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W.P.No.14169 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2025

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14169 of 2020

K.Mohana

....Petitioner

Versus

1.The Government of Tamilnadu
Department of Personnel and
Administrative Reforms (P&AR)
rep. By its Secretary
Fort St.George, Chennai – 600 009

2. The Chairperson
Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
College Road, Nungambakkam,
Chennai

....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration to declare G.O.Ms.No.188 issued by the 1st respondent on 28.12.1976 is applicable to all mode of selection and all the recruiting agencies including the 2nd respondent to declare impugned rejection order R.C.No.9297/L3/2019 dated 03.03.2020 as illegal and consequently to give preferences to the petitioner for the post of Post Graduate Teacher.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.R.U.Dinesh Rajkumar for R1
Additional Government Pleader
Mr.C.Kathiravan for R2
Standing Counsel



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ORDER

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The Writ Petition has been filed for an issuance of a Writ of Declaration to declare G.O.Ms.No.188 issued by the 1st respondent on 28.12.1976 is applicable to all mode of selection and all the recruiting agencies including the 2nd respondent to declare impugned rejection order R.C.No.9297/L3/2019 dated 03.03.2020 as illegal and consequently to give preferences to the petitioner for the post of Post Graduate Teacher.

2. The brief facts of the case are as follows:-

The petitioner has completed M.A(English), B.Ed., and Diploma in Teacher Education and the petitioner joined as Secondary Grade-Teacher in Sri Venkateswara Matriculation Higher Secondary School, Valajapat, Vellore District from 18.01.2010 to 30.04.2013. While so, the petitioner had married one Ilavarasan, who belongs to Scheduled Caste. In order to give preferences to the weaker section in our society, the Government issued G.O.Ms.No.188 dated 28.12.1976 for providing preference in the Government employment to the intercaste marriage couple through employment exchange. Therefore, the petitioner had written examination on 28.09.2019, but her name was not considered by the 2nd respondent, hence the petitioner earlier filed W.P.No.31092 of

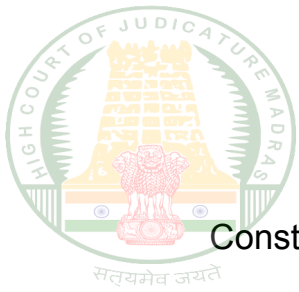


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2019 and the said petition was disposed of on 05.11.2019, but the 2nd respondent has rejected the claim by way of R.C.No.9297/L3/2019 dated 03.03.2020 citing order in W.P.(MD) No.23393 of 2018 dated 28.11.2018 and clarification letter no.76183/R/2002-2 dated 12.02.2003. hence the petitioner has come up with this petition seeking to declare the G.O.Ms.188 dated 28.12.1976 and R.C.No.9297/L3/2019 dated 03.03.2020 issued by the 2nd respondent as illegal.

3. The learned counsel for the petitioner contends that the Hon'ble Supreme Court has held that the recruitment process should not only be done through the employment exchange whereas it should also be done through public advertisement and other possible ways. Therefore, the 2nd respondent ought to have adopted the modern change and applied the benefit of G.O., to the other mode of recruitment including Teachers Recruitment Board.

4. The learned counsel for the petitioner further contends that the Government of Tamilnadu has enacted the Tamilnadu 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 and also the Central Government amended the



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Constitution of India, 1950 and inserted Article 16(6) for special reservation for economically weaker section, but the G.O.No.188 is very old one and therefore, it should be modified subject to the present social and legal development, thereby pleaded to allow the present petition.

