

Case relating to Reservation:

Parties : N. Sathya & Others Versus The Chairman, Teachers Recruitment Board, Chennai & Others

Court : High Court of Judicature at Madras

Case No : W.P.Nos.12552,10336,10337 & 17454 of 2009 & M.P.Nos.1 to 1 of 2009

Judges: THE HONOURABLE MR. JUSTICE K. CHANDRU

Appearing Advocates : For the Petitioners: C. Prakasam, S.T.S. Murthi, S. Packiaraj, Advocates.
For the Respondents: A.C. Manibharathi, G.A. R. Neelakandan, G.A. M. Vaidyanathan, for TNEB.

Date of Judgment : 08-12-2009

Head Note :-

Constitution of India - Article 226 -

Comparative Citation:

2010 (4) MLJ 995

Judgment :-

(Prayer in W.P.No.12552/2009 Petition under Article 226 of the Constitution of India praying for a Writ of mandamus, directing the respondents to implement G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD-2) Department dated 29.04.2009 in so far relates to appointment of the Secondary Grade Teacher and consequently appoint the petitioner in the Secondary Grade Teacher post by applying in the above said G.O.

Prayer in W.P.Nos.10336 and 10337 /2009 Petitions under Article 226 of the Constitution of India praying for a Writ of mandamus, directing the respondents herein to implement that G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD2) Department dt.29.4.2009 in the matter of Direct Recruitment of Secondary Grade Teachers for Elementary/Middle schools under the Control of the Directorate of Elementary Education, Chennai for the year 2007-2008 and 2008-2009.

Prayer in W.P.No.17454 /2009 Petition under Article 226 of the Constitution of India praying for a Writ of mandamus, directing the respondents to implement the G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.4.2009 and G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.5.2009 in the respondent Board and give appointment to the petitioner as technical Assistant Electrical under S.C.Arunthathiyar quota.)

Common Order:

Heard both sides. In Writ Petitions (W.P.Nos.10336 and 10337/2009), the petitioners seek for directions to the respondents to implement G.O.Ms.No.50 (Adi Dravidar and Tribal Welfare (TD2) Department) dt.29.4.2009 in the matter of Direct Recruitment of Secondary Grade Teachers for Elementary/Middle schools under the Control of the Directorate of Elementary Education, Chennai for the year 2007-2008 and 2008-2009 and to pass appropriate orders.

2. In W.P.No.12552 of 2009, the petitioner seeks for a direction to implement G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD-2) Department dated 29.04.2009 in so far as it relates to the appointment of Secondary Grade Teachers and for consequential direction to appoint the petitioner as a Secondary Grade Teacher.

3. In W.P.No.17454 of 2009, the petitioner seeks for a direction, directing the respondents to implement G.O.Ms.No.50 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.4.2009 and G.O.Ms.No.61 (Adi Dravidar and Tribal Welfare (TD2) Department) dated 29.5.2009 in the respondent Tamil Nadu Electricity Board and give appointment to the petitioner as a Technical Assistant (Electrical) under the Schedule Caste, Arunthathiyar quota.

4. The cause of action for these writ petitions arose because of the enactment of Tamil Nadu Act 4 of 2009 titled as '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 Schedule Castes), Act, 2009. The Tamil Nadu Act 4/2009 is intended to provide reservation of seats in educational institutions including private institutions in the State and also for appointments or posts in the services under the State to the Arunthathiyar community people in the State of Tamil Nadu within the 18% reservation meant for the Schedule Castes.

5. The Statement of Objects and Reasons appended to the Act referred to the Report of the One Man Committee of Inquiry headed by Justice M.S.Janarthanam which had submitted its report on 22.11.2008. The Committee recorded that the Arunthathiyar Community in Tamil Nadu have a population of 18,61,457 from out of the total population of Scheduled Castes of 1,18,57,504 as per 2001 Census Report. The respective percentage of population of Arunthathiyars in the total population of Scheduled Castes worked out is 15.70%. Therefore, the Committee after finding that the representation of the Arunthathiyars in the services under the State Government was also incredibly the lowest since the major portion of such job opportunities had been taken by the other sub castes within the Scheduled Castes, recommended a quota within the reservation limit made for the Scheduled Caste Community.

6. Accepting the report, the Act was enacted by the Tamil Nadu State Legislature. As per

Section 1(3) of the Act, the Act was made to come into force on such date as the State Government may, by notification, appoint.

