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W.P.No.11197 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.11197 of 2018 &
W.M.P.No.13121 of 2018**

R.Anushri

... Petitioner

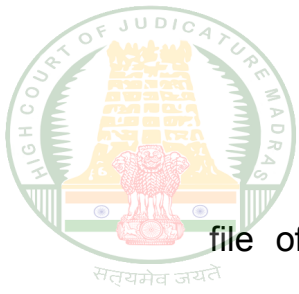
Vs.

1. The Secretary
Tamilnadu Public Service Commission,
VOC Nagar, Park Town,
Chennai – 600 003
2. The Principal Secretary to
Government of Tamilnadu,
Home Department,
Fort St. George, Secretariat,
Chennai – 600 009
[R2-Suo Motu Impleaded as per
order dated 06.11.2023 in
W.P.No.11197/2018 by VBSJ]
3. The Secretary to Government,
Human Resoures Management Department,
Secretariat, Chennai
[R3 – Suo Motu impleaded vide order
dated 22.11.2023 made in
W.P.No.11197 of 2018 by VBSJ]
...Respondents

Writ Petition filed under Article 226 of the Constitution of India for

issuance of a Writ of Certiorarified Mandamus calling for the records on the

<https://www.mhc.tn.gov.in/judis>



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file of the respondent pursuant to the publication of the result dated 17.04.2018 for post included in Combined Civil Service Examination-II (Non Interview Post) (Group-II-A Services) for the years 2017-2018 and quash the same and further direct the respondent to provisionally admit the petitioner for certificate verification to the post included in Combined Civil Service Examination-II (Non-interview Post) (Group-II-A Services) for the years 2017-2018.

For Petitioner : Mr.S.Karthikeyan

For Respondents : Mr.G.Hema for R1
Dr.T.Seenivasan for R2 and R3
Special Government Pleader

ORDER

The petitioner, who is a transwoman, had completed SSLC during the year 2005 2006 and thereafter, completed higher secondary in the year 2007-2008.

2. It is the case of the petitioner that she had completed Engineering in Computer Science and passed out in the year 2012. It is the further case of the petitioner that the first respondent published Notification No. 10/2017 dated 27/4/2017 inviting applications for the post which included in the Combined Civil Service Examination for the year 2017-2018, which are for non-interview Post group -II A services under various categories. The petitioner herein appeared for



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the written examination and obtained 121.5 marks as against the qualifying cut- off marks of 90 for all categories and was placed in serial number 69325th rank under communal ranking. However, despite the petitioner scoring more than the minimum qualifying cut-off mark which was not considered by the respondent but had considered various persons who had scored lesser Mark in a special category ranking between 106452, 124244, 520563, 175767, 200326, 532579, 73047, etc., infact, the last candidate, who had been called to upload the certificate was with 99908 ranking comes from special category.

3. It is the further case of the petitioner that the first respondent is the recruiting agency who ought to have considered the petitioner under the special category despite there being several rulings of Hon'ble Supreme Court and this Court. The first respondent has denied the opportunity to the petitioner from being considered for combined civil service examination for the year 2017-2018 which are for non-interview Post group -II A services under various categories, hence the petitioner has approached this Court seeking for a Certiorarified Mandamus to call for the records on the file of the first respondent pursuant to the publication of results dated 17.04.2018 for the year 2017-2018 and consequently direct the respondent to provisionally admit the petitioner for certificate verification to the post



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included in the combined civil service examination for the year 2017-2018.

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4. The first respondent had filed their counter dated 20/09/2018. This Court traversing the counter filed by the first respondent finds that it is not in dispute that the petitioner applied as a transgender for the notification published by the first respondent in Notification Number 10/2017 dated 27/4/2017 calling for application for the post, which include in the combined civil service examination for the year 2017-2018, which are for non-interview Post group -II A services under various categories direct recruitment. The respondent further stated in its counter that the petitioner with the registration number 014221002 is one among the candidates, who had applied for the recruitment. The petitioner's application has claimed that she belongs to SC category and against gender column as 'transgender'. The written examination for the said recruitment was held on 06/08/2017 and the rank list of the said examination was published in the website on 7/3/2018. They further stated in the counter that total number of candidates uploaded the documents for certificate verification of the said examination was 6171 and since the petitioner who uploaded her certificate in the portal had claimed herself as Schedule Caste woman, as per her claim in the online application, the petitioner had been provisionally admitted for the

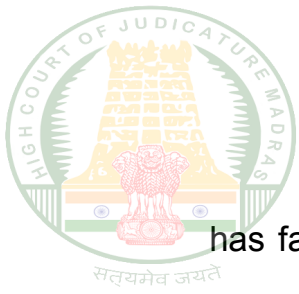


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written examination. Since the petitioner had claimed against the column 'gender' as Transgender she was considered under Schedule Caste (Women) category and the cut-off mark considered for certificate verification in respect of schedule caste women was 222.00. The petitioner has scored only 121.50 marks, which is far below than that of the cut-off mark prescribed for Scheduled caste woman. Therefore, the petitioner was not included in the list of candidates instructed to upload documents for certificate verification.

