



WEB COPY



W.P.(MD)No.5131 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5131 of 2016

and

W.M.P.(MD)No.4580 of 2016

The Management,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Bye Pass Road, Collectorate Post,
Dindigul.

... Petitioner

vs.

1.The Special Deputy Commissioner
of Labour,
Teynampet, Chennai-600 006.

2.V.Subraminan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in the files of the 1st respondent pertaining to the proceedings in A.P.No.310 of 2012, dated 30.06.2014 and to quash the same as illegal.



WEB COPY



W.P.(MD)No.5131 of 2016

For Petitioner : Mr.J.Senthil Kumaraiah
For R1 : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorari, to quash the 1st respondent pertaining to the proceedings in A.P.No.310 of 2012, dated 30.06.2014.

2. The 2nd respondent was appointed as Driver under the category of Scheduled Caste. The Corporation follows a scheme if any person is appointed under “reserved crew”, it will be considered as a temporary employment, which means that the 2nd respondent is not under permanent employment with the petitioner corporation.

3. In the meanwhile, the 2nd respondent concealed the fact that he



W.P.(MD)No.5131 of 2016

WEB COPY

had converted to Islam. The 2nd respondent belongs to SC community and married one Abitha on 07.03.2005. Subsequently, he has converted from Hinduism to Islam on 07.04.2008. This fact was not disclosed to the petitioner corporation, when he was appointed under the reserved crew as Driver on 20.08.2008. After the facts were revealed, the 2nd respondent was dismissed from service. However, the authority under the Industrial Disputes Act did not grant approval in A.P.No.310 of 2012. Aggrieved over the same, the present writ petition is filed.

4. After conversion, the 2nd respondent is not eligible for reservation granted the Scheduled Caste. The said issue is already dealt by another Learned Single Judge in W.P.(MD)No.1019 of 2022 dated 01.12.2022 reported in 2023 (1) CTC 72. This Court has already dealt with the same issue in W.P.(MD)No.16450 of 2014 vide order dated 12.12.2022. The relevant portion is extracted hereunder:



WEB COPY



W.P.(MD)No.5131 of 2016

“5. The learned Counsel appearing for the respondents No.2 to 4 and the learned Additional Government Pleader submitted that the issue was already considered by this Court in W.P.No.1019 of 2022, vide order, dated 01.12.2022. The learned Single Judge has held that the Government of Tamil Nadu had issued as many as four letters whereby laid down guidelines stating that the candidates who have converted to Islam from other religion will be considered only under “others category” and the relevant portion is extracted hereunder:

“The Government of Tamil Nadu had in as many as four letters laid down that the candidates who have converted to Islam from other religion will be considered only as “others category” (vide Lr No. 11373/Bc-MBCs/09-01 dated 04.02.2010, Lr No. 11373/BC-MBCs/09-02 dated 22.08.2012, Lr.No. 6907/BC_MBCs/2015-01 dated 04.05.2017 and Lr.No. 587/BC_MBCs/2019 dated 17.05.2019).”

Based on the letters, the petitioner is not entitled to the said certificate which she was obtained prior to conversion.



W.P.(MD)No.5131 of 2016

WEB COPY

10. In a Public Interest Litigation, the Hon'ble First Bench has considered the issue in W.P. (MD)No.1009 of 2013 in M.K.Muzibur Ragman vs. UOI and others and disposed of the writ petition as follows:

2. It is pointed out to us by the Learned Additional Advocate General that the very issue has been referred to a Larger Bench by the Honourable Supreme Court in Centre, Public Interest Litigation & Another V. Union of India (Writ Petition (Civil) No. 180 of 2004 vide order dated 21.01.2011).

3. In view of the aforesaid facts and circumstances, we see no purpose in entertaining the petition, as the very question is under the consideration before the Supreme Court and the law laid down would be applicable to all."

11. When another Hon'ble Division Bench subsequently took a contra view, the Government of Tamil Nadu filed SLP challenging the same. The Hon'ble Apex Court directed that till the next date of hearing, the status quo shall be maintained (vide



W.P.(MD)No.5131 of 2016

order dated 24.09.2018 in SLP (Civil) Diary No. 2841/2018). ”

6. Considering all these factors, the learned Single Judge has held as under:

12.The issue can be approached from another angle. It is not as if all Muslims have been recognized as belonging to Backward Class in Tamil Nadu. G.O.Ms.No.85 BC, MBC and Minorities Welfare (BCC) Department, dated 29.07.2008 catalogues only the following list of Backward Classes (Muslims): “1.Ansar, 2.Dekkani Muslims, 3.Dudekula, 4.Labbais including Rowthar and Marakayar (whether their spoken language is Tamil or Urdu), 5.Mapilla, 6.Sheik, 7.Syed.” The petitioner has enclosed the certificate issued by the Kazi of Tamil Nadu Government for Ramanathapuram District on 25.12.2012. It reads that Sathiyamoorthy S/o.Lakshmanan had embraced Islam on his own volition and that he has joined the Muslim Jamat as a Member and that he is following Islamic norms and principles. This certificate declaring the petitioner's conversion only states that the petitioner has become a Muslim and nothing more. G.Michael judgment of the Madras High Court also states that



WEB COPY



W.P.(MD)No.5131 of 2016

when a Hindu gets converted to Islam, he becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. When the Kazi does not declare that the converttee is to be treated as belonging to the group of Labbais, I fail to understand as to how a revenue authority of a secular government can fix the converted individual in a particular slot or pigeon-hole. If as in S.Ruhaiyah Begum, a Hindu belonging to the “others category” gets converted to Islam and manages to obtain certificate as if he or she belongs to one of the aforesaid notified groups, the very purpose of social justice can be defeated by such clever stratagems. The learned Senior Counsel submitted that only if the converttee is already enjoying the benefit of reservation prior to his conversion, then and then alone he can be considered as BC (Muslim). As held in S.Ruhaiyah Begum, that exercise will have to be undertaken only by the Government.

13.As observed in S.Yasmine case, a person cannot carry his community of birth even after conversion. Whether such a person should be given the benefit of reservation even after conversion is a question that is pending adjudication before the Hon'ble Supreme Court. When the Hon'ble Supreme Court is seized of the



W.P.(MD)No.5131 of 2016

WEB COPY

matter, it is not for this Court to uphold the claim of the petitioner. It is for this reason, I am not persuaded by the precedents cited by the learned Senior Counsel appearing for the petitioner. The stand taken by the second respondent Commission is correct. It does not warrant any interference.

14.The writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.”

7. Following the said judgment, this Court is of the considered opinion that the claim of the petitioner cannot be entertained. Moreover, the issue is pending before the Supreme Court. At this stage, if any order is passed granting the BC Certificate as if the petitioner belongs to Vellala Chettiyar will amount to interfering in the judicial process that is pending before the Supreme Court.

8. Hence, for the reasons stated above this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.”



W.P.(MD)No.5131 of 2016

WEB COPY

Following the aforesaid judgment, the impugned order passed by the authority is liable to be quashed and the impugned order is quashed. The dismissal of the 2nd respondent is legally valid.

5. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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

05.06.2023

Tmg

To

The Special Deputy Commissioner of Labour,
Teynampet, Chennai-600 006.



WEB COPY



W.P.(MD)No.5131 of 2016

S.SRIMATHY, J

Tmg

W.P.(MD)No.5131 of 2016

05.06.2023