

(2011) 01 MAD CK 0356

In the Madras High Court

Case No : Writ Petition (MD) No. 14305 of 2010 and M.P. (MD) No's. 1, 2 and 3 of 2010

R. Thangapandian

APPELLANT

Vs

Commissioner of Hindu Religious and Charitable Endowment
Board and Another

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16(4), 21, 335
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 116(2)
Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 — Rule 3, 4, 5, 6

Citation : (2011) 3 MLJ 112

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : A.D. Ganeshmoorthy, for the Appellant; M. Rajarajan, for K.M. Vijayakumar and Venkatachalapathy for R. Devaraj, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—By consent of the parties the writ petition is taken up for final disposal.

2. Petitioner has filed this writ petition challenging the advertisement dated 24.9.2010 issued by the second Respondent inviting applications to fill

up various posts and to declare the same as illegal, unconstitutional and consequently direct the first Respondent to earmark the exact vacancies for

SC and ST community and fill up the same in a fair and transparent manner by following communal roster within a given time.

3. According to the Petitioner, the impugned advertisement was issued calling for applications to fill up 77 posts in 23 categories. In the said

selection no provision is made for reservation of posts for candidates belonging

to SC and ST community. Aggrieved over the alleged rights of the SC and ST community people, the Petitioner has chosen to file the writ petition as a Public Interest Litigation. The Petitioner also states that no reservation is also made for BC and MBC community candidates. It is also stated in the affidavit that condition No. 11, which empowers the second Respondent to reject any application without assigning any reason, is unjust and arbitrary. The action of the second Respondent in not reserving seats for the economically and socially depressed classes of persons is in violation of Articles 14, 16(4), 21, 46 and 335 of the Constitution of India, particularly when the second Respondent has invited applications for various posts in Palani Arulmigu Thandayuthapani Swamy Thirukovil, which is under the control of the first Respondent governed by the Hindu Religious and Charitable Endowment Act, 1959 and the Rules framed thereunder.

4. The second Respondent has opposed this writ petition by filing counter affidavit by contending that the writ petition filed by way of public interest litigation to reserve posts for SC and ST candidates for selection to various posts is not maintainable as the issue pertains to service matter.

On merits it is stated that neither the HR and CE Act, 1959, nor the service rules framed thereunder viz., Tamil Nadu Hindu Religious Institutions

(Officers and Servants) Service Rules, 1964, which was amended by G.O. Ms. No. 255 Tamil Development, Religious Endowments and

Information Department, dated 28.6.2010 mandates reservation of seats for SC and ST, BC and MBC candidates. It is also stated therein that

SC and ST candidates can also compete for all posts and their claim will also be considered even though no specific reservation is made in the advertisement.

5. The learned Counsel appearing for the Petitioner reiterated the contentions raised in the affidavit and submitted that not reserving seats for SC

and ST candidates in the public temple of the second Respondent is in violation of the constitutional right guaranteed under Article 16(4) of the

Constitution of India and therefore, the writ petition is maintainable, as the Petitioner is representing the weaker sections of the society and he is not

claiming any service right. The learned Counsel also submitted that the action of the Respondents in not reserving seats, SC and ST candidates are

affected and individual persons are not in a position to come to this Court due to their poverty and social backwardness.

6. The learned Senior Counsel appearing for the second Respondent submitted that even though Article 16(4) empowers the Government to

reserve seats to weaker sections of the society including SC and ST, insofar as the posts to be filled up by the second Respondent, no reservation

is ordered by the State Government either under the HR and CE Act, 1959 or under the Rules framed thereunder, namely, the Tamil Nadu Hindu

Religious Institutions (Officers and Servants) Service Rules, 1964. The said rule nowhere stipulates any reservation and in fact, it only prohibits

appointment of persons other than Hindu Religion and without challenging the said rule or amendment of the rules issued by the Government, the

Petitioner cannot challenge the impugned notification, which is issued in accordance with the rules.

7. We have considered the rival submissions made by the learned Counsel appearing for the Petitioner, learned Counsel appearing for the first

Respondent and the learned Senior Counsel appearing for the second Respondent.

8. The point for consideration in this writ petition is whether the writ petition is maintainable and whether the Petitioner can demand reservation for

SC and ST candidates in the impugned notification issued by the second Respondent inviting applications for filling up 77 posts in 23 categories of

posts in Arulmigu Thandayuthapani Swamy Thirukovil, Palani.

9. The Petitioner is challenging only the action of the Respondents in not reserving seats to the candidates belonging to SC and ST communities.

