

W.P.No.14582 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

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CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.14582 of 2017

Thol.Thirumaavalavan, S/o.Tholkappian
President, Viduthalai Cchirutthagal Katchi (VCK)
42, Second Avenue, TNHB Area
Velacherry, Chennai-600 042.

.. Petitioner

Vs

- 1 The Principal Secretary
Department of Law
Government of Tamilnadu
Fort St. George, Chennai-600 009.
- 2 The Principal Secretary
Department of Adi Dravidar & Tribal Welfare
Government of Tamilnadu
Fort St. George, Chennai-600 009.
- 3 The Principal Secretary
Public (Law Officers) Department
Government of Tamil Nadu
Fort St. George Chennai-600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling the Impugned Rules Notification No.119 G.O.Ms.No.369 Public (Law



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Officers) dated 29.04.2017 and quash the same and directing these respondents herein to frame a new rule to ensure transparency as per the Apex Court Judgment and ensure adequate representation to women, SC/STs and Minorities and public notification for inviting applications from the all eligible advocate candidates in the appointment of Law Officers.

For the Writ Petitioner : Mr.M.Palanimuthu

For the Respondents : Mr.R.Shunmugasundaram
Advocate General
assisted by Mr.P.Muthukumar
State Government Pleader
and Ms.A.G.Shakeena

For the applicants in : Mr.Kaviyanathan
W.M.P.No.20622 of for M/s.Nathan and Associates
2023

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

The instant writ petition is filed impugning the "Appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017" incorporated vide Notification No.119, under G.O.Ms.No.369, Public (Law Officers) Department, dated 29.4.2017. The petitioner further seeks directions to frame new rules to ensure transparency;



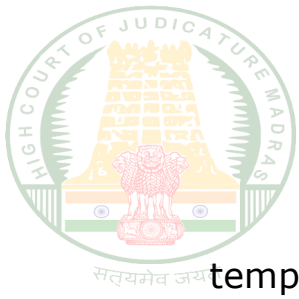
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adequate representation to women, scheduled castes, scheduled tribes and minorities; and to issue public notification for inviting applications from all the eligible candidates for appointment as Law Officers.

2.1. Learned counsel for the writ petitioner and the applicants in the impleading petition strenuously contend that the Appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017 [for brevity, "*the Rules of 2017*"] are framed vide G.O.Ms.No.369, Public (Law Officers) Department, dated 29.4.2017 with a view to bring transparency, however, the Rules of 2017 nowhere provide for reservation in appointment.

2.2. It is submitted that, even if it is assumed that the Law Officers hold temporary appointments, as per O.M.No.27/4/67(II)-Estt.(SCT), dated 24.9.1968, reservation for scheduled castes and scheduled tribes is provided in all



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temporary appointments, except the appointments which are to last for less than 45 days. Reliance is also placed on O.M.No. 36063/3/2018-Estt (Res), dated 15.5.2018. Inasmuch as no reservation is provided in the Rules of 2017, it is submitted that the impugned Rules are arbitrary, unjust and liable to be quashed.

2.3. It is further submitted that the Under Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Estt.(Estt. Reservation-I), has also issued Office Memorandum dated 21.11.2022, which reaffirms the Office Memorandum dated 24.9.1968 providing reservation for scheduled castes and scheduled tribes in all temporary appointments, except the appointments which are to last for less than 45 days.

2.4. It is submitted that, in the information provided under the Right to Information Act, 2005, it has been

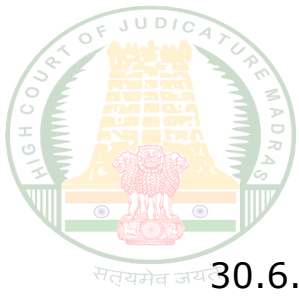


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specifically stated that reservation is not followed in the appointment of Law Officers in the High Court of Madras and its Bench at Madurai. The reason given is that the Law Officers are engaged on contractual basis. While appointing the Law Officers, no written test or interview is conducted. No proper scrutiny of the applications is made. Out of 2485 applicants, 192 were selected and appointed. The said process was not transparent. The basis upon which the selection was made and the procedure followed was not at all revealed by the government. In order to uphold the already downtrodden, vulnerable and oppressed groups of the society, a fair and transparent procedure is to be adopted and inasmuch as there is no provision for reservation, the Rules of 2017 are liable to be quashed.

