



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.378 of 2023

and

W.M.P.No.3261 of 2024

K.Mariappan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by the Secretary to law,
Fort St. George,
Chennai – 600 009.

2.The Registrar General,
High Court of Judicature at Madras,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with Official Memorandum dated 25.04.2022 issued by the 2nd respondent quash the same consequently directing the respondents to provide reservation in promotion for the Petitioner as he is coming under the category of physically challenged person for the post of District Judge called for by the



2nd respondent in ROC No.2709-B/2018/RG/B1/Spl.Cell and ROC. No.3799-A/2019/RG/B1/Spl.Cell dated 17.08.2021 in the light of the Judgment of the Hon'ble Supreme Court in “The State of Kerala and Other Vs. Leesamma Joseph reported in (2021) 9 SCC 208”.

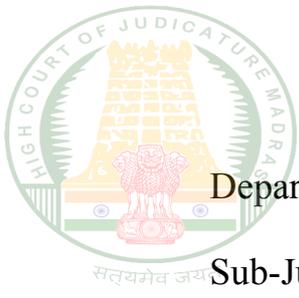
For Petitioner : Mr.K.Thilageswaran
For R1 : Mr.P.Ananda Kumar
Government Advocate
For R2 : Mr.M.Fakkir Mohideen

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The writ petition has been instituted challenging the order of rejection dated 25.04.2022, rejecting the claim of the writ petitioner for grant of promotion to the post of District Judge by providing reservation for differently-abled persons in view of Section 34 of the Rights of Persons with Disabilities Act, 2016.

2. The petitioner is a differently-abled person having 80% Congenital Disability in both hands. He was appointed as Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service by G.O.4D.No.7, Home (Courts.1)



Department dated 12.02.2009. The petitioner was promoted to the post of Sub-Judge and serving as such at Periyakulam, Theni District. The next avenue for promotion is to the post of District Judge (Entry Level).

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3. Mr.K.Thilageswaran, learned counsel for the petitioner would mainly contended that 4% reservations provided for disabled persons are to be extended even to the promotional posts. Therefore, by earmarking 4% post of District Judges (Entry Level), the petitioner should be promoted as District Judge. In support of the contention the learned counsel for the petitioner would submit that the Hon'ble Supreme Court of India in the case of ***The State of Kerala and Others Vs. Leesamma Joseph*** reported in ***CDJ 2021 SC 428***, held as follows:

“14. The legislative mandate has to be understood in the aforesaid context as it provides for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service. This would in fact result in stagnation of the disabled in a consequential frustration.



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15. *The operation of reservation and the computation has to be made with reference to the total number of vacancies in the cadre strength and no distinction should be made between Posts to be filled by direct recruitment and by promotion.*

20. *Thus, a person with disability would be considered for promotion along with other persons working in the feeder cadre. We have no doubt that the mandate of Section 32 of the 1995 Act enjoins the government to identify posts that can be filled up with persons with disability. Thus, even posts in promotional cadre have to be identified for PwD and such posts have to be reserved for PwD. The identification of such posts is no doubt a prerequisite for reservation in promotion for PwD. There cannot be methodology used to defeat the reservation in promotion. Once that post is identified, the logical conclusion would be that it would be reserved for PwD who have been promoted. The absence of rules to provide for reservation in promotion would not defeat the rights of PwD to a reservation in promotion as it flows from the legislation and in our view, this is the basis of the mandate of this Court in Rajeev Kumar Gupta's and Siddaraju's cases (Supra)."*



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4. It is contended that in view of Section 34 of the Rights of Persons with Disabilities Act, 2016, the benefit is to be extended to the petitioner by promoting him to the post of District Judge (Entry Level).

5. Mr.P.Ananda Kumar, learned Government Advocate appearing on behalf of the 1st respondent would oppose the contentions of the petitioner by stating that there is no rule in force to consider the case of the petitioner for promotion to the post of District Judge by applying the Rule of Reservation for differently-abled persons. In the absence of any Service Rules, promotion to the higher post cannot be granted. The petitioner was appointed under differently-abled quota and therefore, further reservation for promotion is impermissible under the Service Rules. The case of the petitioner will be considered for promotion to the post of District Judge based on merit-cum-seniority as per the Rules and therefore, the writ petition is to be rejected.

