

W.A.(MD)No.2471 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.2471 of 2024
and
C.M.P.(MD)No.17308 of 2024**

E.Surya

... Appellant

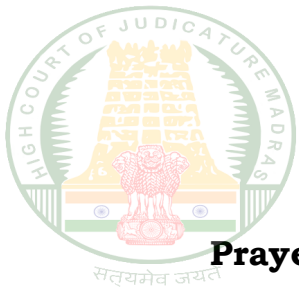
Vs.

1. The Teachers Recruitment Board,
Represented by its Chairman,
DPI Campus, College Road,
Nungambakkam, Chennai - 600 006.

2. The Government of Tamil Nadu,
Represented by its Secretary,
Higher Education Department,
Fort St.George, Secretariat,
Chennai - 600 009.

3. The Directorate of Technical Education,
Represented by its Director,
Technical Education Department,
No.53, Sardar Patel Road,
Guindy, Chennai - 600 032.

... Respondents



W.A.(MD)No.2471 of 2024

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P. (MD).No.18412 of 2022 dated 05.09.2024 on the file of this Court.

For Appellant :Mr.G.Prabhu Rajadurai,
for M/s.Ajmal Associates.

For Respondents :Mr.T.Amjad Khan,
Government Advocate for R1.

Mr.C.Venkateshkumar,
Special Government Pleader
for R2 & R3.

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The Teachers Recruitment Board, Chennai issued Notification No.14/2019 dated 27.11.2019 for the post of Lecturers in Government Polytechnic Colleges and Special Institutions (Engineering/Non-Engineering). The appellant applied in response to the said notification for the post of Lecturer (Information Technology) under Scheduled Caste category. The appellant belongs to Hindu Pallan community which is a Scheduled Caste. The appellant had scored 119 marks. There were two vacancies in the post of Lecturer (IT) to



W.A.(MD)No.2471 of 2024

be filled up. The grievance of the appellant is that both the vacancies were filled up by candidates belonging to SC (Arunthathiyar) community. The appellant does not challenge the selection and appointment of R.Jeyasudha who had scored more marks than her. She, however, takes exception to the selection of M.Subashini who got only 111 marks. The case of the appellant is that Jeyasudha ought to have been selected against the SC(A) category in the first instance. In that event, in the SC (General Category) vacancy, the appellant would have competed with Subhashini and others, all of whom had scored lower marks compared to her. Since Jeyasudha was selected against SC General vacancy in the first instance itself, the appellant who is not an Arunthathiyar could not be considered for the remaining vacancy which had been reserved for a person belonging to SC(A) category. The contention of the appellant is that the procedure adopted by the recruiting agency was not in conformity with the statutory provisions.

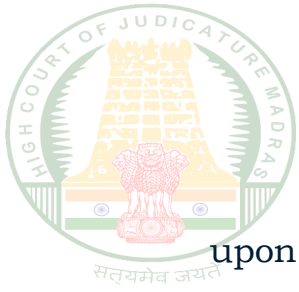
2.The appellant filed WP(MD)No.18412 of 2022 assailing the provisional selection list for the post of Lecturers (IT). The learned Single Judge vide order dated 05.09.2024 dismissed the



W.A.(MD)No.2471 of 2024

writ petition. Aggrieved by the same, this writ appeal has been filed.

3.The learned counsel appearing for the appellant submitted that as per Section 27(a) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as well as the recruitment notification dated 27.11.2019, the vacancy earmarked for SC(A) should be first filled up and if more number of qualified Arunthathiyars are available, they can also compete with the other SC candidates for the remaining vacancy. In this case, Ms.R.Jeyasudha who secured the highest marks was wrongly accommodated under SC General category in the first instance itself thereby depriving the appellant of her opportunity for appointment to the post of Lecturer (IT) under SC General category. This led to the selection of Subhashini under SC(A) category even though she secured eight marks lower than the appellant. The learned counsel for the appellant relied on the decisions reported in **(2021) 4 SCC 542 (Saurav Yadav v. State of Uttar Pradesh)** and **(2007) 8 SCC 785 (Rajesh Kumar Daria vs. Rajasthan Public Service Commission)**. He called



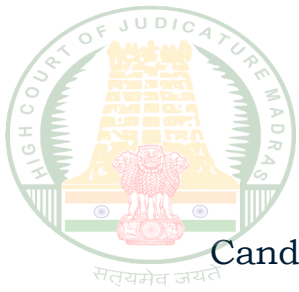
W.A.(MD)No.2471 of 2024

upon this Court to set aside the impugned selection and allow this writ appeal as prayed for.

