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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESEVED ON : **17.07.2023**

DELIVERED ON : **29.09.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.577 of 2014

P.Gurusamy

...Appellant

/Vs./

1.The Vice Chancellor,
Chairman Appointing committee,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.

2.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.

3.N.Muthuraju

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 27.02.2014 made in W.P.(MD)No.4581 of 2010.

For Appellant	: Mr.A.Rajini
For R1 & R2	: Mr.T.Sakthikumaran
For R3	: Mr.T.Lajapathi Roy
	Senior Counsel
	for Mr.S.Rajasekar



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The appellant is the writ petitioner. W.P.(MD)No.4581 of 2010, was filed challenging order of appointment dated 17.03.2010 made in favour of the third respondent in the writ petition. The appointment of the third respondent was to the post of Assistant Professor in Political Science in Madurai Kamaraj University (in short 'MKU').

2. Consequential direction was sought to the Vice Chancellor and Registrar of MKU to recruit the petitioner instead by giving preference as per G.O.Ms.No.65, Personnel and Administrative Reforms (K) Department, dated 27.05.2009 as well as the provisions of *Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the Services under the State within the Reservation for the Scheduled Castes) Act, 2009* (in short 'Act 4 of 2009').



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3. The writ petition had come to be dismissed on 27.02.2014 as against which, the present writ appeal has been filed. There had been no appointment to the post of Assistant Professor, Political Science for several years. The reason for the delay was repeated litigation on the ground that calls for applications/notifications had not followed/applied communal rosters. Matters had been decided by the Single and Division Bench quashing the advertisements on the ground that backlog vacancies ought not to have been clubbed with the general vacancies as this would be contrary to fundamental right guaranteed under Article 16 of the Constitution of India. Liberty was granted for issuance of fresh notification.

4. Subsequent notification issued on 21.03.2007 was specific to backlog vacancies relating to Scheduled Castes (in short 'SC')/Scheduled Tribes (in short 'ST') alone and again come to be challenged in a batch of writ petitions. A high level committee i.e., the Teachers Recruitments Board Committee had been constituted to ascertain the details of cadre strength and other particulars. Post the



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deliberations of the High Level Committee, the 2007 notification had been withdrawn and as also the connected the writ petitions.

5.Yet another notification came to be issued on 22.01.2010 inviting applications for appointment to 30 backlog vacancies, 28 for SC and 2 for ST. This very petitioner had filed W.P.(MD)No.3775 of 2010 seeking mandamus that his application to be considered for one of the backlog vacancies for the post of Assistant Professor, Department of Political Science. Since, pending writ petition, selection had been completed, the writ petition had been closed as withdrawn granting liberty to the writ petitioner to challenge the selection of the third respondent.

6.The writ petitioner and the third respondent were aspirants to the post of Assistant Professor, Political Science. Notification had been issued for recruitment in general terms calling for applications for filling up backlog vacancies for SC/ST. The applications had been notified for SC (Arunthathiyar) on preferential basis applying G.O.Ms.No.65, dated 27.05.2009 and a total of 30 posts had been advertised, 28 relating to SC and 2 relating to ST.



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7. There was only one post available in the Department of Political Science relating to SC community. The notification has been issued on 22.01.2010. G.O.Ms.No.65, dated 27.05.2009 issued by the Personnel and Administrative Reforms Department, deals specifically with the reservation of appointments horizontally for Arunthathiyar within reservation for SC. This is based on Act 4 of 2009, which was enacted to provide for reservation of seats in educational institutions including private educational institutions in State and appointments /posts in the services under the State to Arunthathiyar in the State of Tamil Nadu within 18% reserved for SC.

8. Clause 3 of Act 4 of 2009 notified under G.O.Ms.No.50, dated 29.04.2009 came into effect on that date, and provides for 16% reservation of the seats reserved for SC in favour of Arunthathiyar. Under notification II of G.O.Ms.No.50, the *Tamil Nadu Arunthathiyars (Special Reservation of Seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State within the Reservation for the Scheduled Castes Rules, 2009, (in short 'Rules 2009')* have been notified.



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9. Under those Rules, Arunthathiyars have been defined to mean Arunthathiyar, Chakkiliyan, Madari, Madiga, Pagadai, Thoti and Adi Andhra castes within the list of 76 SCs notified under the Constitution. The reservation is to be made in terms of Rule 3, which sets out an illustration for the manner by which 18 seats reserved for SC are to be given effect and which of those positions shall be offered to Arunthathiyar in rotation.

10. The rotation is set out in the following manner:

“Out of 100 seats, 18 seats are reserved for Scheduled Castes in the following:

2	32	66
6	36	72
12	42	76
16	52	82
22	56	86
26	63	92

Seats to Arunthathiyar are to be offered in the rotation of 2, 32 and 66.