6. Section 34 of the Rights of Persons with Disabilities Act, 2016 provides Reservation. Sub Section (1) to Section 34 enumerates “Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre



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strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:— (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d) autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities. Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time”:

7. Therefore, it is made clear that reservation in promotion for differently-abled persons shall be in accordance with such instructions, which is to be issued by the appropriate Government from time to time.

8. Regarding the Judicial Services, it cannot be compared with Government Services in various Departments. The nature of the Judicial Services are different from Government Services. Article 233 of the



Constitution of India empowers the High Court to frame rules governing the service conditions of the Judicial Officers and the appointments are to be made by the Governor in consultation with the High Court. In the absence of any policy decision by the High Court in this regard, the petitioner cannot claim promotion by implementing the reservation policy of 4% as per the Rights of the Persons with Disabilities Act, 2016.

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9. The 2nd respondent / Registrar General, Madras High Court has stated that fixation of *inter se* seniority was done based on the communal roster, and further promotions were granted based on such seniority. Pursuant to the decision of the Hon'ble Supreme Court in ***Bimlesh Tanwar vs. State of Haryana*** reported in (2003) 5 SCC 604, the validity of such reservations and fixation of *inter se* seniority and promotions in the District Judiciary came up for consideration in various cases and was finally settled by the Hon'ble First Bench of this Court's Order in ***W.P.Nos.20449, 20451 and 20452 of 2015., batch*** dated 20.07.2021, and in para 41 of the said Judgment, the reservation followed by the roster method hitherto, was negated and merits were fixed as a sole contemplation. Even though communal reservation was the subject issue, the High Court had comprehended various aspects and laid the rule that 'merit-based seniority' alone shall be followed for further promotion to be



granted for Judicial Officers, jettisoning roster-based reservation. The relief prayed for in the writ petition seeks to re-agitate/re-settle the aforesaid 'merit-based seniority' in grant of promotion by seeking the re-introduction of rule of reservation in the District Judiciary in the form of horizontal reservation, which is in *de hors* to the Judgment to the Hon'ble Supreme Court in ***Bimlesh Tanwar Vs. State of Haryana*** reported in (2003) 5 SCC 604 and the decision of the Hon'ble First Bench of this Court in Writ Petition Nos.20449, 20451 and 20452 of 2015 etc., batch dated 20.07.2021.

10. The power to implement reservation or framing regulation with regard to the service condition of the cadres of District Judges and Civil Judges serving in the District Judiciary is within the powers of the respective High Court conferred under Chapter V-Part VI, of the Constitution of India, and particularly in exercise of the powers conferred to the High Court under Article 233 of the Constitution of India. Even though the respective State or the Parliament is within their Legislative competence to bring reservation or to frame service regulation for the Ministerial and Judicial cadres, in the light of powers enshrined under Article 309 of the Constitution of India, but the said reservation or the service condition framed by the Parliament or State by the Legislative exercise of powers, shall be introduced by the Governor



subject to consultation with the respective High Court. The process of consultation found under Article 233 of the Constitution of India is wider and leaves discretionary power within the realm of the respective High Court to decide about the introduction of such service conditions framed or, in the case of reservation. The respective High Court, on its Administrative Side, shall decide about the extent of such reservation to be implemented pursuant to the said Legislation.

