



Rev.aplw(MD).No.140 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 08.08.2024

JUDGMENT PRONOUNDED ON : 12.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

REV.APLW(MD)No.140 of 2024
and WMP(MD).Nos. 14998 & 14124 of 2024
in
WP(MD).No.30434 of 2023

1.The Joint Director (Secondary Education)
School Education Department
Chennai

2.The Chief Educational Officer
District Collectorate Campus
Virudhunagar District

3.The District Educational Officer
Srivilliputtur
Virudhunagar District

....Review Petitioners
/Respondents 1 to 3

Vs

1.R.Jayaprabha

...1st Respondent/writ petitioner

2.The Secretary
Sri Rao Bahadur A.K.D.Dharma Raja Girls
Higher Secondary School
Rajapalayam 626 117

...2nd Respondent/4th Respondent



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Prayer:- Review Application filed under Order 47 Rule 1 and 2 of C.P.C read with Section 114 of Civil Procedure Code, to review the order passed W.P(MD).No.30434 of 2023 dated 20.12.2023.

For Appellant : Mr.N.Satheeshkumar
Additional Government Pleader

For Respondents : Mr.M.Ajmalkhan
Senior Counsel for
M/s.Ajmal Associates for R1

JUDGMENT

The instant review petition has been filed seeking to review the order passed by this Court on 20.12.2023 in W.P(MD).No.30434 of 2023.

(A)Facts leading to the filing of this review application are as follows:

2.A vacancy for the post of B.T.Assistant (Tamil) arose in the second respondent School. Being a non-minority aided institution, this School has approached the Educational Authority seeking prior permission to appoint B.T.Assistant (Tamil) Teacher. The prior permission was granted by the Educational Authority on 09.10.2014 indicating that two posts of Tamil Pandit could be filled up by the School. One to be reserved under open category and another under Schedule Caste (Arunthathiyar). The open



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category post is not in dispute in this writ petition.

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3.The school management had sought for sponsorship from the Employment Exchange for the candidates belonging to Schedule Caste (Arunthathiyar). The School published a paper publication calling for applications to the post of B.T.Assistant (Tamil) indicating that the post is reserved for Schedule Caste (Arunthathiyar) on preferential basis.

4.Three names of Schedule Caste (Arunthathiyar) candidates were sponsored by the Employment Exchange. Out of three candidates, two of them have remained absent and the third candidate namely Nagajothi who had appeared for the interview had not passed Teacher Eligibility Test (TET) examination. In view of the fact that no other qualified Schedule Caste (Arunthathiyar) candidate was available, the School Management proceeded to appoint the writ petitioner who belongs to schedule caste category.

5.The Management has sent the appointment order for approval to the educational authority. That proposal was returned by the educational authority on 13.04.2017 on the ground that the communal rotation has not



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been properly followed. The said order was challenged by the appointee in W.P(MD).No.19568 of 2017. The writ Court after referring to the order of the Hon'ble Division Bench in W.A(MD).No.1268 of 2013 dated 05.03.2014 had allowed the writ petition and directed the School Management to approach the competent authority for appropriate orders to fill up the said post by the candidate who belong to the Schedule Caste. The learned Judge has also directed the authorities to consider the case of the writ petitioner in light of the judgement rendered by this Court in W.A(MD).No.1268 of 2013 dated 05.03.2014.

6.On the basis of the above said orders, the School Management has approached the authority through their proceedings dated 05.10.2019 followed by two reminder letters dated 28.04.2021 and 23.07.2021. The authorities had again rejected the said request on the following grounds:

(a)The Management has not given any reason for not selecting the Schedule Caste (Arunthathiyar) namely K.Nagajothi.

(b)The Management has not obtained any certificate from the Employment Exchange that no other qualified Schedule Caste (Arunthathiyar) is available.



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(c)The Management has not obtained any prior permission to appoint a Schedule Caste candidate.