5. The learned counsel for the petitioner contended that the transgenders were not given proper opportunity in the employment, every now and then whenever the respondent or any recruiting agencies issues notification, every time, the transgenders have to approach this Court for relief. As far as the present case is concerned, though the petitioner has scored more than the cut-off mark prescribed for special category, the petitioner was not called for uploading documents for certificate verification. In contrary, those persons claiming under special category who have ranked below petitioner has been called and permitted to upload documents for certificate verification.

6. The learned counsel for the Tamilnadu Public Service commission



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has fairly submitted that they are proceeding by what the Government has prescribed and as such, when they are only the recruiting agency they have very limited powers to include or not include any category of applicants, as such, it is the Government, who frames the Rules and necessary guidelines to be adopted by the recruiting agency, what is prescribed by the government has been followed and in the absence of any notification or instruction from the government to treat the transgender as special category, petitioner who claims herself as a trans-woman under scheduled caste, she had been rank under schedule caste woman category. As such when the petitioner has not scored the requisite mark prescribed as cut off mark for scheduled caste women, she was not considered for uploading the documents for certificate verification.

7. This Court has given anxious consideration for either side arguments. This Court for necessity has impleaded the government as the second and third respondents by orders dated 06.11.2023 and 22.11.2023 respectively.

8. At this stage, the learned counsel for the petitioner had brought to the knowledge of this Court the orders passed by the **Hon'ble Supreme Court in National Legal Service Authority versus Union of India and**



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others reported in (2014) 5 SCC 438 and other cases dealt by this Court

at various point of time. The Hon'ble Supreme Court had set out certain directions to both the Central Government and the State Government which are as follows:

“We therefore declare,

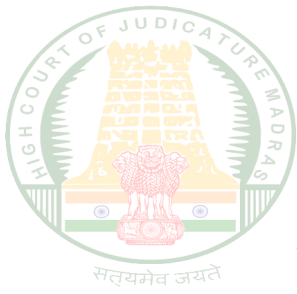
(1) Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

(2) Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

(3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

(4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.

(5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one’s gender is immoral and



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illegal.

(6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

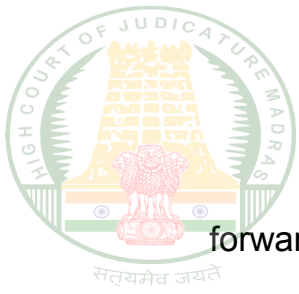
(7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

(8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

(9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

We are informed an Expert Committee has already been constituted to make an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this Judgment and implemented within six months.”

9. Though the above said National Legal Service Authority case came to be decided by the Hon'ble Supreme Court as early as 15.04.2014, still neither the State government, nor the Central Government has come



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forward to formulate a uniform mode of employment opportunities to be provided for the transgenders. In many of the cases ,the guidelines issued by the Hon'ble Supreme Court in the aforesaid paragraphs in NALSA case has been misconstrued. The Hon'ble Supreme Court has directed the Centre and the State Governments to take steps to treat transgender as socially and educationally backward class of the citizens and extend all kinds of reservation in case of admission in educational institution and for public appointments. This direction has been misconstrued at many times by the State governments and the agencies of State Governments by placing a transgender under most backward community or to the caste whichever advantageous to the transgender. This was not the intention of the Hon'ble Supreme Court while delivering the judgement refered supra. The Hon'ble Supreme Court has only directed to extend the benefits that are extended to backward class communities to the transgender, at no point of time, the Hon'ble Supreme Court has directed the State and the Central Government to place the transgender under backward class or most backward class category.

10. Moreover, the Hon'ble Supreme Court has clearly expressed that the transgenders should be treated as unique and the transgenders should not be treated one among the male or female. In fact, when the State of



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Punjab had placed all the transgenders under male category, the Hon'ble Supreme Court has held such action as illegal and unsustainable. This is evident in Paragraph No.76 the aforesaid NALSA Judgement and the same is extracted as follows:-

“76. Article 14 has used the expression “person” and the Article 15 has used the expression “citizen” and “sex” so also Article 16. Article 19 has also used the expression “citizen”. Article 21 has used the expression “person”. All these expressions, which are “gender neutral” evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one’s personal self, based on self identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.”