7. Section 4 of the Act reads as follows:-"4. Reservation in appointments or posts in the services under the State: -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 included in the Scheduled Casts, sixteen per cent of the appointments or posts reserved for the Scheduled Castes shall be offered to Arunthathiyars, if available, in appointments or posts in the services under the State, on preferential basis amongst the Scheduled Castes, in such manner as may be prescribed.

Explanation – For the purposes of this Act, "service under the State" includes the services under -

- i) the Government;
- ii) the Legislature of the State;
- iii) any local authority;
- iv) any Corporation or Company owned or controlled by the Government; or
- v) any other authority in respect of which the State Legislature has power to make laws."

(Emphasis added)

8. Under Section 14, if any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, published in the Tamil Nadu Gazette, can make such provisions which are not inconsistent with the provisions of this Act as may appear to them to be necessary or expedient for removing the difficulty. Such a power to grant directions was however restricted to a two year period from the date of the enactment.

9. The State Government by its order in G.O.Ms.No.50, Adi Dravidar and Tribal Welfare Department dated 29.04.2009 has notified the date of coming into force of the Act as 29.04.2009. Paragraph 3 of Notification II, reads as follows: -

3. Reservation of seats for Arunthathiyars:- In the sixteen per cent of seats offered to Arunthathiyars within the seats reserved for Scheduled Castes for admission in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State, the first seat shall be offered to Arunthathiyars as illustrated below: -

"The seats to Arunthathiyars shall be offered in the rotation 2,32 and 66", the following expression shall be substituted, namely: -

"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 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".

10. Subsequent to the notification, the State Government also issued G.O(Ms)No.61 Adi Dravidar and Tribal Welfare (TD2) Department dated 29.05.2009 by amending the earlier Rules. The amendment reads as follows: -

In the said Rules, in rule 3 in the illustration for the expression

"The seats to Arunthathiyars shall be offered in the rotation 2,32 and 66", the following expression shall be substituted, namely: -"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 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".

11. The State Government by way of illustration prescribed as to how the roster for filling up the Scheduled Castes candidates can be prepared by the respective employers in that order.

12. Notice was ordered on these writ petitions. Pending the writ petitions, in some cases this Court directed the respondents to keep one post vacant in each of the writ petition, pending final orders on the writ petitions.

13. In none of these cases, counter affidavit has been filed by the State. However, written instructions received from the Chairman of the Teachers Recruitment Board was filed before this Court.

14. It was stated by the Chairman of the Teachers Recruitment Board (TRB) that the Board had taken steps to fill up 5773 posts of Secondary Grade Teachers with the Employment Exchange seniority. The Board had conducted certificate verification of candidates sponsored by the Commissioner of Employment and Training, Chennai from 28.05.2009 to 05.06.2009. A total number of 24354 candidates had attended the certificate verification. After the certificate verification, the Board has released the list of provisionally selected candidates on 12.06.2009. It was only when the selection process were under midway, G.O.Ms.No.50 Adi Dravidar and Tribal Welfare Department dated 29.04.2009 came to be issued for providing internal reservation for the candidates belonging to Arunthathiyars within the Scheduled Caste Community. The second order in G.O.Ms.No.65 Personnel and Administrative Reforms Department dated 27.05.2009 was

also issued revising the roster providing 3% reservation to Arunthathiyars on preferential basis.

15. It is the stand of the respondent TRB that the Government had directed that the roster prescribed in this order shall be applicable in respect of selection made by the recruiting agencies and appointments made on or after 29.04.2009. In the very same order, the Government has also indicated that the 200 point roster need not be reopened. It is the stand of the TRB that since the Board has already notified the vacancies on 14.01.2008 based upon the 200 point roster and the recruitment process was already commenced, the Board could not re-open the earlier recruitment of selection of 5773 Secondary Grade Teachers.

16. Subsequently, by G.O.Ms.No.145 School Education Department dated 29.06.2009, the Government had issued orders to recruit 1943 secondary grade teachers by the Board. Those candidates have already attended the certificate verification. In the mean while, the Board has followed the revised roster issued in G.O.Ms.No.65 P & AR Department dated 27.05.2009 and followed the 3% reservation to Arunthathiyars on preferential basis. The Board had also conducted certificate verification at the District levels to identify the Arunthathiyars to follow the 3% preferential reservation and a circular was also issued to the respective Chief Educational officers of the Districts. Therefore, it is the contention of the respondents that the selection process of Secondary Grade Teachers were followed as per the Government Orders and there is no violation.