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7.The above said order was put to challenge before this Court in W.P(MD).No.30434 of 2023. This Court by an order dated 20.12.2023 has allowed the writ petition on the ground that when no other qualified Schedule Caste (Arunthathiyar) candidate was available, the Management was right in appointing a Schedule Caste candidate. This Court has directed the authorities to approve the appointment of the writ petitioner. Seeking to review the said order, the present review petition has been filed.

(B)Contentions of the counsels appearing on either side:

8.The learned Additional Government Pleader appearing for the review petitioner has contended that when no Schedule Caste (Arunthathiyar) was available, the School Management ought to approach the Employment Exchange for getting “non-availability certificate” and thereafter, approach the Educational Authority seeking permission to appoint a Schedule Caste candidate. He had further contended that after obtaining permission from the authorities, the Management should have



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approached the Employment Exchange calling for sponsorship of Schedule Caste candidates, only then, the other Schedule Caste candidates would be in a position to apply for the post. The advertisement issued by the School Management restricted the applications to Schedule Caste (Arunthathiyar) candidates. Unless a new advertisement is issued calling for application from the schedule caste candidates, selection process cannot be considered to be proper.

9.The learned Additional Government Pleader had further contended that this Court in W.P(MD).No.19568 of 2017 has directed the School Management to approach the authority concerned with a proper request for appointing a Schedule Caste candidate. After orders were passed on 29.03.2019, the School Management has never approached the educational authority. This fact has not been taken into consideration by the writ Court when the orders were passed on 20.12.2023.

10.Unless prior permission is obtained from the authorities for change of communal rotation and sponsorship is sought for from the Employment Exchange for schedule caste candidate, the appointment of the



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writ petitioner cannot be approved. These facts were not brought to the notice of the Court, when the writ petition was disposed of. Hence, he sought to review the order.

11.Per contra, the learned Senior Counsel appearing for the writ petitioner/first respondent in the review petition had contended that the internal reservation for Schedule Caste (Arunthathiyar) is within the reservation provided for schedule caste candidates. It is not an exclusive reservation for Schedule Caste (Arunthathiyar). The reservation only provides for an preferential right to Schedule Caste (Arunthathiyar). In case, if no Schedule Caste (Arunthathiyar) candidate is available, certainly the said post could be filled up through qualified schedule caste candidates. For the said purpose, a fresh notification or seeking sponsorship from the Employment Exchange would not arise. If such a procedure is adopted, it will be a never ending process.

12.The learned Senior Counsel had further relied upon Tamil Nadu Act 4 of 2009 and G.O.(Ms).No.50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.04.2009 and G.O.(MD).No.61, Adi Dravidar and



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Tribunal Welfare (TD2) Department dated 29.05.2009 to contend that what is offered to Schedule Caste (Arunthathiyar) is only on preferential basis and if no qualified Schedule Caste (Arunthathiyar) is available to fill up the preferential seats, the said vacancies can be filled up through schedule caste members on merit basis.

13.The learned Senior Counsel had further contended that the arguments raised on the side of the review applicant are nothing, but rearguing the writ petition and the ingredients of the review application have not been satisfied. Hence, he prayed for dismissal of the review petition.

14.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

15.A careful perusal of Sections 4 and 6 of the Tamil Nadu Arunthathiyars (Special Reservation of Seats in Educational Institutions Including Private Educational Institutions and of Appointments or Posts in



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the Services Under the State within the Reservation for the Scheduled Castes) Act, 2009 (Hereinafter called as 'Tamil Nadu Act 4 of 2009) clearly reveals that out of 18% of seats reserved for Scheduled Castes, 16% of the seats are offered to Arunthathiyars, if available on preferential basis among the schedule castes. It could be further seen that when there are no qualified Arunthathiyars candidates, it shall be filled up by the schedule caste candidates and it need not be carried forward.

16. The rules of Tamil Nadu Act 4 of 2019 were published under G.O.(Ms).No.50 Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.04.2009. As per the said Rules, out of 100 seats, 18 seats are reserved for Scheduled Caste. Out of 18 seats, rotation Nos. 2,32 and 66 were offered for Arunthathiyars. The said Rules were amended in G.O.Ms.No.61, dated 29.05.2009. In Rule-3, the following was substituted.

