



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.23617 of 2023

& WMP.No.23135 of 2023

G.Harini

... Petitioner

Vs.

- 1.The Secretary,
Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel and Training,
North Block, New Delhi – 110 001.
- 2.The Principal Secretary to the Government,
BC, MBC and Minorities Welfare Department,
Secretariat, Fort St. George,
Chennai – 600 001.
- 3.The Secretary to the Government,
Human Resources Management Department,
Secretariat, Fort St. George,
Chennai – 600 001.
- 4.Additional Chief Secretary/Commissioner of
Revenue Administration,
Commissionerate of Revenue Administration and
Disaster Management,
Chepauk, Chennai – 600 005.
5. The District Collector,
District Collectorate,
Perambalur – 621 212.



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6. The Revenue Tahsildar,
Kunnam Taluk, Perambalur District.

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... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the order passed by 6th respondent dated Nil with respect to petitioner's application No.TN-8620230320112 and consequently direct the 6th respondent to issue the E.W.S. certificate to the petitioner.

For Petitioner	: Mr.Girish
For Respondents	: Mr.M.R. Gokul Krishnan Additional Government Pleader For R2 to R6

ORDER

The petitioner is an aspirant for the ensuing UPSC examinations. Hence, after completion of her education with commendable credentials, she states that she had commenced preparations for civil services and other Government Services examinations.

2. She belongs to Hindu Reddy (Kanjam) caste, which has been notified by the Government of Tamil Nadu as a Backward Caste ('BC'). To be noted



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that the list of backward classes as approved by the Government of Tamil Nadu runs to 252 such castes.

3. She believes herself entitled for reservation under Economically Weaker Section ('EWS') quota and places reliance in this regard, on O.M. dated 31.01.2019 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India / R1 ('Scheme').

4. Clause 5.1 of the Scheme states that the benefit of EWS reservation may be availed on production of income and assets certificate issued by the competent authority. The State has also, consequent on the floating of that Scheme, issued guidelines to the State Authorities / District Collectors for implementation of the Scheme.

5. The petitioner had approached R6, being the Revenue Tahsildar, for issuance of certification under the Scheme. Since there was a typographical error in her application submitted on 26.10.2022, there was no enquiry per se but she was in receipt of an order dated 27.02.2023 rejecting her request for EWS quota on the ground that her caste falls under the BC category.

6. Inter alia, the respondent refers to a report received from the jurisdictional Revenue Inspector on 14.12.2022 to the effect that the petitioner is not entitled to the certificate. The rejection has been done mechanically, and



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without really looking into the Scheme at all and the present writ petition has been filed seeking a quash of order dated Nil rejecting the petitioner's application for EWS Certificate and a direction to R6 to issue such certificate to her.

7. Mr.Gokul Krishnan, who appears for the official respondents does not seriously dispute the eligibility of the petitioner for grant of EWS certification. R1 vide O.M. dated 31.01.2019 on the subject of '*Reservation for EWS and Direct Recruitment in civil posts in the Government of India*' had provided for such recruitment and the terms and conditions thereof.

8. Clause 2 of that OM refers to the quantum of reservation that may be applied for the purposes of the reservation and states that those persons belonging to EWS '*not covered under the Scheme of Reservation for SCs/STs and OBCs shall get 10% reservation in direct recruitment in civil posts and services in the Government of India*'.

9. The petitioner is, admittedly, not covered under the Scheme of reservation of SCs/STs/OBCs as notified by the Central Government as the Central List of OBCs for the State of Tamil Nadu does not include the Hindu, Reddy (Kanjam) caste. A comparison of the Central list of OBCs for the State of Tamil Nadu and the State list of BC's in Tamil Nadu reveals that there are 252 Backward Castes notified by the State of Tamil Nadu whereas there are only 180 OBCs as notified by the Centre for the State of Tamil Nadu.



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10. Thus, while the petitioner does fall under BC category as notified by the State, her caste does not fall within the Other Backward Classes (OBC) category as per the Central list of OBC for the State of Tamil Nadu.

11. One question that comes to mind is as to why at all there should be a difference between the list of Backward Castes in the Central and State lists as the assessment of relevant parameters for such categorisation are expected to be one and the same. Such an assessment would thus be common whether the notifying authority were to be the State or the Centre.

12. The above question also finds mention in the Statement of Objects and Reasons prior to introduction of the Constitution (127th amendment) Bill, 2021 that reads as follows:-

“STATEMENT OF OBJECTS AND REASONS

The Constitution (One Hundred and Second Amendment) Act, 2018 has inserted three new articles, that is, 342A, 366(26C) and 338B in the Constitution. Whereas article 338B has constituted the National Commission for Backward Classes, article 342Axxsfgtgf., has dealt with the Central List of the socially and educationally backward classes (commonly known as the Other Backward Classes) and article 366 (26C) has defined the socially and educationally backward classes.



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2. *The legislative intent at the time of passing of the Constitution (One Hundred and Second Amendment) Act, 2018 was that it deals with the Central List of the socially and educationally backward classes (SEBCs). It recognises the fact that even prior to the declaration of the Central List of SEBCs in 1993, many States/Union territories are having their own State List/Union territory List of OBCs. The same was clarified in Parliament that the States and Union territories may continue to have their separate State List/Union territory List of SEBCs. The castes or communities included in such State List or Union List of Backward Classes may differ from the castes or communities included in the Central List of SEBCs*

3. *Although since 1993, there always existed separate lists of the Central Government and that of the State Governments and Union territories, a question has arisen after enactment of the Constitution (One Hundred and Second Amendment) Act, 2018 as to whether the said amendments to the Constitution mandated for a single Central List of SEBCs specifying the SEBCs for each State, thereby taking away the powers of the State to prepare and maintain a separate State List of SEBCs.*

4. *In order to adequately clarify that the State Government and Union territories are empowered to prepare and maintain their own State List/ Union territory List of SEBCs and with a view to maintain the federal structure of this country, there is a need to amend article 342A and make consequential amendments in articles 338B and 366 of the Constitution.*

5. *The Bill seeks to achieve the above objectives”*

13. The amendments that the Bill refers to have been made by virtue of the Constitution (One Hundred and Fifth Amendment) Act 2021 that has since been upheld by the Hon’ble Supreme Court in the majority judgement in *Janhit Abhiyan vs. Union of India* (2023 (5) SCC 1).



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14. In light of the discussion as aforesaid and the factual position being clear that the Hindu Reddy (Kanjam) caste is not part of OBC Central list for the State of Tamil Nadu, the petitioner is entitled to the benefit of EWS Reservation as per OM dated 31.01.2019.

15. The impugned order is thus quashed and this writ petition is allowed. Let the petitioner approach the 6th respondent on 04.03.2024 with a copy of this order, she shall be granted audience and certificate be issued to her forthwith to enable her to make necessary applications in the ensuing UPSC examinations as the last date of application is stated to be 05.03.2024. There shall be no order as to costs. Connected miscellaneous petition is closed.

01.03.2024

Index : Yes / No
Speaking Order
Neutral citation: Yes
ssm

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