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11. According to the writ petitioner, he belongs to Chakkiliyan Community. He had obtained a Masters in Public Administration in 2000 with 64 marks. He completed his Masters in Philosophy in 2001 with 73 marks in the subject of comparative religion and his Doctorate in political science on 06.02.2009. He had been employed as Temporary Lecturer in the Directorate of Distance Education in MKU between 2001 and 2004 taking classes for student in M.A. Political Science. Thereafter, and till institution of Writ Petition, he was employed as a temporary Lecturer in Theni Institution of Cooperative Management at Andipatti. He has also claims to have authored some books.

12. According to him, there is no representation from the Arunthathiyar community in the department of Political Science in MKU and this is a lacuna that has to be corrected in the light of the constitutional mandate that has been propounded by the 2008 Act and Rules. Quite apart from this, the petitioner claims to be the only eligible candidate who has secured necessary marks and holds the requisite qualifications. His candidature ought to have been preferred over any other candidate from SC community. While this is so, the third



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respondent has been appointed, who is not from Arunthathiyar community.

13.The Writ Court also refers to yet another aspirant, one Dr.R.Arumugam, who also belongs to Arunthathiyar community and has admittedly performed better in the tests than the writ petitioner. It was thus the case of the official respondents in the writ petition that if at all the post ought to have been offered to a candidate from SC Arunthathiyar community, it should have been so offered to Dr.R.Arumgam, who was better qualified, but not the petitioner. The writ Court refers to the judgment of the Apex Court in *The State of U.P. vs. Sangam Nath Pandey and others* [(2011) 2 SCC 105], on the question of whether the vacancies for which applications were solicited, could be treated as backlog vacancies at all.

14.Having noted the rival contentions on this score, as to whether those vacancy would at all constitute backlog vacancies or regular vacancies, the Writ Court declined to answer that question for the reason that it had been raised incidentally in the course of oral



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submissions and had not been specifically raised in the writ affidavit.

Thus the writ Court restricted itself to examination of the process of selection of candidates pursuant to notification dated 22.01.2010, proceeding on the basis that all the vacancies dealt with under that notification constitute backlog vacancies only. In fact the notification itself is titled '*Recruitment of backlog vacancies for SC/ST*'.

15.The second question that the writ Court looked into was based on a decision of this Court in *W.P.(MD) No.4421 of 2001, M.Periya Karuppan Vs. State of Tamil Nadu, dated 01.09.2008* (in short 'Madras Universities Teachers Association Case), to the effect that every department of the University must be taken as an individual unit and the communal roster be applied to each department.

16.In the present case there is only one post that has been advertised in every department and all those posts relating to SC/ST community only. If one were to apply G.O.Ms.No.50 exclusively to each department, which is what the appellant would urge, the end result would be that every post would have to be filled in only by a candidate from the Arunthathiyar community.



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17. We do not agree that this is the manner in which the communal roster must be applied. Undoubtedly, G.O.Ms.No.50 must be applied to notification dated 22.01.2010 as a result that the applications could only be in the rotation fixed under that Government Order. Arunthathiyar candidates would be offered the posts in the rotation of 2, 32 and 66 as per the illustration in paragraph No.11 supra.

18.It is relevant to note that notification dated 22.01.2010 itself is not unchallenged, and rightly so, as it under that notification that the Arunthathiyars are accorded priority within a reserved class – a reservation within reservation. This cannot be interpreted such that the benefit is far wider than what has been contemplated as the Appellant would have us do.

19.We are unaware of, and the pleadings do not provide any clarity as to the rotational turn that the present vacancies relate to. It is more or less admitted that notification dated 22.01.2010 relates to backlog vacancies for the last at least one decade. The 2008 Act has



undoubtedly to be applied to notifications issued on or after coming into force of the Act, for which the effective date is 29.04.2009. Thus, notification dated 22.01.2010 would have to be interpreted in line with 2008 Act and Rules.

20. Admittedly notification dated 22.01.2010 is the first call for applications after coming into force of 2008 Act on 29.04.2009. Thus, the first turn would devolve upon a candidate from SC community only. Since there is only one post is advertised, the appointment of the third respondent, a candidate from SC community, seems to be in order.

21. Apprehending that a candidate from Arunthathiyar community would bag the single one slot notified, the third respondent had filed W.P.(MD)No.1864 of 2010 challenging advertisement dated 22.01.2010 insofar as it relates to recruitment of Assistant Professor for Political Science Department and seeking provisional consideration of his appointment to that post. The writ petition was dismissed as withdrawn on 09.03.2010 and the order of appointment of the third respondent is dated 17.03.2010.



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22. One ancillary question that has also arisen touches upon whether G.O.Ms.No.65 would apply to vacancies that have arisen even prior to the date of Government Order. In this regard, the Government Order itself says at paragraph No.3 that the roster prescribed shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009. The State has clarified that those appointments that have already been made, following the prescriptions on 200 point roster in Government Orders dated 29.10.2007, 30.05.2008 and 06.11.2008 will not be disturbed.

