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Rev.Aplc(MD) No. 108 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
and
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Rev.Aplc (MD) No.108 of 2018
and C.M.P.(MD) No. 8166 of 2018

Pankajam Girls Higher Secondary School
Rep. By its Secretary,
Bodinayakkanur,
Theni District.

.. Review Petitioner

Vs

1.The State of Tamil Nadu
Rep. By its Principal Secretary,
School Education Department,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai 600 006.

3.The Chief Educational Officer,
Theni.

4.The District Educational Officer,
Uthamapalayam, Theni District.

5.G.Thangam

..Respondents

Petition filed under Section 47 Rule 1 and 2 and Section 114 of
CPC to review the order dated 27.07.2018 in W.A.(MD) No. 748 of
2018.



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For Petitioner : Mr.Issac Mohanlan
Senior Advocate
for M/s. Issac Chambers

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader
for R1 to R4

ORDER
(Made by *Dr.ANITA SUMANTH.,J*)

This matter has been remanded to the file of this Court by an order of the Hon'ble Supreme Court dated 14.02.2023 on a challenge made by the Pankajam Girls Higher Secondary School (in short and hereinafter referred to as 'school') challenging an order dated 25.04.2019 passed by this Court rejecting the Review Application filed by it as against an order dated 27.07.2018.

2. The writ petition had been filed at the original instance by a Record Clerk in the school to challenge the rejection by the respondents in the writ petition, of a confirmation of his appointment. A learned Single Judge allowed the writ petition and that decision come to be reversed in writ appeal. The Division Bench at the first instance, passed an order dated 27.07.2018, reversing the order of the learned Single Judge and confirming the ineligibility of the petitioner to the



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post of record clerk. That order had been passed on a consideration of G.O.No.241 dated 29.10.2007 and G.O.No. 65 dated 27.05.2009.

3. As against order dated 27.07.2018, a petition for review came to be filed by the School. The ground raised by the School in Review Application was that the post of Record Clerk was a single post and thus, the communal roster was itself inapplicable. This was a new ground that had not hitherto figured as part of the writ petition originally filed.

4. The review application came to be dismissed on 25.04.2019, the Division Bench holding that the order passed by it at the first instance on 27.07.2018 had not been challenged by the Record Clerk and the review-applicant had not been represented either in the writ petition or the writ appeal. It was thus held that School would have no locus standi to seek a Review.

5. As against the dismissal of the review petition, the school filed a petition for Special Leave. The Hon'ble Supreme Court, not finding the need to go into the technicalities of the matter, and noting that an important legal question has been raised by the School, has remitted the matter vide judgement dated 14.02.2023 to the file of this Court for decision on the issue raised in review.



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6. The question raised in the Review Application touches upon whether at all the communal roster would be applicable to determine appointments in the cases of single cadre posts. We have heard Mr.Issac Mohanlal, learned Senior Counsel for the review petitioner / school and Mr.D.Sadiq Raja, learned Additional Government Pleader for respondent nos. 1 to 4.

7. The learned Additional Government Pleader would, even at the outset, bring to our notice order dated 16.05.2023 passed by the District Educational Officer on the heels of judgment dated 14.02.2023, confirming the appointment of the petitioner in writ petition, as record clerk. With this, the stand of the State and the authorities in the Education Department is clear and categoric as to the eligibility of the petitioner to the post.

8. The question of applicability of communal roster to single cadre posts was the subject-matter of various judgments of the Hon'ble Supreme Court. The first judgment on this score is *Chakradhar Paswan v State of Bihar and others* ((1998) 2 SCC 214). In that judgment, where the Hon'ble Supreme Court considered a challenge to an order of the Patna High Court, the questions that fell for determination are as follows:



"(1) Is the post of Deputy Director (Homeopathic) an 'isolated post' and therefore reservation of the post for a scheduled caste candidate amounts to 100% reservation and must therefore be declared to be impermissible under Art. 16(4)? (2) Whether the posts of the Director and the three Deputy Directors could be grouped together for purposes of implementing the policy of reservation, according to the 50 point roster. And (3) Could the posts of the Director and the three Deputy Directors in the Directorate of Indigenous Medicines although they are posts carried on different grades, still be clubbed together for purposes of reservation merely because they are Class I posts?"

9. While considering the questions, the Hon'ble Supreme Court noted that the Directorate of Indigenous Medicines comprised of four posts, one Director and three Deputy Directors, the latter being Class I posts. The post of Director was an isolated post that fell within a cadre of its own. They observed that the post of a Director was senior / superior to that of Deputy Director and hence could not be grouped together with that post.

10. Considering the inter play between the reservation for the said posts, the conclusion was that if there is only one post in a cadre, there could be no reservation with reference to that post either for recruitment at the initial stage or for filling up of future vacancies in



respect of that post. Thus, a reservation which would come under Article 16(4) would pre-suppose the availability of multiple posts or at least more than one post in that cadre.

11. A subsequent judgment in the case of *Union of India v Madhav* ((1997) 2 SCC 332), took a slightly divergent view from the judgment in *Chakradhar's case* holding that in the case of an isolated or single cadre post, reservation at the first instance should be general but in the second instance should be considered as reserved.

12. By virtue of this cleavage of opinion, the issue was referred to the attention of a Constitution Bench and in *Post Graduate Institute of Medical Education and Research v Faculty Association and others* ((1998) 4 SCC 1), the question was decided once and for all approving the view taken in *Chakradhar's case*. At paragraph 37 the Bench holds as follows:-

"37. We, therefore, approve the view taken in *Chakradhar case* that there cannot be any reservation in a single post cadre and we do not approve the reasonings in *Madhav case*, *Brij Lal Thakur case* and *Bageshwari Prasad case*, upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of *Post Graduate Institute of Medical Education & Research* cannot also be sustained. The review petition made in Civil Appeal No.3175 of 1997 in



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the case of Post Graduate Institute of Medical Education & Research, Chandigarh, is therefore allowed and the judgment dated 2-5-1997 passed in Civil Appeal No.3175 of 1997 is set aside."

13. In light of the detailed discussion as above, the legal issue in regard to the applicability of the communal roster and reservation in case of single cadre / isolated posts is answered to state that in such instances there can be no application of the communal roster at all. To clarify, in the case of a single cadre, isolated post, the communal roster does not apply.

14. This Review Application stands allowed. No costs. Connected miscellaneous petition is closed.

(R.S.M., J.) (A.S.M., J.)
14.06.2023

Index:Yes
Neutral Citation : Yes
ssm



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