4.Per contra, the respondents submitted that the impugned selection cannot be faulted and that the learned Single Judge rightly negatived the appellant's request. According to them, there is no merit in this writ appeal.

5.We carefully considered the rival contentions and went through the materials on record.

6.Reservation was introduced with the aim of advancing and giving adequate representation to Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes of citizens. Article 341(1) of the Constitution of India empowers the President to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall be deemed to be Scheduled Castes in relation to the concerned State or Union Territory as the case may be. The Constitution (Scheduled Caste) Order, 1950 issued by the President contains a list of 76 castes as far as the State of Tamil Nadu is concerned.



W.A.(MD)No.2471 of 2024

WEB COPY

Candidates belonging to these 76 castes are eligible to compete in the quotas meant for Scheduled Castes. Though this sounds fair, in practice, it turned out that only a few communities were cornering the benefits of reservation supposedly meant for all the 76 enumerated castes. The Government of Tamil Nadu took note of this and appointed a one man committee under the chairmanship of Justice M.S.Janarthanam in the year 2008. The said committee submitted its report on 22.11.2008. Based on the said report, the State of Tamil Nadu enacted 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) Act, 2009. The validity of this Act was put to challenge. The Hon'ble Supreme Court upheld its constitutionality in ***State of Punjab vs. Davinder Singh (2025) 1 SCC 1***.

7.The only point that has to be answered in this appeal is whether the authorities were right in accommodating the meritorious SC(A) candidate against SC(General) category in the



W.A.(MD)No.2471 of 2024

first instance.

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8.It cannot be disputed that reservation meant for Arunthathiyars is a social reservation and not special reservation. Social reservation will come only under vertical category whereas Special Reservation will come under horizontal category. Horizontal reservation will cut across all categories. In the very nature of things, reservation for Arunthathiyars cannot cut across all categories. Since Arunthathiyar reservation has been carved out of the reservation for Scheduled Castes, as a logical correlative, it is also vertical.

9.It is true that in ***Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007) 8 SCC 785*** and ***Saurav Yadav vs. State of UP (2021) 4 SCC 542***, it has been held that if the quota fixed for horizontal reservations is already satisfied, there would be no need for further selection towards the special reservation quota. But such an approach cannot be adopted in the case of reservation for Arunthathiyars because it is not a horizontal reservation but vertical reservation.



W.A.(MD)No.2471 of 2024

WEB COPY 10. It must be conceded that use of expressions such as “preferential basis”, “even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes” found in the relevant statutes do cause confusion. Before remarking on the use of such terms, we must remind ourselves of the historical context in which the statutes ((Tamil Nadu Act 4 of 2009) and (Tamil Nadu Act 14 of 2016)) came to be enacted. The State of Tamil Nadu took a daring step for the cause of social justice in the face of the judgment of the Hon'ble Supreme Court in ***E.V.Chinnaiah vs. State of A.P (2005) 1 SCC 394***. It was held therein that there cannot be any grouping of Scheduled Castes into different categories for differential treatment. The said decision forbade sub-classification of Scheduled Castes. It declared that the members of the Scheduled Castes are a single integrated and homogenous class and that it was not competent for a legislature of a State to sub-divide them into separate compartments with a separate percentage of reservation for each.

11. ***E.V.Chinnaiah*** was overruled in ***Davinder Singh*** which is a Seven Judges Bench (6:1) decision. The correctness



W.A.(MD)No.2471 of 2024

of **E.V.Chinnaiah** was doubted in the year 2020 itself by a Five Judges Bench. The text as well as the expressions found in Tamil Nadu Act 4 of 2009 and Section 27 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 must be expansively construed in the light of **Davinder Singh** so as to effectuate the legislative intention.

