amenities and unless such arrangement is made and prior information in this behalf is given to such woman employee, she shall not be called to perform any election duty at any such place where the above arrangements are not available.”

In the absence of challenge to the above, the writ petition cannot be entertained.

7. It is the obligation of the authorities to provide for the basic amenities and make all necessary required arrangements. In a particular place, if certain basic amenities and/or security arrangements are not made, the person certainly has the right to make a grievance about it. At the first instance, it would be the duty of the authorities to provide for all the basic amenities. The policy itself further states that the arrangements of transport and appropriate stay at the place of duty with basic amenities shall be made and unless



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such arrangements are made and prior information is given to such a woman employee, she shall not be called to perform election duty at any such place, where the above arrangements are not available. The policy is in place. In case the policy is violated, then the aggrieved person can certainly make a grievance about the same.

8. In view of the above, the writ petition stands disposed of. There will be no order as to costs. Consequently, W.M.P.No.32001 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : Yes/No
Neutral Citation : Yes/No

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