When that being so, the question of treating the transgenders either as male, or female is unsustainable and even more under any one community is also not sustainable.

11. Coming back to the present case, in Notification dated 27.04.2017, in the General Informations Serial Number 5 (B), the rule of reservation of appointment is made applicable separately to each posts divisions. 20% of all vacancies in direct recruitment have been given on



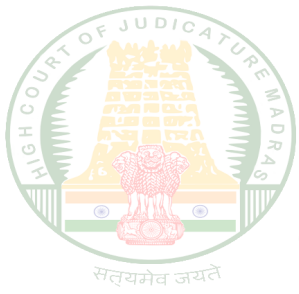
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preferential basis to the persons studied in Tamil medium, the same way reservations to ex-servicemen is made applicable, as per Section 27 (C) of Tamil Nadu Government Servants (Conditions of Service) Act 2016, and 10% of vacancies out of 30% of vacancies set apart for women applicants in direct recruitment are reserved for destitute widows. Apart from this, 3% of reservation for differently abled persons.

12. It is clear that the entire notification does not specify any reservations or treating the transgender as a separate category as directed by the Hon'ble Supreme Courts as well as this Court in very many cases. Thus it is very clear that the respondents have not recognised the rights of the transgender, despite there being several judgements directing them to treat the transgender as a separate category. In fact, it would be appropriate to extract the observation made by the **Hon'ble Division Bench of this Court in Writ Appeal No.330 of 2018 dated 22.02.2018**, wherein at Paragraph Nos.5 and 6, it is held as follows:-

“5. Even as we pass the above order, we are inclined to observe as follows:-

From the submission of Ms.Narmadha Sampath, learned Additional Advocate General-VIII, we gather that it is following observation in paragraph 67 of the judgment of Hon'ble Supreme Court in National Legal Services Authority-Vs-Union of India and others [(2014) 5 SCC 438] which has led



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Government of the State to include transgenders in the list of Most Backward Classes (MBC) in G.O.(Ms).No.28, Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 06.04.2015. We reproduce paragraph 67 in the aforesaid judgment:-

“TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.”

Similarly G.O.(Ms).No.567, Home (Police VI) Department, dated 02.08.2016 states that a transgender candidate, who applies as Third Gender, shall be eligible for appointment in the vacancies reserved for women candidates



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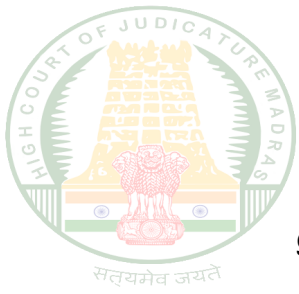


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as well as vacancies under the general category. This is presented as a concession shown to transgenders and has missed the observation in the order of Hon'ble Supreme Court in *National Legal Services Authority-Vs.-Union of India [(2014) 5 SCC 438]* in paragraph 135, particularly 135(3), which reads thus:-

“13.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments”.

6. A wholesome reading of the judgment of the Apex Court in *National Legal Services Authority-Vs.-Union of India [(2014) 5 SCC 438]* reveals that after the abject neglect and gay abandon of the Third sex over the centuries finally has dawned upon the world community. Through the judgment, the Supreme Court has impressed upon the Nation the need to undo the wrong silently suffered by the Third Gender of the human race, which has for far too long been oppressed, suppressed and left depressed. If the judgment of the Hon'ble Supreme Court is seen in such light and if the intent behind the same is to be carried forward, then we see absolutely no reason why reservations in age permissible to destitute widows and Ex-Servicemen and the like should not be extended also to transgenders. This observation would be applicable in equal measure to each and every concession, relaxation of conditions made in any form of public employment. In other words, the aim of Government should be upliftment of the Third



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gender in every manner possible. We, strongly would recommend the adoption of such a course and earnestly hope that this State be the forerunner in placing those who have too long been tread upon as the least among us, as the first among equals.”

Though the State Government has passed several notifications subsequent to the orders passed by the Hon'ble Supreme Court as well as this Court, but, till date, the State Government is still under the confusion and perpetuating the confusion by placing the transgender either in the female or male category along with the caste they belong.