17. The same officer has also issued a further clarification on 10.09.2009 after prescribing the format under which such certificate verification has to be done by the officers vide his proceedings dated 10.09.2009. It reads as follows:-

Government in the G.O. First cited above have sanctioned 1943 number of Secondary Grade Teachers (Tamil Medium) for which the Teachers Recruitment Board takes all steps to select the candidates for appointment. In this connection, I would like to mention that 3% preferential reservation for Arunthathiyars (group and communities stipulated in Govt.Gazette published in G.O second cited in the reference) should be incorporated in the selection process for which community verification is to be done at the district level on 6.10.2009. On the same day i.e. On 6.10.2009 Certificate Verification is to be conducted for ineligible /rejected candidates. Certificate Verification for others are to done on 7.10.09.

(Emphasis added)

18. Therefore, it is the stand of the first respondent on the issue relating to the appointment of Secondary Grade Teachers that the orders of the Government in internally reserving candidates for Arunthathiyars community will hold good for the selection conducted by virtue

of G.O.Ms.No.145 dated 29.06.2009 in respect of 1943 Secondary Grade Teachers.

19. In this regard, the administrative order of the Government in G.O.Ms.No.65 dated 27.05.2009 was also referred by the counsel for the respondents. Paragraph 3 reads as follows:

"3. The Government further direct that the roster prescribed in this order shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009. However, the recruiting agencies/ appointing authorities are informed that the selections/appointments, if any, already made with reference to the 200 point roster prescribed in the Government Orders first, second and third read above need not be reopened and for further selections/appointments, the revised roster prescribed in this Government Order shall be continued by the recruiting agencies/ appointing authorities from the last turn upto which the selection was already made."

(Emphasis added)

20. But however in respect of the employment in the Tamil Nadu Electricity Board is concerned in W.P.No.17454 of 2009, it was stated that they have received a letter from the Secretary to Government, P & AR Department dated 24.06.2009 issuing certain clarifications regarding the adoption of a revised roster. In the said order, it was stated as follows:-

"In the reference fourth cited, the Tamil Nadu Public Service Commission, in the circumstances stated therein, has suggested that the special reservation to Arunthathiyars on preferential basis ordered in the Government Order third cited shall be made applicable to the fresh notification to be issued by the Commission on or after 29.04.2009. The Tamil Nadu Public Service Commission has requested clarification in this regard.

2. The Government have examined the suggestion of the Tamil Nadu Public Service Commission and direct that in respect of those vacancies notified by the recruiting agencies on or after 29.04.2009, the revised roster prescribed in the Government Order third cited shall be continued. "

(Emphasis added)

21. Therefore, the stand of the Government which had consulted the TNPSC was that in respect of those vacancies notified by the recruiting agencies on or after 29.04.2009 alone, the revised roster shall be continued. In this order, the earlier order of the State Government prescribing revised roster in G.O.(Ms).No.65 P & AR Department dated 27.05.2009 is also referred as reference No.3.

22. In the light of the above, the question arises for consideration is whether the prayer made by the petitioners can be granted by this Court. In this context, it is necessary to refer to certain

decisions of the Supreme Court which may have a bearing on the issue.

23. In *Mohan Kumar Lal v. Vinoba Bhave University and others* reported in (2002) 10 SCC 704, in paragraph 2 the Supreme Court observed as follows:

"2. The short question that arises for consideration in this appeal is whether the Service Commission could ignore the decision to make reservation policy applicable in respect of an appointment to the post, which was advertised on 10.01.1990 and the last date for submission of the application was 30.01.1990. The High Court in the impugned judgment is of the view that since appointments had not factually been made, the reservation policy would apply. As it transpires, the provisions of Section 57, which governs the field, did not contain any clause for reservation and sub-section (5) of the said Section 57 providing for reservation was introduced only on 22.08.1993. In this view of the matter in respect of the post advertised for which the process of recruitment had been initiated, the reservation policy could not have been made applicable. The impugned judgment of the High Court was, therefore, erroneous, and cannot be sustained. We, therefore, set aside the impugned judgment of the High Court and hold that the reservation policy, pursuant to the amended provision of sub-section (5) of Section 57 of the Act, will not apply to the present case."

(Emphasis added)

24. Subsequently, the Supreme Court dealt with the case of an Office Memorandum dated 06.11.2003 with reference to conversion of vacancies between Scheduled caste and Scheduled Tribe categories made such an action impermissible. The question arose before the Supreme Court whether the said Memorandum will have any bearing on the selection process which had started already.