23. In *A.A. Calton vs. Director of Education and another* [(1983) 3 SCC 33], the appellant had questioned the validity of appointment of the respondent as Principal of Ranikhet Intermediate College, Ranikhet, based upon an interpretation of Uttar Pradesh Interpretation Act, 1921, which was amended by U.P. Act 26 of 1975 that had come into force on August 18, 1975.



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24.The question that was decided related to whether that amendment would apply to the appointments that had been challenged. The Court noted that the amended Act did not provide that such amendment would apply only to pending proceedings nor could it be deduced as such. The Court thus reiterated the well settled proposition that existing rights that had been created should not be impaired by an amendment, unless there was an express stipulation to such effect.

25.In that case, the process of selection under the U.P. Interpretation Education Act, 1921 commences from the call for applications up to the stage when the Director became entitled to make the selection of appropriate candidate. Those statutory provisions could not be considered as mere procedural provisions. The amendment was thus held to be prospective, not affecting any proceedings that had commenced prior to 18.08.1975.

26.In the case of *Y.V.Rangiah and others vs. J.Sreenivasa Rao and others* [(1983) 3 SCC 284], challenge was to an order of the Andhra Pradesh Administrative Tribunal, at the instance of the employees, who



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worked as Lower Division Clerks in the Department of Registration and Stamps, Andhra Pradesh. Their appointments were covered by the Andhra Pradesh Registration and Subordinate Service Rules (in short 'Rules') that came to be issued from time to time. The panel was to be prepared in September every year providing for transfer or promotion to various positions.

27. While so, the Rules had been amended on 22.03.1977. The petitioners had made representations for preparation of approved list that remained unattended till the Rules were amended. They thus contended that their chance for promotion was reduced substantially in the context of the amended Rules and this prejudice could have been averted, if the representations had been considered in a timely fashion in light of the then applicable Rules. This contention was accepted by the Court holding that the posts, which fell vacant prior to the amended Rules would be covered by the old Rules and not by the new Rules.

28. All these cases were considered in a batch of Civil Appeals and in *State of Himachal Pradesh and others vs. Raj Kumar and others*



[Civil Appeal No.9746 of 2011 dated 20.05.2022], the Hon'ble Apex Court considered 15 illustrations where they differed from the ratio in *Rangaiah's Case*. Exceptions were carved out to the broad provisions formulated therein. Summarizing those findings, the propositions, as set out in the analysis in paragraph 36 reads thus:

1. *There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.*
2. *It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.*
3. *The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. 60 There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.61 The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.*
4. *The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.*
5. *When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases."*



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29. The conclusion is that there is no Rule of universal application to the effect that vacancies must necessarily be filled only on the basis of Rules that exists on the date when such vacancies arise. The ratio in *Rangaiah's* case was thus impliedly overruled and in fine, the following conclusions were laid down:

“(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.”

30. The decision in *Pankjeshwar Sharma and others vs. State of Jammu and Kashmir and others* [(2021) 2 SCC 188] has been supplied by the private respondent in support of the position that since he has been serving since 2010, it cannot be inappropriate to disturb from the post now. After considering the ratio of the judgments in *Arup Das vs. State of Assam* [(2012) 5 SCC 559], *Gujarat State by Executive Engineers's Association vs. State of Gujarat* [1994 SCC (L& S) 1159] and *Buddhi*



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Nath Chaudhary vs. Abahi Kumar [(2001) 3 SCC 328], three judges of the Apex Court opined that appointment of long serving candidates must normally not be disturbed.

31.To the complaint of the writ petitioner that MKU does not have even a single Arunthathiyar employee on its rolls, the list of faculty position as on 17.07.2023 has been circulated to establish that there are two Arunthathiyar candidates as on that date employed in the university, one of whom had been relieved on 12.03.2013 and other continuing till date.

32.In the present case, all the posts notified in call dated January, 2010 are backlog vacancies. The ratio of the judgment in *Rajkumar*, has settled the position that the applicable law to decide the appropriate candidate for the posts, would have to be determined bearing in mind the facts and circumstances and the governing Rules. It is also rather a grey area as to which period, these 30 vacancies relate, except that they relate to the position prior to 11.01.2010. Though the vacancies would have arisen on various dates from 2006 to 2010, with the passing



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of 2008 Act and 2009 Rules on and from 29.01.2009, it is mandatory that the communal roaster to be applied with the horizontal reservation as provided.

33.In light of the discussion and our decision on the legal issue of applicability of the communal roaster to notification dated 22.01.2010, we see no reason to go in detail into the eligibility of the rival candidates before us and proceed on the basis that the disclosure made by those candidates in the selection process is correct. Even if so, there would be no change in the conclusion arrived at by us in regard to the application of the communal roaster. We find nothing untoward in the selection of third respondent to the post of Assistant Professor (Political Science) and confirm the order passed by the Writ Court.

34.In the result, this Writ Appeal is dismissed. No costs.

[A.S.M.J.] & [R.V.J.]
29.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes



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TO:-

- 1.The Vice Chancellor,
Chairman Appointing committee,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.
- 2.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)No.577 of 2014

Dated:
29.09.2023