

(2016) 03 MAD CK 0254

In the Madras High Court

Case No : W.A.(MD).Nos.489 of 2016 and 490 of 2016 and C.M.P.Nos.3478 and 3479 of 2016

District Elementary Educational Officer

APPELLANT

Vs

Marthandam Hindu Primary School

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 — Rule 3

Citation : (2016) 2 CWC 228 : (2016) 7 MLJ 137

Hon'ble Judges : Mr. S. Manikumar and Mr. R. Mahadevan, JJ.

Bench : Division Bench

Advocate : Mr. V.R. Shanmuganathan, Special Government Pleader, for the Appellants; Mr. K.K. Kannan, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—Challenge in these two Writ Appeals is to the Orders dated 26.03.2012 and 27.08.2012 made in W.P.(MD). Nos.13456 of 2011 and 8530 of 2012.

2. Since common issues are arising for the consideration of this Court, both the Writ Appeals are heard together and a Common Judgment is being passed.

3. The case of the respondent in W.A.(MD). No.489 of 2016 before the learned Single Judge was that the respondent school is a recognised private aided primary school. Totally, 250 students were studying and seven posts were sanctioned. On account of voluntary retirement of erstwhile Headmaster - S. Swamy, on 01.09.2009, the post of Headmaster fell vacant and in the said vacancy, one Sudha, who was working as Secondary Grade Teacher, was promoted and placed, with effect from 04.01.2010 and thus, the post of Secondary Grade Teacher fell vacant. The respondent school, therefore, made a representation to the District Elementary Educational Officer, Tirunelveli, seeking permission to fill up the said post and permission was also accorded, vide

proceedings dated 01.03.2010.

4. In pursuance of the said proceedings, the respondent school made paper publication on 12.03.2010 in Dhina Malar Edition and also called for a list of candidates from the District Employment Office, Tirunelveli, for selection and appointment of Arunthathiyar candidates. The District Employment Exchange forwarded a list of five candidates, who were directed to attend the interview held on 17.03.2010. However, no candidates, belonging to Scheduled Caste Arunthathiyar Community, were available. Hence, the respondent school once again forwarded a request to the District Employment Officer and also effected a paper publication in Malai Malar dated 31.03.2010. But, no Arunthathiyar candidate has come forward to attend the interview. Under the above circumstances, the respondent school selected and appointed one Miss.I.Saravana Kalai Jyothi, belonging to Scheduled Caste Community, on 08.04.2010. Thereafter, a proposal was forwarded to the authority concerned seeking approval of appointment of Miss. I. Saravana Kalai Jyothi, on 08.04.2010. The said proposal was returned on the ground that she does not belong to Scheduled Caste Arunthathiyar Community.

5. Likewise, the case of the respondent in W.A.(MD).No.490 of 2016 before the learned Single Judge was that Subramaniya Muthaliyar Middle School was started in the year 1951, which is an aided middle school, governed by the provisions of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 and the Rules framed thereunder. The said school has six sanctioned posts. One post of Graduate Teacher fell vacant on 16.07.2009, due to the promotion given to a Graduate Teacher as Headmaster. The respondent school sought for permission to fill up the said post of Graduate Teacher and vide order dated 16.02.2010, the District Elementary Educational Officer accorded permission to fill up the post of Graduate Teacher (History) from the candidates belonging to Scheduled Caste Arunthathiyar Community.

6. By virtue of the permission granted by the first appellant herein, dated 03.03.2010, the respondent school sent a requisition to the Employment Exchange, requesting to send a list of four candidates. Accordingly, the Employment Exchange sent a list of four candidates on 08.03.2010. The respondent school sent interview letters to the above said four candidates, but none of them appeared for the interview held on 22.03.2010. Therefore, the respondent school made yet another representation to the Employment Exchange, on 03.04.2010, seeking a list of candidates from among the scheduled caste candidates, but there was no response. Thereafter, based on the paper publication dated 12.03.2010, certain candidates belonging to Scheduled Caste Community attended the interview held on 21.04.2010. Since no persons belonging to Scheduled Caste Arunthathiyar Community appeared for the interview, it resulted in selection of one Mr. Thanapal, who belongs to Scheduled Caste Community. Thereafter, the respondent school sent a proposal seeking approval of his appointment. Since no action was taken, in this regard, the

respondent school submitted a representation dated 30.07.2010. Subsequently, the second appellant herein returned the proposal seeking some explanation regarding the reservation through his letter dated 20.09.2010 and the respondent school also re-submitted the said proposal, but no response was forthcoming. Therefore, the respondent school was constrained to file W.P. (MD).No.2889 of 2011, in which, this Court directed the appellants to consider the claim of the respondent school and pass appropriate orders within a period of four weeks. However, the first appellant, by order dated 27.05.2011, has declined to grant approval on the ground that such post should be filled up from the candidates belonging to Scheduled Caste Arunthathiyar Community.

7. Under the above circumstances, the respondents school filed W.P. (MD).Nos.13456 of 2011 and 8530 of 2012. The Writ Courts, vide Orders dated 26.03.2012 and 27.08.2012, set aside the orders of the first appellant herein and directed the appellants to approve the appointments, as sought for. Questioning the validity of the above orders, the appellants have come up with the present Writ Appeals.

8. We have heard the learned Special Government Pleader appearing on behalf of the appellants, as well as the learned counsel appearing on behalf of the respondents and perused the records available carefully.

