BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.11.2022

Pronounced on : 01.12.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1019 of 2022
and
W.M.P(MD)No.860 of 2022

U.Akbar Ali ... Petitioner

v.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Personnel and Administrative Reforms
Department,
Secretariat, Chennai.

2.The Tamil Nadu Public Service Commission,
Rep.by its Secretary,
TNPSC Road, VOC Nagar, Park Town,
Chennai – 600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Letter No.36-4/181/RID-4/2021 dated 28.07.2021 and quash the same as illegal and consequently to direct the second respondent to consider the name of the petitioner for the appointment taking into account of

the marks secured by the petitioner under BCM category within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel
for Mr.C.Venkatesh Kumar

For Respondents : Mr.A.K.Manikkam
Special Government Pleader for R1
Mr.V.Panneer Selvam for R2

ORDER

The petitioner as well as his family members were Hindus. They belonged to Most Backward Class (DNC). They got converted to Islam on 26.05.2008. The petitioner changed his name. It was also notified in the gazette. The Zonal Deputy Tahsildar, Ramanathapuram Taluk issued community certificate dated 28.10.2015 certifying that the petitioner belongs to Labbais community. When TNPSC issued Notification No.15/2018 dated 10.08.2018 inviting applications from eligible candidates for direct recruitment to the posts included in Combined Civil Services Examination – II (Group-II Services), the petitioner applied in response thereto. He cleared the preliminary written examination held on 11.11.2018. He also wrote the main examination held on 23.02.2019. But he was not included in the final selection list. He invoked the provisions of the Right to Information Act and

came to know that the reason for his non-selection was because TNPSC did not treat him under "BC (Muslim)" category but considered him under "General" category. Questioning the said stand taken by TNPSC, the present writ petition has been filed.

2.The learned Senior Counsel appearing for the petitioner submitted that Article 25 of the Constitution of India recognizes freedom of conscience; one can profess any religion. One can get converted. The petitioner was only exercising his fundamental right when he converted to Islam. Before conversion, he enjoyed the status of belonging to MBC (DNC). In the State of Tamil Nadu, Muslims are recognized as belonging to Backward Class. The petitioner should therefore be considered as belonging to BC community. The jurisdictional authority had certified that the petitioner belongs to Labbais. When similar issue arose before this Court, it had been repeatedly held that it is not open to the recruiting agency to question the contents of the community certificate when its genuineness is not in doubt. The learned Senior Counsel placed reliance on the following decisions :

"i) R.Ayesha v. The Government of Tamil Nadu (2015 SCC OnLine Mad 3572),

ii) S.Sumaiya Parveen v. The Secretary, TNPSC (WP No.8500 of 2019),

iii) The Teachers Recruitment Board rep.by its Member Secretary, DPI Campus, Chennai v. K.Barida Beevi (WA No.1852 of 2021)

iv)M.Fathima Begam v. The Principal Secretary to Government, Revenue Department (WP (MD) No.17642 of 2015 and etc.,)

v)M.U.Aariffaa v. The Secretary to the Government, Chennai – 9 2014 (3) MLJ 476"

3.The learned Special Government Pleader as well as the learned standing counsel appearing for the respondents submitted that when similar issue was raised before the Hon'ble First Bench in WP(MD)No.1009 of 2013 (***M.K.Muzibur Ragman vs. UOI and ors***), it was closed as the matter was pending before the Hon'ble Supreme Court of India. They also pointed out that when a Hon'ble Division Bench of this Court allowed a similar claim, the Government of Tamil Nadu filed SLP before the Hon'ble Supreme Court which granted an interim order of status quo. The respondents pressed for dismissal of this writ petition.

4.I carefully considered the rival contentions and went through the materials on record. I must clarify at the outset that it is not as if the Madras High Court has been consistently upholding the claim of those who converted to Islam to be treated as BC(Muslim). In ***S.Yasmine v. The Secretary,***

TNPSC reported in ***2013 (4) CTC 53*** rendered by His Lordship Mr.Justice V.Ramasubramanian (As His Lordship Then Was), it was held that TNPSC was right in treating a candidate who converted to Islam as belonging to the category of "other communities". Interestingly, the Hon'ble Judge described his earlier decision rendered in W.P. Nos.9150 and 10859 of 2012 dated 10.1.2013 as not representing the correct position in law. Reliance was placed on ***Kailash Sonkar v. Maya Devi (1984) 2 SCC 91*** and ***G.Michael v. S.Venkateswaran [1952 (1) MLJ 239***]. In G.Michael, it was observed that a member of one of the castes or sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. This decision of the Madras High Court was approvingly cited in ***K.P.Manu v. Scrutiny Committee (2015) 4 SCC 1***. In ***Kailash Sonkar***, it was held that the caste to which a Hindu belongs is essentially determined by birth and that if a Hindu is converted to Christianity or another religion which does not recognize caste, the conversion amounts to loss of the said caste. The original caste remains under eclipse and as soon as the person is reconverted to the original religion, the eclipse disappears and the caste automatically revives.

