



W.P(MD)No.12634 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.11.2022

Pronounced On : 24.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12634 of 2022

and

W.M.P.(MD)No.8946 of 2022

K.Srinivasan

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by its Principal Secretary,
Welfare of Differently abled person (DAB.3.2) Department,
St.George Fort,
Secretariat, Chennai-9.

2.The Director of Agriculture,
Directorate of Agriculture,
Chepauk, Chennai-5.

3.The Joint Director of Agriculture,
Chockikulam,
Madurai-625002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 & 2 to provide 4% reservation for the differently abled person in the promotional post of Assistant Director of Agriculture in compliance of the dictum laid down by the Hon'ble Apex Court in Rajivkumar Gupta and others Vs. Union of India



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& others, reported in 2016 (13) SCC Page 153 and as per Section 34 in the person with disabilities (equal opportunities protection of rights, full participation) Act, 1995.

For Petitioner : Mr.R.Maheswaran

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents.

2. The writ petitioner is presently working as an agriculture officer. He was recruited by TNPSC. He joined duty on 17.04.2013. He belongs to a backward community. Admittedly, the petitioner is a differently abled person having locomotor disability. The petitioner seeks promotion to the post of Assistant Director of Agriculture. According to the petitioner, the respondents are obliged to earmark 4% of the promotional posts for differently abled persons. The petitioner submitted a representation in this regard on 04.07.2021 and again on 24.01.2022. Since it did not elicit any response, the present writ petition came to be filed.



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3. Notice was ordered. The respondents have filed a counter affidavit.

The learned Additional Advocate General took me through its contents. The stand of the respondents is that the conditions of service of the writ petitioner are governed by the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which does not provide for reservation in promotional post. The stand of the respondents is that the petitioner therefore has no right to demand reservation in promotion for the post of Assistant Director of Agriculture. The respondents pressed for dismissal of the writ petition.

4. I carefully considered the rival contentions and went through the materials on record.

5. The issue raised in this writ petition is no longer *res integra*. It is squarely governed by as many as three decisions of the Hon'ble Supreme Court of India namely ***Rajeev Kumar Gupta Vs. Union of India (2016) 13 SCC 153***, ***Siddaraju Vs. State of Karnataka (2020) 19 SCC 572*** and ***State of Kerala Vs. Leesamma Joseph 2021 (9) SCC 208***. It is unnecessary to repeat what has already been authoritatively laid down in the aforesaid decisions. Suffice it to say that the right of differently abled Government employees to reservation in



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promotional posts has been authoritatively declared. It is true that the aforesaid three decisions related to Central Act 1 of 1996. But in 2016 Act also, there is a corresponding provision. The first proviso to Section 34(1) of the Act reads that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. The State of Tamil Nadu cannot take shelter behind non-issuance of such instructions as contemplated by the aforesaid proviso. The Hon'ble Apex Court in *Leesamma Joseph* had declared that the statutory object cannot be defeated by such strategies. In fact, in the said decision, a direction has been issued to provide for reservation in promotion in all posts after duly identifying the same and to complete the exercise within a period of three months. The Hon'ble Supreme Court made it clear that they are making it time bound so that the mandate of the Act is not again frustrated by making Section 32 as an excuse for not having identified the posts. The same approach deserves to be adopted in the present case also. I do not find any repugnancy between the provisions of 2016 Act and the provisions of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. In any event, the Central Act will prevail.

6. Applying the ratio laid down in *State of Kerala Vs. Leesamma Joseph 2021 (9) SCC 208* reiterating *Siddaraju Vs. State of Karntaka*, I direct the



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respondents 1 and 2 to provide 4% reservation for differently abled persons in the promotional post of Assistant Director of Agriculture. This shall be done within a period of three months.

7. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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24.01.2023