9. The learned Special Government Pleader appearing for the appellants submits that the permission was granted by the District Elementary Educational Officer, Tirunelveli, to fill up the post of Secondary Grade Teacher with candidate belonging to Scheduled Caste Arunthathiyar Community and no permission was granted to fill up the vacancy with candidate belonging to Scheduled Caste Community. Therefore, if no candidate belonging to Scheduled Caste Arunthathiyar Community is available, according to the learned Special Government Pleader, it is for the respondent school to report the same to the District Elementary Educational Officer concerned. However, without obtaining such permission, the respondent school filled up the vacancies with Scheduled Caste Candidates.

10. Further, the learned Special Government Pleader submits that if no candidate belonging to Scheduled Caste Arunthathiyar Community candidate is available, then, a vide publicity should be given about the vacancy. But, the respondent school effected advertisement only in Malaimalar Nagerkovil evening edition, calling for applications from the Scheduled Caste both men and women. The above facts, according to the learned Special Government Pleader, were not properly considered by the Writ Courts while passing the orders, setting aside the orders of the District Elementary Educational Officer concerned.

11. The learned Special Government Pleader, in support of his contention, referred to the Government Order issued in G.O.Ms.No.61, Adi-Dravidar Tribal Welfare (TD2) Department, dated 29.05.2009, stating that when 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 caste candidates.

12. Per contra, the learned counsel appearing for the respondent school submits that in exercise of the powers conferred under 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, Statutory Rules called as "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) Rules, 2009" have been framed for reservation for people belonging to Arunthathiyar candidates.

It is further submitted that by virtue of G.O.(Ms) No.50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.04.2009, it has been provided that out of 100 seats, 18 seats are reserved for scheduled castes in the following rotation:-

2

32

66

6

36

72

12

42

76

16

52

82

22

56

86

26

62

92

The seats falling as Sl.Nos. 2, 32 and 66 in 100 point roster, out of 100 seats,

are to be offered to Arunthathiyars.

5. Rule 3 of the Rules further provides as under:

"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."

13. Thus, according to the learned counsel for the respondent school, in pursuance of the permission accorded by the first appellant, the respondent school advertised the post and also forwarded requisitions to the Employment Exchange for appointment of Graduate Teachers, out of Scheduled Caste Arunthathiyar Community. However, no persons belonging to Scheduled Caste Arunthathiyar Community applied for the post and therefore, the respondent school appointed the above said Mrs. I. Saravana Kalai Jyothi and Mr. Thanapal, who belong to scheduled caste category, which is in consonance with the Government Orders and Rules, referred to above. Thus, according to the learned counsel for the respondent school, the impugned orders passed by the Writ Courts are just and proper and the same do not require any interference at the hands of this Court.

14. We have considered the above submissions.

15. For better appreciation, it would be worthwhile to refer to Amendment made to Rule 3 of the Tamil Nadu Arunthathiyar [Special Reservation of Seats in Educational Institutions including Private Educational Institutions and Appointments or Posts in the Services under the State within the Reservation for the Scheduled Caste Rules, 2009, vide G.O.Ms.No.61, Adi - Dravidar and Tribal Welfare (TDR) Department, dated 29.05.2009, which reads as follows:-

"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 Caste Members on inter se merits 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 Caste Members on merits basis".

16. The specific case of the respondents herein before the learned Single Judge was that no Scheduled Caste Arunthathiyar Community candidate, sponsored by the Employment Exchange concerned, appeared for selection process. Since no candidate belonging to Scheduled Caste Arunthathiyar Community candidate was available, the respondents school made paper publication and accordingly, appointed the candidates belonging to Scheduled Caste Community. Moreover,

the Government by G.O.Ms.No.61, Adi-Dravidar and Tribal Welfare (TDR) Department, dated 29.05.2009, directed that in the absence Scheduled Caste Arunthathiyar Community candidate, the vacancy could be filled up by Scheduled Caste Candidate.

17. At this juncture, it is relevant to refer to Rule 3 of the Employment Exchanges [Compulsory Notification of Vacancies] Rules, 1960, which reads as follows:-

"3. Employment Exchanges to which vacancies are to be notified-(1) The following vacancies, namely;-

(a) vacancies in posts of a technical and scientific nature carrying a basic pay of [Rs.1,400] or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act, and]

(b) vacancies which an employer may desire to be circulated to the Employment Exchanges outside the State or Union Territory in which the establishment is situated, shall be notified to [such Central Employment Exchange as may be specified by the Central Government, by notification in the Official Gazette, in this behalf]

(2) Vacancies other than those specified in sub-rule (1) shall be notified to the local Employment Exchange concerned".

18. A cursory reading of the above Rule would make it manifestly clear that the vacancies other than those specified in sub-rule (1) shall be notified to the local Employment Exchange concerned, which the respondent school has rightly done by calling for particulars from the Employment Exchange concerned, selected the candidates and appointed them.

19. Thus, as rightly held by the Writ Courts, a special statute has been framed for reservation for Arunthathiyars and under the said Act, the Government is to perform Regulative function to frame Statutory Rules, in exercise of powers conferred under Section 13 of the Act. The statutory Rules have been framed, which give liberty to fill-up the post from other scheduled caste candidates. The District Elementary Educational Officer, without taking into consideration of the Statutory Rules and the Government Order, passed the impugned orders, which were rightly set aside by the Writ Courts. This, in our considered view, does not require any interference at the hands of this Court.

20. In the result, the Writ Appeals fail and the same are, accordingly, dismissed, confirming the orders dated 26.03.2012 and 27.08.2012 made in W.P. (MD).Nos.13456 of 2011 and 8530 of 2012. No costs. Consequently, connected Miscellaneous Petitions are closed.