“ The seats to be allotted to Arunthathiyars on preferential basis shall be offered in the horizontal rotation such as 2, 32 and 66. The preferential seats if filled up, it does not mean that the other qualified Arunthathiyars shall not compete with the rest of the Scheduled Castes members on inter-se merit basis; vice versa, if no qualified Arunthathiyars



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are available to fill up the preferential seats, it does not mean that the vacancies so arising shall not be filled up by the scheduled castes members on merit basis.”

17.A perusal of the amended Rule will indicate that what is offered to Schedule Caste (Arunthathiyar) is only a preferential seat on rotations such as 2, 32 and 66 and if no qualified Arunthathiyar candidate is available, the said vacancies can be filled up by the Scheduled Caste members on merit basis. After introduction of 200-point roster system, apart from rotation 2, 32 and 66, rotation 102, 132 and 166 were also offered to Schedule Caste (Arunthathiyar).

18.The rotation such as 2, 32, 66, 102, 132 and 168 continue to be reserved for schedule caste candidates until a qualified Arunthathiyar candidate is available. There is no exclusive reservation for Arunthathiyar candidate and they get only a preferential seats within the seats reserved for schedule caste candidates provided they are qualified.

19.A combined reading of the Act and the Rules will clearly disclose



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that if no candidate is available from the Schedule Caste (Arunthathiyar) for preferential seats, the said seats could automatically be filled up through a qualified Scheduled Caste candidate. In case, if no qualified Arunthathiyar candidate is available, it need not even be carried forward. Therefore, the appointment of a qualified Scheduled Caste candidate on preferential seats of Schedule Caste Arunthathiyar (when no qualified Arunthathiyar is available) is nothing but automatic under the statute and Rules and it does not call for any further administrative action. In such circumstances, filling up of a scheduled caste candidate in the post of Scheduled Caste (Arunthathiyar) preferential seat can never be considered to be a violation of communal rotation. No statutory provisions or Government orders have been brought to the notice of the Court that filling up of a Scheduled Caste (Arunthathiyar) preferential seat with that of a Scheduled Caste candidate (when no qualified Arunthathiyar candidate is available) would amount to violation of communal rotation.

20. When the appointment of Schedule Caste candidate in the preferential seat of Arunthathiyar candidate is automatic (when no qualified Arunthathiyar candidate is available), the question of again approaching the



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educational authority or employment exchange for getting prior approval or sponsorship is not mandated either under the Act or under the Rules. In fact, in the paper advertisement, the School Management has specifically pointed out that the seat is reserved for Schedule Caste (Arunthathiyar) on preferential basis. Therefore, in view of the said legal position, it is clear that the Scheduled Caste candidate can also apply for a preferential seat of Schedule Caste (Arunthathiyar).

21.In W.P(MD).No.19568 of 2017, this Court had directed the authorities to consider the case of the writ petitioner in the light of the judgment rendered in W.A(MD).No.1268 of 2013 dated 05.03.2014. However, the authorities have not chosen to follow the dictum laid down in W.A(MD).No.1268 of 2013 and they have proceeded to pass an order alleging violation of communal rotation.

22.This Court by an order dated 17.02.2023 in W.P(MD).No.30434 of 2023 had directed the School Management to approach the authorities. Accordingly, the Management had approached the authorities by way of resubmitting the proposal on 05.10.2019 and sending reminder on 28.04.2021 and 23.07.2021. Only based upon the said proposal, the order



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impugned in the writ petition dated 15.09.2022 has been passed. Therefore, the contention of the learned Additional Government Pleader that the order of this Court dated 17.02.2023 has not been followed by the School Management is not factually correct.

23.The Hon'ble Supreme Court in a judgment reported in **(2024) 2 SCC 362 (Sanjay Kumar Agarwal Vs. State Tax Officer(1) and another)** in paragraph No.16 has summarized the proposition of law relating to the entertainment of a review application and the same is extracted as follows:

“16. The gist of the aforesaid decisions is that: -

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”



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R.VIJAYAKUMAR, J.

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Pre-Delivery Judgment made in
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