12.It is well settled that such of the reservation category candidates who make it on their own merit have to be adjusted against the General Category candidates. In other words, when vacancies are filled up, the open quota opens first and candidates irrespective of caste, sex etc., are allowed to compete based on merit. The meritorious candidates should be first selected as against the open quota vacancies. Only thereafter, selection has to be made for the vertical reservation category from among the remaining candidates belonging to that particular reserved category (vertical) based on merits. It must then be seen if sufficient number of candidates to satisfy special reservation (horizontal reservation) have been selected. If not, the required number of special reservation candidates shall have to be accommodated as against social reservation categories by



W.A.(MD)No.2471 of 2024

deleting the number of candidates therefrom. At any rate, candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations. The above procedure was approved by the Hon'ble Supreme Court in **State of T.N vs. K.Shobana (2021) 4 SCC 686**.

13.Even though this is the settled procedure for implementing the policy of reservation, the appellant would want us to make a departure when it comes to Arunthathiyar reservation. Section 5 of Tamil Nadu Act 4 of 2009 and Section 27(a) of Government Servants (Conditions of Service) Act, 2016 do state that the sub quota for Arunthathiyars must be filled up first. Section 5 of Tamil Nadu Act 4 of 2009 is as follows:

“5. Right to compete for non- preferential seats, appointments or posts not to be affected. - Notwithstanding anything contained in the 1994 Act or the 2006 Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, having regard to the social and educational backwardness of Arunthathiyars, where more number of qualified Arunthathiyars are



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W.A.(MD)No.2471 of 2024

available, even after filling up of the required percentage of reservation for Arunthathiyars on preferential basis, such excess number of candidates of Arunthathiyars shall be entitled to compete with Scheduled Castes other than Arunthathiyars in the inter-se merit among them in the case of appointments or posts in the services under the State or admission into educational institutions including private educational institutions.”

Section 27(a) of the 2016 Act is a mere reiteration of Section 5 of the 2009 Act. Section 27(a) is as follows :

“ 27. Reservation of appointments.

- Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall be made on the following basis:-

(a) The unit of selection for appointment, for the purpose of this section, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward



WEB COPY



W.A.(MD)No.2471 of 2024

Classes and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

Provided that if even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes in Schedule-V, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the other Scheduled Castes in the inter-merit among them and if any appointment or post reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.”

But the key to the problem lies in Section 8 of Tamil Nadu Act 4 of 2009 which provides a complete answer. It reads as follows:

“8.Reservation not to be affected.- Notwithstanding anything contained in sections 3,4,5 and 6 of this Act, the claims of the students or members belonging to Arunthathiyars shall be considered for the unreserved seats, appointments, or posts which shall be filled up on the basis of merit and where a



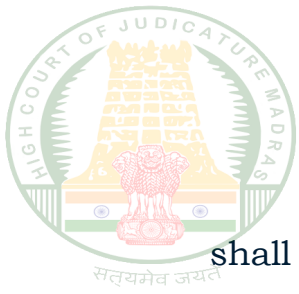
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W.A.(MD)No.2471 of 2024

student or member belonging to Arunthathiyars, if selected on the basis of merit, the number of seats, appointments or posts reserved for the Arunthathiyars shall not, in any way, be affected.”

Section 5 makes it clear that Arunthathiyars are entitled to compete with the other Scheduled Castes. In other words, the Arunthathiyars cannot be cribbed and confined only to the 3% sub-quota carved out of the 18% meant for all Scheduled Castes. Section 4 might suggest that the sub-quota must be filled up first and only thereafter the remaining candidates can compete in the SC (General) category. But Section 5 of the Act will have to be read in subordination to Section 8 of the Act. This is so because Section 8 opens with the clause “notwithstanding anything contained in Sections 3, 4, 5 and 6 of this Act...”. The expression “notwithstanding” found in Section 8 of the Act gives it an overriding effect over the other provisions of the Act including Sections 3, 4 and 5 of the Act. Black's Law Dictionary defines “notwithstanding” as despite/inspite of. In P. Ramanatha Aiyar's Advanced Law Lexicon defines “notwithstanding clause” as a clause to prevail over other clauses. The provision which has this non-obstante clause would have overriding effect and