25. The Supreme Court vide its judgment in *Sonia v. Oriental Insurance Co. Ltd and others* reported in 2007 AIR SCW 5329 held that the subsequent office Memorandum withdrawing conversion of posts between SC and ST candidates cannot have any bearing on the earlier selection made pursuant to an advertisement. Persons who were empanelled were requested to appear before the interview Board without being affected by the subsequent office Memorandum. The case of the petitioner is converse where the petitioner wanted an office memorandum to be applied even in case of the selection started before the Act was notified by the State.

26. The Supreme Court also dealt with the case where a particular community was included in the Other Backward Class (OBC) list. The question arose before the Supreme Court was that by the subsequent addition of a community in the list, if members can have the benefit of reservation under the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Others Backward Classes) Act, 1994 (4 of 1994). The said judgment

relating to Uttar Pradesh Public Service Commission v. Satya Narayan Sheohare and others is reported in (2009) 5 SCC 473.

The Supreme Court upheld the action of the High Court in directing the inclusion of such newly added OBC candidates for the written test for which selection had already been initiated was valid. In paragraphs 9 to 13, it was held as follows: -"9. Section 2(b) of the Act defines "Other Backward Classes of Citizens" as those backward classes of citizens specified in Schedule I to the Act. Where a particular caste was not included in the list of "Other Backward Classes" in Schedule I to the Act, when the Act was enacted, and when such caste is subsequently added to the list of Other Backward Classes in Schedule I of the Act by way of an amendment, for all purposes, the Act commences in respect of the newly added caste from the date when the Amendment Act came into effect.

10. Thus, the principle contained in Section 15 would apply whenever a new caste, which was not an OBC earlier, is added to Schedule I of the Act by an amendment to the Act. Therefore whenever the Act is amended by including new castes/classes in the list of Other Backward Classes in Schedule I, the date of amendment to the Act would be the date of commencement of the Act in regard to such caste/class inserted by the amendment.

11. It is evident from the Explanation to sub-section (1) of Section 15 that where under the relevant service rules recruitment is to be made on the basis of written test and interview, the selection process shall be deemed to have been initiated on the date on which written test was started.

12. In this case, there is no dispute that the written test started on 4.8.2000. It is also not in dispute that before 4.8.2000 when the written test commenced, the State Government had issued a notification amending the First Schedule to the Act including the castes to which the writ petitioners belonged, in the list of OBCs. Therefore, though the writ petitioners were general category candidates when the recruitment notification dated 4.3.2000 was issued, as on the relevant date, namely, the date on which the selection process was deemed to have been initiated, they were OBC candidates.

13. Having regard to the fact that the Notification including their castes in the Schedule was issued on 7.7.2000 after the recruitment notification, the writ petitioners were not able to show their caste as an OBC nor could they claim the benefit of reservation as OBC candidates when they made applications. However when the Act was amended on 7.7.2000 before the commencement of the written test, they became entitled to claim the benefit of reservation, and they secured the necessary certificates and gave their representations without any delay on

29.8.2000 and 13.9.2000 respectively. Having regard to the principle underlying Section 15 of the Act, we are of the view that the decision of the High Court directing that the writ petitioners should be treated as OBC candidates does not call for any interference." (Emphasis added)

27. In the present case, the Act is only providing a percentage within the outer limit prescribed for Schedule Caste community. Consequently the Government's clarification can be considered to be a direction issued under Section 14 of the Act. Though the first two decisions did not support the case of the petitioners, the third decision in Uttar Pradesh Public Service Commission' case (cited supra) help the case of the petitioners.

28. In view of the fact that the selection process were not over and the stand of the Government is also that the internal reservation giving preference to Arunthathiyar Community will also be counted in the existing selection, pursuant to G.O.Ms.No.145 dated 29.06.2009. Hence the prayer of the petitioners must succeed. Therefore, W.P.Nos.12552, 10336 and 10337 of 2009 will stand allowed to the extent indicated above, but cannot go to the selection held for the year 2007 – 2008.

29. In respect of the writ petition W.P.No.17454 of 2009, though M.Vaidyanathan, the learned counsel for the Electricity Board referred to a letter written by the Secretary to Government, dated 24.06.2009, in the light of the judgment of the Supreme Court in Uttar Pradesh Public Service Commission's case (cited supra), the case of the petitioner will have to be considered. Though the petitioner has claimed consideration of his case and for grant of appointment to the post of Technical Assistant (Electrical) under the S.C.Arunthathiyar quota, it is for the Electricity Board to work out the number of posts available. In case the petitioner comes within the preferential quota, his case can be considered for the grant of an appointment.

30. In the result, all the writ petitions are disposed of to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.