

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.330 of 2018
and
CMP.No.2792 of 2018

The Chairman,
Tamil Nadu Uniformed Services,
Recruitment Board,
Old COP Office Campus
Pantheon Road, Egmore,
Chennai-600 008.

... Appellant

Aradhana
Transgender Women,
Fathered by S.Kannan,
Forest Road 6th Street,
Opposite to Ganesh Kadalai Mittai,
Theni District-625 531.

... Respondent

Writ Appeal filed under Clause 15 of Letters of Patent Appeal, against the interim order dated 25.01.2018 passed in WP.No.1163 of 2018, Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Advertisement No.217, dated 28.12.2017 and quash the same as illegal as far as not prescribing age limit for transgender and contrary to the Judgment rendered by Hon'ble Supreme Court in National Legal Service Authority-vs-Union of India and others 2014(5) SCC 438 and further direct the respondent to allot one post under special category for Secondary Grade Police Constable (AR) for the selection year 2017-18.

For Appellant : Ms.Narmadha Sampath, AAG-VIII
 Asst. by
 Mr.P.S.Shivashanmughasundaram
 Special Government Pleader

For Respondent: Mr.K.V.Sajeev Kumar

JUDGMENT

[Judgment of the Court delivered by C.T.SELVAM, J.]

Respondent has moved WP.No.1163 of 2018 seeking the following reliefs:-

"issue a writ of certiorari/firmed mandamus or any other appropriate writ or order in the nature of writ calling for the records on the file of the respondent in Advertisement No.217, dated 28.12.2017 and quash the same as illegal as far as not prescribing age limit for transgender and contrary to the Judgment rendered by Hon'ble Supreme Court in National Legal Service Authority-Vs-Union of India and others 2014 (5) SCC 438 and further direct the respondent to allot one post under special category for Secondary Grade Police Constable (AR) for the selection year 2017-18".

2. Under orders in WP.No.1163 of 2018 and WMP.No.1452 of 2018 dated 25.01.2018, learned single Judge *inter alia* directed the appellant/respondent to keep one post vacant and to entertain the application of the respondent/petitioner regardless the age of the petitioner, subject to the result of the writ petition. Challenging such order, appellant/respondent has preferred the present writ appeal.

3. Heard Ms.Narmadha Sampath, learned AAG-VIII and learned counsel for the respondent.

4. On consideration of rival submissions, this Court is of the view that it would suffice to state that the observations of the learned Single Judge in paragraph 2 of the order in WP.No.1163 of 2018 and WMP.No.1452 of 2018 dated 25.01.2018 will not hold sway while finally disposing of the writ petition on merits. This Court does not consider it necessary to interfere with the direction of the learned Single Judge requiring the appellant/respondent to receive his application and keeping one post vacant, as doing so, would have severe adverse consequences on the respondent/petitioner, should he succeed in the writ petition.

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 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

reserved for women candidates 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 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.

7. With the above observation, this Writ Appeal is disposed of. We request learned single Judge to dispose of the writ petition as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is also closed.

8. Registry is directed to forward a copy of this order to Chief Secretary to Government for due consideration and appropriate action.

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 (C.T.S., J) (N.S.K., J)

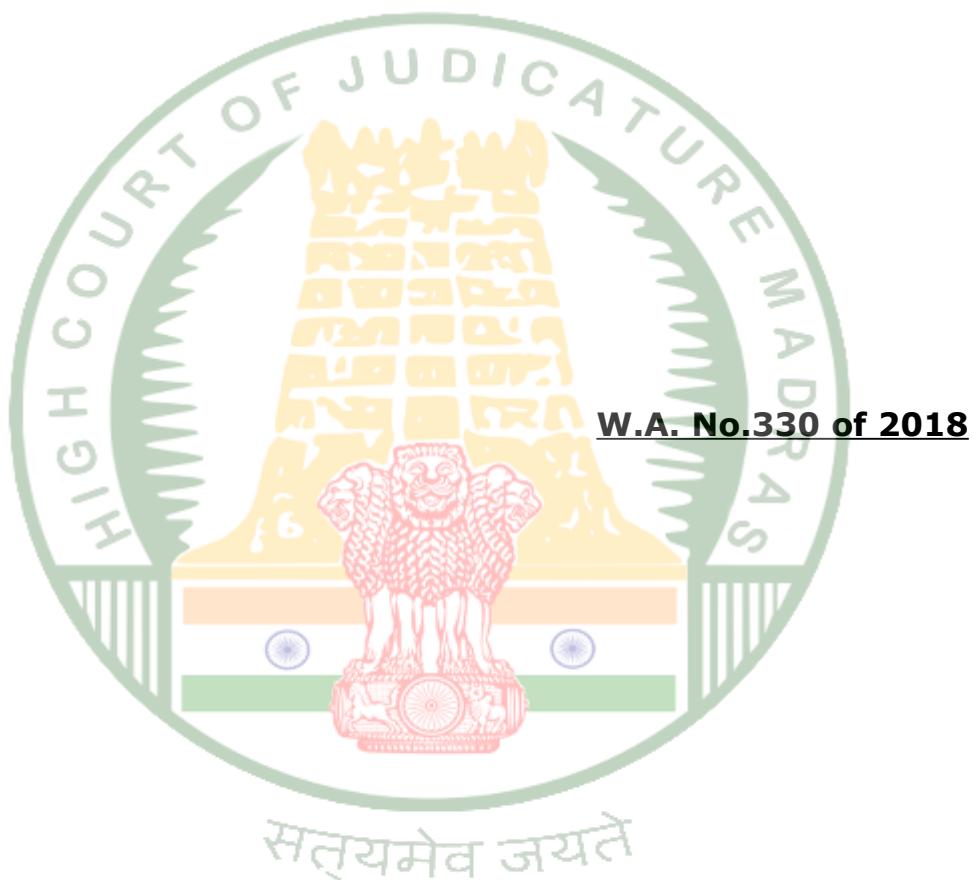
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C.T.SELVAM, J
AND
N.SATHISH KUMAR, J

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