

Madras High Court

D. Ulaganathan vs The Chairman, Teachers ... on 5 November, 2004

Author: D Murugesan

Bench: D Murugesan

ORDER D. Murugesan, J.

1. At the stage when the injunction petition and the direction petition are listed, considering the limited issue involved and with the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

2. The petitioner applied for appointment to the post of Junior Grade Assistant (Mathematics) pursuant to the notification and the prospectus issued by the Teachers Recruitment Board. At the time of application, the petitioner forwarded, among other documents, the community certificate issued by the Head Quarters Deputy Tahsildar, Gudiyatham certifying the petitioner as belonging to Hindu Vanniakulakshathiriya community, which is recognised as a Backward Class, as per G.O.Ms. No. 1564(SW) dated 30.7.85. His claim for appointment was rejected on the ground that he did not obtain the required marks for appointment under the post reserved for backward community candidates.

3. The grievance of the petitioner is that prior to the year 1989, the Hindu Vanniakulakshathiriya community was recognised only as Backward Class and thereafter by G.O.(Manuscript Series) No. 28, Backward Classes and Most Backward Classes Welfare Department dated 19.7.94, the said Hindu Vanniakulakshathiriya community has been recognised as a Most Backward Class. Hence, the petitioner applied to the Deputy Tahsildar, Gudiyatham for issuance of community certificate and who issued such a certificate on 27.1.2004 certifying the petitioner has belonging to Hindu Vanniakulakshathiriya community, which is recognised as a Most Backward Class. Though the petitioner produced the said community certificate to the authorities, of course, after the last date for submitting the application viz., on 14.11.2003, the same was not taken into consideration. Hence, the present writ petition seeking for quashing of the proceedings of the first respondent made in O.Mu. No. 1136/A.4/2004 dated 2.7.2004 and direct the first respondent to select the petitioner as Junior Grade Assistant under Most Backward Community quota for the year 2003-2004 and direct the second respondent to appoint the petitioner as Junior Grade Assistant under Most Backward Community quota for the year 2003-2004 with due seniority and attendant benefits.

4. It is the contention of the learned Additional Government Pleader that in terms of clause 9 of the prospectus, permanent community card certificates obtained from the competent authority on or before 14.11.2003 were alone considered for rule of reservation. The cut-off date was fixed on the basis of the last date of receipt of application. Therefore, the application filed by the petitioner without enclosing the community certificate certifying him as belonging to Most Backward community was not considered.

5. The entitlement for consideration of appointment on the basis of the rule of reservation is a right guaranteed under Article 15(1) of The Constitution of India. There is no dispute that the petitioner, who belongs to Hindu Vanniakulakshathiriya community, has been recognised as a Most Backward

Class by virtue of G.O.Ms. No. 28 dated 19.7.94. Of course, the respondents are right in insisting such a community certificate, for consideration of the petitioner for appointment, along with the application. But, merely because such a certificate was not produced along with the application, the right for consideration for appointment as against the post reserved for Most Backward Class cannot be deprived in the event the petitioner is able to satisfy the respondents as to his community before the selection is finalised. The caste/community is a question of fact as is recognised by the Government Order. The right to entitlement and consideration on the basis of the rule of reservation cannot be deprived to an individual on his failure to submit the application within the stipulated period, as submission of the application is only procedural for verification. There is no dispute that the petitioner belongs to Most Backward Class and has submitted the said certificate before the appointments were finalised. In the circumstances, the respondents cannot deprive the right of the petitioner for consideration as to the appointment as against the post reserved for Most Backward Class. From the impugned reply dated 2.7.2004, it is seen that the petitioner has been denied the appointment only on the ground that he, being a backward community candidate, has not secured the minimum marks for appointment as against the post reserved for Backward Class candidates. Such an order cannot be sustained as the said order was passed on 2.7.2004 after the petitioner has produced the community certificate dated 27.1.2004 certifying him as belonging to Most Backward Class.

6. In view of the above, the impugned order is quashed with a direction to the respondents to consider the petitioner for appointment to the post of Junior Grade Assistant under the Most Backward Community quota for the year 2003-2004 on the basis of the marks obtained by him in the examination. The writ petition is allowed. No costs. Consequently, W.P.M.P. Nos. 31706 and 31707 of 2004 are closed.