5.I am conscious that in ***M.U.Aariffaa***, another learned Judge of this Court after referring to ***Yasmine*** decision took the view that on conversion to Islam, the person converted should be considered as BC(M). It was also held that the recruiting agency is bound by the community certificate given by the competent authority. The learned Judge purported to follow the Full Bench decision reported in ***(2011) 6 MLJ 609 (TNPSC v. R.Manikandan)***.

6.I am more than satisfied that reliance on ***Manikandan*** was utterly misplaced. The facts leading to the reference cannot be lost sight of. TNPSC was withholding the results of candidates belonging to Scheduled Castes and Scheduled Tribes and took the stand that only after the Scrutiny Committee certified the genuineness of the community certificates, the results will be declared. In that background, reference came to be made and it was answered as follows :

> "27. In that view of the matter and for the reasons discussed, we answer the reference in the following manner:
>
> A) The scrutiny of the genuineness of the Scheduled Caste certificates can be made only by District Level Vigilance Committee constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

B) The scrutiny of the genuineness of the Scheduled Tribe certificates can be made only by State Level Scrutiny Committee constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

C) Such scrutiny of certificates, be it Scheduled Caste or Scheduled Tribe, cannot be made by the Tamil Nadu Public Service Commission;

D) For the purpose of processing the application and allowing a candidate to take part in the written examination and the consequential oral examination, the Service Commission would be entitled to verify as to whether the Candidate has produced a Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of the candidate cannot be withheld and the name should be forwarded to the appointing authority for making appointments;

E) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the community certificate;

F) In terms of paragraphs 10 and 15 of the directions of the Apex Court in Kumari Madhuri Patil's case, which we have extracted, a candidate who is selected and appointed subject to verification of the community certificate, shall not claim any benefit of such selection and in case if the certificate is found to be false, the candidate should consequently lose his employment."

It is obvious that ***Manikandan*** case did not involve the issue of the community status of a convertee to Islam.

7.In ***S.Ruhaiyah Begum vs The Government Of Tamil Nadu*** (WP No.2972 of 2013 dated 19.02.2013), a Hindu belonging to open category embraced Islam and got married to one Sahul Hameed, a Muslim by birth. She obtained a community from the Zonal Deputy Tahsildar stating that she belongs to Muslim-Dekkani. The court held that the said certificate has got no legal value. It was further held as follows :

"10.As to whether any converted Backward Class Muslim will automatically become Backward Class Muslim is also an issue that can be considered in the present case.

11.For the purpose of communal reservation in the terms of Article 15(4) and 16(4) of the Constitution, a community has to be identified as a Backward Class, which is not adequately represented by the State under the service of the State.

Therefore, it requires an exercise to be undergone by the State whether the Converted Backward Class Muslim automatically becomes Backward Class Muslim whether by marriage or any other reason. In the present case, the list of Backward Class Muslim shows that there are several other Muslim communities left out.

12.Therefore, in the absence of exercise by the State Government by including a particular caste or religion group into the list of Backward Class, which requires undergoing of an exercise by the State Government, the converted backward class Muslim will not be included as a Backward Class. A caste can be relevant factor for identifying the Class, as laid down by the Hon'ble Supreme Court in Indra Sawhney Vs. Union of India and others) reported in 2000(1) SCC 168.

13.Even from the list of Backward Class prescribed by TNPSC, it can be seen that in respect of the Scheduled Castes, who converted into Christianity from Schedule Caste, were notified as Backward Class community under Serial No.131. In the absence of such converted Muslims automatically being including in the Backward Class list, the petitioner's prayer that she should be declared as Backward Class Muslim and consequently, be selected for the post, cannot be accepted by this Court and such claim has to be rejected out right.”

8.The Hon'ble Apex Court in ***Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai (2006) 12 SCC 583*** observed as follows :

> "...it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law)in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's `The General Theory of Law and State').
>
> In our country this hierarchy is as follows:
> 1) The Constitution of India;
> 2) The Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature;
> 3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;
> 4) Administrative orders or executive instructions without any statutory backing."