11. It is submitted that the High Court has framed the Service Rules for the Judicial Officers viz., the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 and the above said Rules allowed for communal reservation as well as other reservations that are in consonance with the State Legislation, as well as the reservation for the specially-abled as per the Rights of Persons with Disabilities Act, 2016. The same is evident from Rule 10 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007. With regard to Persons with Disabilities or the communal reservation, the same is provided only to the stage of Direct Recruitment of the Judicial Officers. Providing reservation for Direct Recruitment at the entry level alone is a policy decision of the High Court on its Administrative Side. The scope of Judicial Review questioning such a policy decision of the State or the High



Court is so limited that it arises only in the event that it is grossly arbitrary, irrational, or a constitutional abrogation is found in the said policy, or it results in discrimination among similarly placed identical persons. The aforesaid constitutional provisions, leaves discretion for the High Court to decide about the extent of introducing the benefits rising out of the said Legislation, but the petitioner seeks to directly implement the benefits of “Rights of Persons with Disabilities Act, 2016”.

12. As far as the contention of the petitioner regarding his rights under the Rights of Persons with Disabilities Act, 2016 is concerned, there is no non-discrimination in respect of the posts of Civil Judge and District Judge. Already, the posts are identified and reservation of 4% is provided. The petitioner has availed the said benefit at the time of recruitment as Civil Judge (Junior Division) which is a Class-1 post. That being the situation, his right under Section 3 or Section 20 or Section 24 of the Act is not violated. Section 34 of the Act envisages reservation of not less than 4% of the total number of vacancies. The said reservation is to provide employment to the differently-abled persons and as such the High Court has more appropriately provided the said reservation with reference to direct recruitment quota. There is no policy of reservation in promotion. This apart, a careful perusal of the Act would go



to show that the provision of non-discrimination as well as the reservation are meant for employment of disabled persons and not for any fast forward career progression. As such, the policy as existent as on date is in compliance of Articles 14 and 16 of the Constitution of India.

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13. The cadre of District Judges is filled at the ratio of 65% by way of promotion; 10% by Limited Competitive Examination; and 25% by Direct Recruitment. 25% Direct Recruitment from among the eligible advocates allows for Reservation for Persons with Disabilities and Communal Reservation as well. With regard to promotion, the petitioner cannot allege that there is inadequate presence of the Persons with Disabilities among the District Judges, as the feeder category of Civil Judges is recruited by 4% of the Persons with Disabilities, who in turn are promoted on the basis of merit-cum-seniority, and progressively they reach the position of District Judges without discrimination. Further, 25% of the Direct Recruitment also provides Persons with Disabilities, reservation, and by this arrangement, Persons with Disabilities are adequately found in all cadres of the District Judiciary and in particular in the post of District Judges. By any sort of arithmetic and pragmatic approach, the level of 4% Persons with Disabilities presence has been achieved by this Court in the present and is achievable in the future as



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14. The High Court, in order to encourage the meritorious Civil Judges and Senior Civil Judges and also to have an accelerated position of their promotional chances to advance for the deserving Judicial Officers, has earmarked 10% of posts in the District Judge to be filled by conducting a Limited Competitive Examination among the incumbent Civil Judges. By the nomenclature of such selection, it shows that merit alone is the qualifying consideration for filling up such a post. Filling up such a post by adding the rule of reservation either horizontally or vertically would defeat the object of such career advancement based on merit consideration.

15. Rights of Persons with Disabilities Act, 2016 or the repealed “The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995” mandates the reservation of posts to the extent of 4% by allowing the discretion to management for identifying the post suitable for such reservation and also for the type of specially-abled persons fit for such reservation. The High Court, in consonance with the object of the above acts, has allowed reservation of post and has achieved adequate presence of the Persons with Disabilities. The sole thrust of the writ petition is advanced



by placing reliance on the judgment of the Hon'ble Supreme Court of India reported in (2021) 9 SCC 208 (*The State of Kerala & Ors. vs. Leesamma Joseph*).

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16. The above said judgment is not applicable to the facts of the present case. The said judgment is with regard to the grant of promotion and promotional chances for Persons with Disabilities. In the said case, the fixation of seniority does not mandate for “merit-based seniority” to be followed in the grant of further promotion and hence they had grievances about the inadequate presence of the Persons with Disabilities. Whereas such a situation does not arise for the present in the District Judiciary, this Court has effectively implemented reservation in the selection process of the Civil Judge (Junior Division) and also in the Direct Recruitment of District Judges. This phase wise approach has enabled the successful accomplishment of Persons with Disabilities presence in its overall cadre strength.

