



W.P(MD)No.1763 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1763 of 2022

and

W.M.P.(MD)Nos.1551, 1552 and 4319 of 2022

S.Mahesh Raja

... Petitioner

Vs.

- 1.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli – 627 003,
Tirunelveli District.
- 2.S.T.Hindu College,
Rep. by its Secretary,
Nagercoil – 629 002,
Kanyakumari District.
- 3.The Secretary,
S.T.Hindu College,
Nagercoil – 629 002,
Kanyakumari District.
- 4.The Principal,
S.T.Hindu College,
Nagercoil – 629 002,
Kanyakumari District.
- 5.The Secretary to Government,
Welfare of Differently Abled Persons Department,
Government of Tamilnadu, Chennai.



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6.The Secretary to Government,
Higher Education Department,
Government of Tamilnadu,
Chennai.

... Respondents

*(R5 and R6 are suo motu impleaded vide order
dated 21.06.2023 in W.P.(MD)No.1763 of 2022)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned advertisement issued by the respondents 3 and 4 herein in daily newspaper Dinamalar dated 15.12.2021 calling applications for the posts of Assistant Professors in the 2nd respondent college, Quash the same at least insofar as 1 post of Assistant professor (English), and further Direct the 2nd respondent college to fill the post of Assistant professor (English) under “persons with benchmark disability” as per the Special Reservation Policy provided under the Rights of Persons with Disabilities Act, 2016 by considering the petitioner herein in accordance with law under the said category.

For Petitioner : Mr.E.V.N.Siva

For Respondents : Mr.N.Satheesh Kumar,
Addl. Govt. Pleader for R1, R5 & R6.

Mr.V.Panner Selvam for R2 & R3.

No appearance for R4.



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ORDER

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Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the respondents 1, 5 and 6 and the learned counsel for the respondents 2 and 3.

2.The petitioner belongs to backward community. He is also a differently abled person. His vision is 100% impaired. The petitioner is holding post graduate degree i.e., M.A.(English). He has also cleared SLET. He is eligible to be appointed as Assistant Professor (English). When vacancy arose in the said post in the second respondent college, the petitioner was one of the applicants. However, he was not successful. That led the petitioner to file the present writ petition.

3.The case of the petitioner is that the second respondent must provide 4% reservation for differently abled persons as mandated in Central Act 49 of 2016 (The Rights of Persons with Disabilities Act, 2016). He would impugn the impugned notification on the ground that it is not in accord with the statutory scheme set out in the said Act.



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4.The department as well as the college management have taken a stand that they are following 200 points roster which provides for reservation for differently abled candidates and that the vacancy in question has not been earmarked for such candidates.

5.The respondents are technically right. But this writ petition cannot be disposed of by recording the stand of the respondents. The learned counsel for the petitioner has raised a larger issue. When the Central Act 49 of 2016 mandates that there must be 4% reservation, the same cannot be rendered illusory. Since the second respondent college is having a good teaching staff strength and they claim to have come up to 68th point in the roster and since 71th point has been earmarked for differently abled candidate, it is possible to reach the same in another few years. But then, this is obviously not the case in a vast number of other educational institutions. Most of the institutions do not even maintain a proper roster. Therefore, the Government / respondents 5 and 6 are directed to evolve a proper policy so that the policy of the reservation for differently abled candidates set out in Central Act 49 of 2016 is realized.



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6.It is not enough that reservations are made on paper. When the vacancy meant for schedule caste category candidate is not filled up, the Central Government as well as the State Governments undertake a special drive to fill up such vacancies. A similar effort must be taken in the present case also. The petitioner is permitted to submit a comprehensive representation to the respondents 5 and 6 in this regard. The respondents 5 and 6 shall constitute an expert committee and evolve an appropriate policy in this regard. This is because if the 200 points roster is applied as such for aided institutions which are having less number of teaching posts, then the reservation policy will be totally defeated. That cannot be permitted. The saying “one size fits all” will not apply in this case. For each institution, the number of points in the roster for the purpose of implementing the reservation policy will have to vary based on the staff strength of the concerned institution. Therefore, such a policy shall be evolved so as to fulfil the statutory objective within a period of six months from the date of receipt of the representation.



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7.This writ petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

21.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Joint Director of Collegiate Education,
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- 2.The Secretary to Government,
Welfare of Differently Abeld Persons Department,
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Higher Education Department,
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