13. In the present case, the petitioner has been placed in the scheduled caste woman category and denied the permission to upload the certificate for verification, as she had scored lesser than the cut-off mark prescribed for schedule caste woman. This approach of the first respondent denying the petitioner to upload her certificate on the basis that she has scored lesser mark than the cut of Mark prescribed for schedule caste woman category is unsustainable. When the notification issued by the first respondent has not categorised transgender as a special category, the question of transgender being categorised under woman category is unsustainable and against the order passed by the Hon'ble Supreme Court and this Court.



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14. When a specific question has been posed by this Court to the learned counsels appearing on the side of the 2nd and 3rd respondents as to what steps have been taken by the Government after the verdict of the Hon'ble Supreme Court and Judgements render by the Hon'ble Division Bench of this Court, the learned counsel appearing on the side of the 2nd and 3rd respondents stated that most of the directions issued by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court has been complied with by passing several government orders in favour of the transgender, however, regarding the transgender being treated as a separate category is not yet been formulated by any law by the government. At present, the third genders are given age relaxation similarly applicable to scheduled caste shall apply to the transgender candidates and no special privilege is granted to the transgender by treating them as one under the special category.

15. It is to be noted that if there has to be a special reservation, as directed by the Hon'ble Supreme Court provided to the transgender certainly, the petitioner would have found a way to lead a life as any other citizen of this country legitimately had the respondents have considered her under special category. The denial to consider the petitioner under a special



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category is against the direction issued by the Hon'ble Supreme Court and there cannot be any reason for not doing so. Every denial of opportunity to a transgender that too when there are very minimal number of transgenders, who are educationally qualified, the said denial would pull back the transgender to live in abnormal life is what we see in the society. It is for the Government to improve the quality of their living by providing sufficient opportunity to the transgender in education and employment avenues. Only this would create a balance in the society as far as the transgenders are concerned.

16. It is also to be noted that the transgenders are placed in the caste in which they are born and treated in the said category. This is of no use and detrimental to their development, the transgenders are to be treated as a special category only irrespective of their caste and gender (either Thirunangaiyar or Thirunambi).

17. Therefore this Court has no hesitation to hold that the petitioner is entitled to get special reservation on par with other special category candidates. In view of situation prevailing as far as treating the transgender as a special category, this Court is inclined to issue the following directions



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to the 2nd and 3rd respondents.:-

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(i) The second respondent is directed to treat the transgenders under special category and not to treat them under female or male category in all education and employment avenues.

(ii) In every employment and educational avenues, the Government shall prescribe separate norms for transgenders which shall be below the norms prescribed for male and female candidates.

(iii) Further, the second respondent shall ensure by directing all the recruiting agencies to specify transgender as special category and prescribe separate norms for their cut-off mark, the age relaxation that are extended to other special categories shall also be extended to the transgender irrespective of their caste in future employment and educational avenues. The transgender at no point of time in future shall be clubbed under male or female categories.

18. At this juncture, it is brought to the notice of this Court that the notification, which is impugned in this Writ Petition is of the year 2017-2018 all the vacancies are filled and at present, notification number 3/2022 dated 23/2/2022 has been issued, wherein applications are invited for the post which include in the combined civil service examination, which are for interview and non- interview Post group -II and Group -11 A services under



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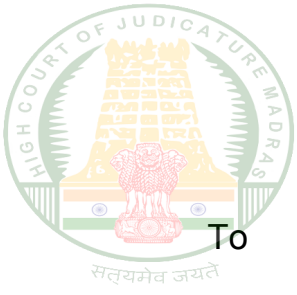
various categories for recruiting the post included in combine civil service examination are underway and the recruiting process is ongoing.

19. In view of the abovesaid detailed discussions and considering the fact that since the petitioner has scored the eligible cut-off mark under the special category in notification No. 10/2017 dated 27/4/2017, the first respondent shall permit the petitioner to upload documents for certificate verification under the notification number 3/2022 in non interview post forthwith, as the counselling for the above said notification, viz., 3/2022 is scheduled on 22.06.2024. It is made clear that for the notification No.3/2022, if there are more number of transgenders, the petitioner having applied for Notifiation 2017 should be given first preference along with other transgenders.

In the result, the Writ Petition stands allowed. Consequently the connected miscellaneous petition is closed. No costs.

12.06.2024

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd



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To

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1. The Secretary
Tamilnadu Public Service Commission,
VOC Nagar, Park Town,
Chennai – 600 003
2. The Principal Secretary to
Government of Tamilnadu,
Home Department,
Fort St. George, Secretariat,
Chennai – 600 009
3. The Secretary to Government,
Human Resoures Management Department,
Secretariat, Chennai



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ssd

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W.M.P.No.13121 of 2018**

12.06.2024