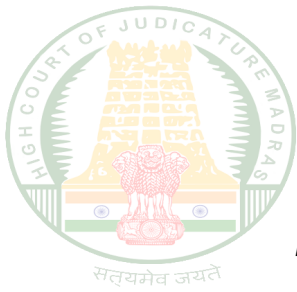
5. That apart, the learned counsel appearing for the petitioner in support of his contention has relied on the following Judgments:

(i) Judgment of Hon'ble Apex Court in Civil Appeal No.59 of 2021 [The State of Kerala & Ors. Vs. Leesamma Joseph] dated 28.06.2021, wherein some views of the High Court has been reiterated, therefore, the relevant Paragraph Nos.28 to 30 is hereby extracted as follows:-

“28. Mr. Gaurav Agrawal, learned Amicus Curiae through the note also pointed out different views of the High Court

a. Poonam Manchanda vs. Union of India reported in 2019 SCC Online P&H 2710-

The Punjab and Haryana High Court while dealing with the case of the petitioner having 70% disability noticed that she had been appointed as Assistant Accounts Officer in 1999 and promoted as Accounts Officer in 2007. On both occasions she did not claim reservation but was considered in general category. The next post was that of Senior Accounts Officer and she claimed promotion on roster No. 1 earmarked for PwD. The Rules did not provide for reservation for PwD in promotion to Group A and Group B



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posts. The High Court granted relief relying upon *Rajeev Kumar Gupta's case (supra)* and directed that the petitioner be considered for promotion under 3% reservation provided for PwD.

b. Union of India vs. Poonam Manchanda in Civil Appeal No.6092 of 2019

An appeal was filed before this Court was dealt with along with a batch of matters of which judgment was delivered in Siddharaju's case (supra).

c. Kamla Chanyal vs. State of Uttarakhand [W.P.No.126 of 2015- Judgment dated 29.11.2016

*“The Uttarakhand High Court once again relying upon the judgment in *Rajeev Kumar Gupta's case (supra)* quashed an OM to the extent that it ruled out reservation for PwD in Group A and B posts and directed the Government to consider the issue relating to the availability of benefit of reservation to the petitioner therein in the capacity as PwD. We may note that as per the solution of learned Amicus Curiae, the Chief Commissioner for Persons with Disabilities [Divyangjan], Government of India receives a number of complaints regarding non-grant of promotion to PwD in Group A and B posts by denying them benefit of reservation in promotion. In *B. Uma Prasad vs. Chief Executive Officer, EPFO14*, the Chief Commissioner noticed that the complainant was not being given reservation in promotion to Group B post and recommended that the respondent may give promotion to persons with benchmark disabilities in all posts, including Group A and Group B posts”.*



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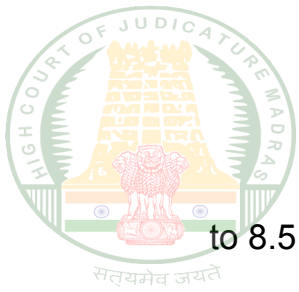
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CONCLUSION

29. *We are of the view that the course of action followed by the High Court in the impugned order is salutary and does not call for any interference. We have also answered various questions which have arisen in the present proceedings assisted by learned Amicus Curiae. In fact, what seems to emerge is that the appellant-State has not implemented the judgment of this Court in Rajeev Kumar Gupta's and Siddaraju's cases(supra). Thus, we consider it appropriate to issue directions to the State of Kerala to implement these judgments and provide for reservation in promotion in all posts after identifying said posts. This exercise should 14 A case before the Chief Commissioner for Persons with Disabilities (Divyangjan), Govt. of India be completed within a period of three months. We are making it time bound so that the mandate of the Act is not again frustrated by making Section 32 as an excuse for not having identified the post.*

30. *We may also note that the 2016 Act has now taken care of how to deal with the aspect of reservation in promotion. The view aforesaid was required to be propounded as a large number of cases may still arise in the context of the 1995 Act."*

(ii) Order passed by this Court reported in (2010) 5 MLJ 46 in W.P.Nos.10748 of 2009 etc., [D.Pothumallee and Others Vs. District Collector, Thiruvavarur District and Others] , wherein at paragraph No.8.3



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to 8.5, it is held as follows:-

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8.3. After bitter experiences, it was emphasised that by communal feasting and food being served to various groups by engaging cooks from underprivileged society will remove instantaneously some form of untouchability and will be a milestone in our march to an egalitarian society.