The Government of Tamil Nadu had in as many as four letters laid down that the candidates who have converted to Islam from other religion will be considered only as "others category" (vide Lr No.11373/BC_MBCs/09-01 dated 04.02.2010, Lr No.11373/BC_MBCs/09-02 dated 22.08.2012, Lr No.

6907/BC_MBCs/2015-01 dated 04.05.2017 and Lr No.587/BC_MBCs/2019 dated 17.05.2019).

9.Applying the hierarchy principle, it is obvious that the certificate issued by the jurisdictional Deputy Tahsildar will rank below that of a Government letter. In fact, the jurisdictional Deputy Tahsildar had acted irregularly by breaching the mandate set out in the government letters which are binding on him. The recruitment agency is therefore obliged to disregard such community certificate issued in breach of the instructions issued by the Government. Respectfully applying the ratio laid down in ***Ispat Industries Ltd.,*** I hold that the letters mentioned above will prevail over any community certificate issued in breach thereof***.***

10. When a Public Interest Litigation was filed to decide and declare the community status of the persons who convert from the Scheduled Caste Community to Islam and for consequential direction to the authorities to issue community certificate, the Hon'ble First Bench vide order dated 03.10.2016 in WP(MD)No.1009 of 2013 (***M.K.Muzibur Ragman vs. UOI and ors***) disposed of the writ petition in the following terms :

"2.It is pointed out to us by the learned Additional Advocate General that the very issue has been referred to a Larger Bench by the Hon'ble Supreme Court in Centre, Public Interest Litigation & Another v. Union of India. (Writ Petition (Civil) No.180 of 2004 vide order dated 21.01.2011)

3.In view of the aforesaid facts and circumstances, we see no purpose in entertaining the petition, as the very question is under the consideration before the Supreme Court and the law laid down would be applicable to all."

11.When another Hon'ble Division Bench subsequently took a contra view, the Government of Tamil Nadu filed SLP challenging the same. The Hon'ble Apex Court directed that till the next date of hearing, the status quo shall be maintained (vide order dated 24.09.2018 in SLP (Civil) Diary No. 28421/2018).

12.The issue can be approached from another angle. It is not as if all Muslims have been recognized as belonging to Backward Class in Tamil Nadu. G.O.Ms.No.85 BC, MBC and Minorities Welfare (BCC) Department, dated 29.07.2008 catalogues only the following list of Backward Classes (Muslims) :

"1.Ansar, 2.Dekkani Muslims, 3.Dudekula, 4.Labbais including Rowthar and Marakayar (whether their spoken language is Tamil or Urdu), 5.Mapilla, 6.Sheik, 7.Syed."

The petitioner has enclosed the certificate issued by the Kazi of Tamil Nadu Government for Ramanathapuram District on 25.12.2012. It reads that Sathiyamoorthy S/o.Lakshmanan had embraced Islam on his own volition and that he has joined the Muslim Jamat as a Member and that he is following Islamic norms and principles. This certificate declaring the petitioner's conversion only states that the petitioner has become a Muslim and nothing more. ***G.Michael*** judgment of the Madras High Court also states that when a Hindu gets converted to Islam, he becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. When the Kazi does not declare that the convertee is to be treated as belonging to the group of Labbais, I fail to understand as to how a revenue authority of a secular government can fix the converted individual in a particular slot or pigeon-hole. If as in ***S.Ruhaiyah Begum,*** a Hindu belonging to the "others category" gets converted to Islam and manages to obtain certificate as if he or she belongs to one of the aforesaid notified groups, the very purpose of social justice can be defeated by such clever stratagems. The learned Senior Counsel submitted that only if the convertee is already enjoying the benefit of reservation prior to his conversion, then and then alone he can be considered as BC (Muslim). As held in ***S.Ruhaiyah Begum***, that exercise will have to be undertaken only by the Government.

13.As observed in ***S.Yasmine*** case, a person cannot carry his community of birth even after conversion. Whether such a person should be given the benefit of reservation even after conversion is a question that is pending adjudication before the Hon'ble Supreme Court. When the Hon'ble Supreme Court is seized of the matter, it is not for this Court to uphold the claim of the petitioner. It is for this reason, I am not persuaded by the precedents cited by the learned Senior Counsel appearing for the petitioner. The stand taken by the second respondent Commission is correct. It does not warrant any interference.

14.The writ petition stands dismissed. No costs.

01.12.2022

Index : Yes / No
Internet : Yes/ No
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To

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Department,
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G.R.SWAMINATHAN, J.

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