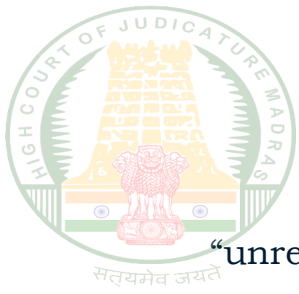
W.A.(MD)No.2471 of 2024

shall prevail over the provisions mentioned in the clause. (*vide*

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Ishar Das v State of Punjab AIR 1972 SC 1295). Section 8 of the Act states that the claims of the Arunthathiyar candidates shall be considered for the unreserved seats/posts which shall be filled up on the basis of merit. Where an Arunthathiyar candidate is selected on such merit basis, the number of seats/posts reserved for Arunthathiyars shall not in any way be affected. Section 8 of the Act has to be construed and interpreted in the light of ***Davinder Singh*** judgment.

14. We must also bear in mind the mischief rule of interpretation. Tamil Nadu Act 4 of 2009 was intended to remedy the inability of Arunthathiyars to enjoy the fruits of reservation. The one man committee report noted that Arunthathiyars who constitute nearly 16% of the total population of Scheduled Castes in the State are in the last rung of the Scheduled Castes. They are referred as Dalits of Dalits. They are socially and educationally backward and did not find adequate representation in the services under the State in proportion to their population. Therefore, the expression



W.A.(MD)No.2471 of 2024

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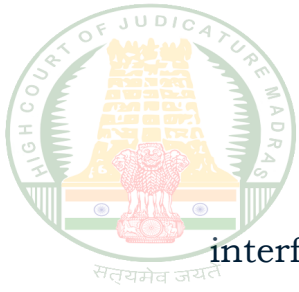
“unreserved seats, appointments or posts” occurring in Section 8 of the Tamil Nadu Act 4 of 2009 must be understood only as “seats, appointments or posts not reserved for Arunthathiyars for which they are entitled to compete”. In other words, the expression “unreserved” denotes the entire field outside the sub-quota earmarked for Arunthathiyars in the SC(General) category and the open quota. Section 8 of the 2009 Act must be understood in the light of Section 5 of the said Act. If this expression is understood as denoting only the open quota, then, the very object of enacting Tamil Nadu Act 4 of 2009 will not be furthered but frustrated. This alone would ensure fair representation and substantive equality. To use a lighter expression, what is sauce for the goose must be sauce for the gander. When a reserved candidate can compete in the open quota on merit and his selection would not affect the number of vacancies earmarked for his group, the same approach should be adopted in the case of sub-reservation also. In ***Davinder Singh***, the Hon'ble Supreme Court emphasised that Article 16(4) must be understood in terms of effective and not just numerical representation.



W.A.(MD)No.2471 of 2024

WEB COPY 15.To sum up, when reservation policy is implemented, the open quota shall be filled up first on merit basis. An Arunthathiyar candidate can compete in the open quota on merit basis and if he or she is selected, the sub-quota earmarked for Arunthathiyars will not be affected. The meritorious Arunthathiyars are entitled to compete in the SC General category and if selected on merit basis, again, the sub-quota meant for Arunthathiyars will not be affected. The most meritorious Arunthathiyar candidate shall not be adjusted against the SC(A) vacancy in the first instance. Such an approach alone would give effect to Section 8 of Tami Nadu Act 4 of 2009 which will prevail over Section 27(a) of the Act 14 of 2016 as well as Sections 3, 4 and 5 of the Tamil Nadu Act 4 of 2009.

16.In this view of the matter, we uphold the manner of selection made by the Teachers Recruitment Board. The most meritorious candidate happened to belong to SC(A) category. She was rightly accommodated under the SC(G) category. The learned Single Judge adopted the correct approach and



W.A.(MD)No.2471 of 2024

interference with the said order is not called for. This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
20.06.2025

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

To:

1. The Chairman,
Teachers Recruitment Board,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.
2. The Secretary,
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W.A.(MD)No.2471 of 2024

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W.A.(MD)No.2471 of 2024

20.06.2025