8.4. In *Bharat Sevashram Sangh v. State of Gujarat* reported in (1986) 4 SCC 51, the Supreme Court emphasised the purpose of providing reservation in Schools and exhorted such provision found in the School Education Act made by the Gujarat State. It is necessary to extract the following passage found in paragraph 8 of the judgment:

"8. The next section which was attacked before us is Section 34 of the Act. Section 34(1) of the Act provides that 15 per cent of vacancies of the teaching staff of a registered private school shall be filled up by persons belonging to the Scheduled Castes and the Scheduled Tribes. It is argued that the above provision interferes with the managerial function. As already mentioned a large number of teachers whose salaries are met by the grants given by the State under the Grants-in-Aid Code are employed by the managements. The State should therefore, have a voice in the method of recruitment. The State should also make provision for reservation of certain percentage of seats for members belonging to the Scheduled Castes and the Scheduled Tribes under Article 16(4) of the Constitution. The insistence on having teachers belonging to the Scheduled Castes and the Scheduled Tribes is also in the public interest. Children should be brought up in an atmosphere where there is opportunity to mix freely with students and teachers belonging to traditionally disfavoured communities also. The opportunity to show reverence to teachers belonging to the Scheduled



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Castes and Scheduled Tribes will in the long run enable the child brought up in that atmosphere to shed the feeling of superiority over members belonging to the Scheduled Castes and the Scheduled Tribes. Such an atmosphere would also be congenial to the development of a society consisting of persons free from feelings of hatred or contempt towards others. ..." (Emphasis added)

8.5.It is surprising to note that the State is taking umbrage under the judgment of the Supreme Court in State of Karnataka Vs. Ameerbi case, but not referring to the subsequent judgments in Dipitimayee Parida Vs. State of Orissa and State of W.B. Vs. Kaberi Khastagir's case (cited supra) as well as the interim order passed by the Supreme Court in PUCL's case. It also ignores the scheme of appointment formulated in this State which is vastly different from the State of Karnataka."

6. Per contra, the learned Additional Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the 2nd respondent would submit that G.O.Ms.No.188 dated 28.12.1976 which was later amended by G.O.Ms.No.229 P&AR Department dated 07.04.1988 and clarification letter issued by the P&AR Department vide 76183/R/2002-2 dated 17.02.2003 has made very clear that horizontal reservation for specific categories like Destitute Widow, inter-caste marriage are applicable only when recruitment is made exclusively through employment exchange seniority and not when recruitment made through open advertisements. Further,



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it is also submitted that Teachers Recruitment Board is only a nodal agency which conducts exams and not a policy making body to decide whether reservation should be given to any special category during recruitment and in support of the same, has relied on the order passed by this Court in W.P.(MD) No.23393 of 2018 dated 28.11.2018 reported in 2018 SCC Online Mad 9632 [J.Kavitha Vs. Govt., of Tamilnadu, rep. By the Secretary to Government, Higher Education Department and Another], thereby pleaded to dismiss the petition.

7. Heard the learned counsels on either side and perused the documents placed on record carefully.

8.It is no doubt true that in order to give preferences to the weaker section in our society, the Government issued G.O.Ms.No.188 dated 28.12.1976 for providing preference in the Government employment to the inter-caste marriage couple through employment exchange and the relevant portion is extracted hereunder:-

“Group II:

i) "Destitute Widows" (Destitute widow means one who has neither any means by herself to live on nor any dependent to protect her from starvation). (Authority: G.O.Ms.No. 229, Personnel and Administrative Reforms (Personnel-R) Department, Dated 7.4.1988.