Though reservation is prayed for in the notified posts, its implication is to enforce social justice. SC and ST communities people are belonging to

socially and economically weaker category and each one of the candidate aspiring for the posts may not be in a position to approach this Court,

hence the writ petition cannot be held as not maintainable.

10. The learned Counsel appearing for the Petitioner as well as Respondents submitted that Arulmigu Thandayudhapani Swamy Temple, Palani is

coming within the purview of the HR and CE Act, 1959 and the Respondents are controlling its administration. For appointment of the Officers

and Servants of the temple and to its Institutions, the Tamil Nadu Hindu

Religious Institutions (Officers and Servants) Service Rules, 1964, was enacted which was amended recently vide G.O. Ms. No. 255 Tamil Development, Religious Endowments and Information Department, dated

28.6.2010. The said rule was framed under Sub-section (2) of Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act,

1959. In the said rule, the following categories of employees of the religious institutions are listed.

Senior Grade .. 83

Temples - Outdoor categories

Servants

Incorporated and .. 17

unincorporated categories

Devaswoms -

Outdoor Servants

Technical staff .. 44

categories

Medical Staff .. 14

categories

Education staff .. 5

categories

Senior Grade .. 75

Temples - Ulthurai categories

(Indoor) servants

Religious Institutions..17

other than Senior categories

Grade Temples

both Outdoor and

Indoor servants

Indoor servants ..31

categories

Archaka Training .. 7

Institute categories

Rule 3 states that every Officer or servant of a religious institution shall profess the Hindu religion and shall cease to hold office as such officer or

servant when he ceases to profess that religion. Physical fitness, age and certain grounds of disqualifications are mentioned in Rule 4, 5 and 6

respectively. No provision is made to reserve any post to any caste or community. The said rule is a special rule applicable for appointment of

Officers and Servants in Hindu Religious Institutions. The State and Subordinate Service Rules provides for reservation to several categories of

persons like BC, MBC, SC and ST as vertical reservation and reservation to women, physically challenged, etc. However, the said rule states that

it can be applied only subject to the special rules. In the absence of providing reservation in the special rules, the Petitioner cannot blame the

second Respondent for not reserving any seat for SC and ST candidates or to any other category. Article 16(4) of the Constitution of India is an

enabling provision to the State Government to reserve posts.

11. Similar issue was considered by the Supreme Court in the decision in Dr. Gulshan Prakash and Others Vs. State of Haryana and Others, in

respect of reservation of seats to post graduate medical course which was claimed under Article 15(4) of the Constitution of India. The Supreme

Court in the said decision held that the Court cannot compel the Government/ authorities to provide for reservation for SC and ST candidates in the

absence of any specific statutory rule framed. In the said decision, the Supreme Court held as follows at p. 1575 of MLJ:

16. In Ajit Singh and Others Vs. The State of Punjab and Others, a Constitution Bench of this Court in para 28 has held that Article 16(4) is only

an enabling provision which reads as under:

17. ...On the face of it, the above language in each of Articles 16(4) and 16(4-A) is in the nature of an enabling provision and it has been so held in

judgments rendered by Constitution Benches and in other cases right from 1963.

25. ...the State Government is the competent authority to decide the reservation in the State. The State Government did not prescribe any

reservation for SC/ST and Backward Classes, due to which it was not included in the prospectus. They also clarified that the Petitioners before the

High Court were on the wrong impression that the Government of Haryana has

already taken a decision to make a reservation in admission to

MD/MS/PG diploma and MDS courses for SC/ST category. It was clarified that the Government of Haryana has never granted the benefit of

reservation to SC/ST category in admission to MD/MS/PG diploma and MDS courses. Though, even at the postgraduate level, reservation for

SC/ST/ Backward community is permissible, in view of the specific decision by the State of Haryana not to have reservation for Scheduled Castes

and Scheduled Tribes at the postgraduate level, there cannot be any mandamus by this Court as claimed by the Appellants....

18. ...As the State Government is competent to make the reservation to a particular class or category, until it is decided by the State, as being a

policy matter, there cannot be any direction to provide reservation at the PG level....

12. Applying the principle laid down in the said judgment to the facts of this case and in the absence of any provision to reserve seats in the Special

Rules, we are of the view that the Petitioner is not entitled to claim reservation for SC and ST candidates in the notified vacancies. This Court

cannot compel the Government to reserve seats to SC and ST candidates. It is made clear that this order will not stand in the way of the State

Government in deciding the issue of reservation by appropriately amending the Special Rules, bearing in mind the provision contained in Article

16(4) of the Constitution of India.

The writ petition is dismissed with the above observations. No costs. Connected miscellaneous petitions are also dismissed.