17. The judgment was based on the touchstone of Persons with Disabilities reservation alone, whereas the reservation of a District Judge or drawing of a seniority position requires merit-based consideration and shall be primordial over all other aspects. Even in the said judgment, the Hon'ble



Supreme Court relied upon its earlier judgments in *Government of India and Another vs. Ravi Prakash Gupta and Another* reported in (2010) 7 SCC 626

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and the judgment in *Union of India vs. National Federation of the Blind* reported in (2013) 10 SCC 772, opining that reservation shall be computed to the total number of vacancies in the cadre strength and has held that distinction cannot be drawn for filling up of posts by Direct Recruitment or promotion.

18. In view of the above reasons, the judgement relied on by the petitioner is in-applicable to the facts presented before us. The object of accommodating the Persons with Disabilities at the statutory maximum level of 4% was extended to both the Civil Judge and District Judge. This has resulted in the successful presence of beneficiaries at the level of 4% in the cadre strength.

19. Apart from the petitioner viz., Thir.K.Mariappan, Sub-Judge, Periyakulam, five other physically challenged candidates i.e., Civil Judges of 2009 batch, are functioning in the cadre of Senior Civil Judge in the Tamil Nadu State Judicial Service i.e., 4 being seniors to Thiru.K.Mariappan as per merit viz., i) Ms.C.Karthika, Chief Judicial Magistrate, Nagapattinam, ii)



Thiru. T.D.Chakkaravarthy, Associate Editor, Tamil Law Journal, High Court of Madras, iii) Thiru.R.Kanagaraj Judicial Officer/Chairman Taxation

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Appeals Tribunal / Corporation of Tiruppur and iv) thiru.K.V.Sakthivel, XIII Metropolitan Magistrate, Egmore, Chennai and one junior to the petitioner, Ms.N.Mareeswari, Sub-Judge, Thoothukudi. The details of available beneficiaries, who are similarly placed as that of the petitioner, are set out as hereunder:

| S. No. | Name and Designation of the Judicial Officer | Disability Nature | Roster Seniority (among the 193 selected candidates of the 2009 batch) | Merit seniority (among the 184 functioning candidates of the 2009 batch) |
|---------------|--|--------------------------|---|---|
| 1. | C.Karthika, Chief Judicial Magistrate, Nagapattinam | Ortho | 2 | 25 |
| 2. | T.D.Chakkaravarthy, Associate Editor, Tamil Law Journal, High Court of Madras | Blind | 16 | 30 |
| 3. | K.Mariappan, Sub Judge, Periyakulam | Ortho | 58 | 125 |
| 4. | R.Kanagaraj, Judicial Officer/Chairman, Taxation Appeals Tribunal, Corporation of Tiruppur, Tiruppur | Ortho | 98 | 75 |
| 5. | K.V.Sakthivel, XIII Metropolitan Magistrate, Egmore, Chennai | Ortho | 148 | 106 |
| 6. | N.Mareeswari, Sub Judge, Thoothukudi | Ortho | 154 | 181 |

20. Hence, the petitioner cannot allege about inadequate presence of the Persons with Disabilities in the cadre strength of the State Judiciary or



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that there are any warranting or compelling circumstances existing in the State Judiciary to have further mechanisms of reservation to be followed in the grant of promotion, as it would only result in an unjust acceleration of seniority.

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21. In view of the facts and circumstances, the very claim set out by the

writ petitioner is untenable and not supported by the Service Rules. Thus, we

are not inclined to consider the relief as such sought for in the present writ

petition and consequently, this Writ Petition stands dismissed. No costs.

Connected Miscellaneous Petition is closed.

[S.M.S., J.] [K.R.S., J.]

11.03.2024

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Index : Yes

Speaking order

Neutral Citation : Yes

To

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