

(2010) 04 MAD CK 0288

In the Madras High Court

Case No : Writ Petition (MD) No. 6443 of 2010

Marthandam Hindu Primary School

APPELLANT

Vs

The District Elementary Educational Officer and The Assistant
Elementary Educational Officer

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0288

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

**Advocate : K.K. Kannan, for the Appellant; K.M. Vijayakumar, Special
Government Pleader, for the Respondent**

Judgement

P. Jyothimani, J.—Mr. K.M. Vijayakumar, learned Special Government Pleader, takes notice on behalf of the respondents. By consent, the Writ Petition is taken up for final disposal at the stage of admission itself.

2. Heard Mr. K.K. Kannan, learned Counsel appearing for the petitioner and Mr. K.M. Vijayakumar, learned Special Government Pleader, who has made his submission on instructions.

3. In the petitioner School, when there was a vacancy of Secondary Grade Teacher, the same was directed to be filled up on Roster basis by Scheduled Caste Adi Dravidar Arunthathiyar community, as it is seen in the proceedings of the District Elementary Educational Officer, the first respondent herein, dated 01.03.2010. Based on the said permission, the petitioner School has issued an advertisement in the newspapers calling upon the candidates from Scheduled Caste Adi Dravidar Arunthathiyar to apply on or before 17.03.2010.

4. It is the case of the petitioner School that the candidates from Scheduled Caste Adi Dravidar Arundhathiyar community were not available and, therefore, they have re-advertised in the newspapers calling for the candidates from Scheduled Caste for the said post. It is based on the said advertisement, it is

stated that the petitioner School has decided to appoint a candidate belonging to the Scheduled Caste Adi Dravidar community Miss. I. Saravana Kalai Jyothi and the same was sent for approval to the second respondent. The second respondent, in the proceedings dated 21.04.2010, has returned the papers saying to the effect that the approval granted for the purpose of appointment of the said post was only from and out of the Scheduled Caste Arunthathiyar community, whereas the proposal is in respect of the Scheduled Caste other candidates and it is also stated in the said return that based on the conditions contemplated in the proceedings of the first respondent dated 01.03.2010, if a fresh proposal is sent, the same will be considered.

5. It is the further case of the petitioner School that while as per G.O.Ms. No. 50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.04.2009, the said post has to be filled up from and out of 18 seats reserved for Scheduled Caste from the candidates of Arunthathiyar community, however, by a subsequent Government Order in G.O.Ms. No. 61, Adi Dravidar and Tribal Welfare (TD2) Department, dated, 29.05.2009, an amendment came to be introduced to the earlier G.O.Ms. No. 50, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.04.2009, which is 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 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.

thereby enabling the appointing authorities to make appointment from among Scheduled Caste members, in cases where qualified Arunthathiyar community people are not available under the preferential seats and it is the case of the petitioner School that by virtue of an earlier advertisement calling upon the candidates belonging to the Arunthathiyar community, steps were taken. But the candidates belonged to the said community were not available and, therefore, it was only as per the amended Government Order, as stated above, the subsequent advertisement was given calling upon the Scheduled Caste other candidates. Based on that, the proposal came to be sent. Therefore, according to the petitioner School, while giving second advertisement for the purpose of calling upon the candidates from Scheduled Caste, there is no necessity to get prior approval from the Government, since the enabling G.O.Ms. No. 61, Adi Dravidar and Tribal Welfare (TD2) Department, dated, 29.05.2009 itself gives such power to the Management to go ahead with the appointment of the candidates from the reserved vacancy and it is with that, the present Writ Petition is filed for a direction against the respondents to approve the appointment of Miss. I. Saravana Kalai Jyothi as a Secondary Grade Teacher in the petitioner's School with effect from 08.04.2010, since she also belongs to

Scheduled Caste community.

6. It is the case of the learned Special Government Pleader that while it is true that under G.O.Ms. No. 61, Adi Dravidar and Tribal Welfare (TD2) Department, dated, 29.05.2009, the Management is unable to fill up the post with the Scheduled Caste candidates, in the absence of suitable Arunthathiyar candidates on a preferential basis, while taking steps for the purpose of filling of such posts, with other Scheduled Caste candidates, it is the duty on the part of the petitioner School to obtain prior permission from the first respondent and inasmuch as the prior approval has not been obtained, there is no possibility for the Government to have a check to see as to whether G.O.Ms. No. 61, Adi Dravidar and Tribal Welfare (TD2) Department, dated, 29.05.2009 is properly implemented or not and, therefore, according to him, the return of the papers on 21.04.2010 made by the second respondent is in accordance with law.

7. Be that as it may, now that under the order of the second respondent dated 21.04.2010, the second respondent has only returned the papers saying that the appointment of the said Miss. I. Saravana Kalai Jyothi cannot be approved, since she only belongs to Scheduled Caste and not Arunthathiyar, which is the community within the Scheduled Caste and, therefore, if a fresh proposal is sent, it will be considered.

8. In such view of the matter, if it is the case of the petitioner School that the petitioner School is entitled to resort to the appointment of the candidates from Scheduled Caste community in the absence of Arunthathiyar from Scheduled Caste, it is open to the petitioner to re-submit the papers along with proper explanation and on such re-submission of the papers, which shall be made within a period of two weeks from the date of receipt of a copy of this order, it is open to the second respondent to pass appropriate orders on merits and in accordance with law and such orders shall be passed by the second respondent, within a period of four weeks thereafter.

9. The Writ Petition stands disposed of in the above terms. No costs.