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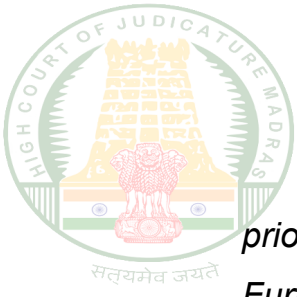
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ii) *"Intercaste Married Couple" (Where one of the spouses belongs to SC/ST) (Authority: G.O.Ms.No. 939, Personnel and Administrative Reforms (Personnel-R) Department, Dated 24.09.1986.)"*

9. Admittedly, the petitioner married one Ilavarasan, who belongs to Scheduled Caste and the petitioner had applied for Post Graduate Assistants / Physical Education Directors Grade-I-2018-2019 through Teachers Recruitment Board vide Notification No.10/2019 dated 12.06.2019 and appeared for the written examination on 28.09.2019, but her name was not considered by the 2nd respondent. Therefore, the petitioner earlier filed W.P.No.3109 of 2019 and the said petition was disposed of on 05.11.2019, but the 2nd respondent has rejected the claim by way of R.C.No.9297/L3/2019 dated 03.03.2020 citing order in W.P.(MD) No.23393 of 2018 dated 28.11.2018 and clarification letter no.76183/R/2002-2 dated 12.02.2003.

10. Further, the relevant Paragraphs of the order passed in W.P.(MD) No.23393 of 2018 dated 28.11.2018 is extracted hereunder for ready reference:-

"2. For such request made by the petitioner, the Deputy Director of TRB who is arrayed as second respondent herein, has informed that in the year 2013, for recruitment of teachers no



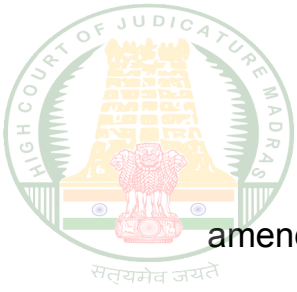
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priority was given for inter-caste marriage certificate holders.

Further, it is also informed to the petitioner that only in case of appointment made through employment exchange seniority, as per government order priority for inter-caste marriage is permissible.”

11. Accordingly, it is crystal clear that no priority can be given based on the above said G.O.Ms.No.188 dated 28.12.1976 which later amended by G.O.Ms.229 P&AR Department dated 07.04.1988. Further, it was also made very clear that horizontal reservation for specific categories like Destitute Widow, inter-caste marriage are applicable only when recruitment is made exclusively through employment exchange seniority and not when recruitment made through open advertisements. Therefore, the petitioner cannot move beyond the reservation given by the Government. Further, the above said Government Order itself is a concession given to persons, who have entered into matrimonial relationship with another person, who is from an oppressed community. The aim of the Government is to eradicate discrimination and untouchability among the people in the name of caste and creed and to bring equilibrium. Hence the petitioner cannot claim as a right for recruitment.

12. When the G.O.Ms.No.188 dated 28.12.1976 which later



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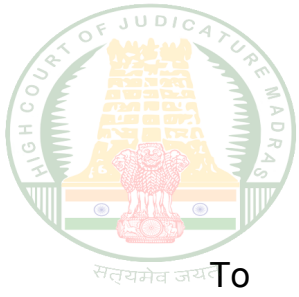
amended by G.O.Ms.229 P&AR Department dated 07.04.1988 clearly prescribes that the horizontal reservation for specific categories like Destitute Widow, inter-caste marriage are applicable only when recruitment is made exclusively through employment exchange seniority and not when recruitment made through open advertisements, the petitioner, who had applied vide Notification No.10/2019 dated 12.06.2019 through direct recruitment, cannot claim appointment as a matter of right.

13. In view of above, this Court is of the view that the petitioner's claim cannot be granted and it is for the Government to take policy decision in this regard and this Court cannot interfere with the policy decision of the State Government and it is left open to the petitioner to approach the authorities / State Government regarding this issue.

In the result, the present Writ Petition is dismissed. No costs.

02.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/Non Speaking order
ssd



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- To
1. The Government of Tamilnadu
Department of Personnel and
Administrative Reforms (P&AR)
rep. By its Secretary
Fort St.George, Chennai – 600 009
 2. The Chairperson
Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
College Road, Nungambakkam,
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V.BHAVANI SUBBAROYAN,J

ssd

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