2.5. Learned counsel further submit that the Social Justice Monitoring Committee, upon receipt of the representation dated 5.2.2022 from the impleading applicant, addressed a letter on

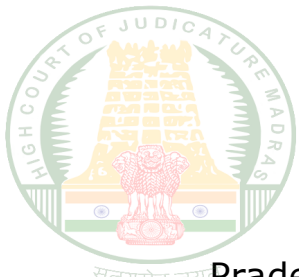


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30.6.2022 to the Secretary to Government, Legal Affairs Department, wherein the contention of the impleading applicant that no reservation of 19% for SC/ST and 30% for women in appointment of Law Officers to the Madras High Court and its Madurai Bench and so also the Subordinate Courts was pointed out. It is was also stated that in the neighbouring States, such as Andhra Pradesh, reservation is followed even for temporary appointments made to contractual posts, however, the State of Tamil Nadu failed to provide due representation as per the population or reservation to Adi Dravidars called SCs, STs and all women, who are downtrodden and underprivileged vulnerable groups.

2.6. It is submitted that the Committee constituted by the Government of Tamil Nadu, namely the Social Justice Monitoring Committee, has forwarded the representation made by the impleading applicant to the appropriate department pointing out that in the neighbouring States, such as Andhra



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Pradesh, etc., reservation is followed and the State of Tamil Nadu, being the pioneer in implementing the reservation policy, 69% reservation policy should be followed in appointment of Law Officers in each grade/rank. The reservation need to be implemented both vertically and horizontally. The salary and the fees is paid to the Law Officers from public exchequer, hence, the selection and appointment process of the Law Officers should be transparent and according to known selection principles, with rule of reservation in accordance with Article 16 of the Constitution of India. Equality of opportunity in matters of public employment has to be provided by the State machinery.

2.7. Learned counsel rely upon a judgment of the Apex Court in the case of *The Secretary, State of Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1*, to submit that the constitutional scheme envisages employment by government and its instrumentalities on the basis of a



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procedure established in that behalf. Equality of opportunity is the hallmark.

2.8. Learned counsel also rely upon a judgment of the Aurangabad Bench of the Bombay High Court in the case of *Sambhaji S.Tope v. State of Maharashtra, (2015) 6 Mah LJ 728*, to contend that the present matter is not beyond the pale of judicial review. Reliance is also placed on a judgment of the Apex Court in the case of *Board of Control for Cricket v. Cricket Association of Bihar and others, (2016) 8 SCC 535*.

3.1. Learned Advocate General for the respondents submits that the post of Law Officer is not a civil post. A Law Officer is not in State's employment. He/She is not an employee of the government department, but a professional practitioner engaged to do a specific work by using his/her legal expertise.



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3.2. It is further submitted that the Apex Court in the case of *Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217*, held that for performance of duties in certain services and positions, it may not be advisable to provide for reservation. The post of Law Officer is one such position.

3.3. Learned Advocate General also relied upon the Full Bench judgment of the Andhra Pradesh High Court in the case of *S.Nagender v. Government of Andhra Pradesh and others, (2006) 4 ALD 210*, wherein it is held that the post of Law Officer is also one of such posts as considered by the Supreme Court in the case of *Indra Sawhney (supra)* to be inappropriate for making a provision for reservation in appointment.

3.4. It is further submitted that the Law Officers in Tamil Nadu are appointed by following the Rules of 2017. As per Rule 5(3) of the Rules of 2017, the government shall invite application in the format prescribed in Annexure-I from eligible



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advocates by putting up notice in the recognised Bar Association, for the post mentioned in Rule 5(1) of the Rules of 2017. Sub-Rules (3) to (8) of Rule 5 of the Rules of 2017 deal with the selection process. The said Rules were challenged in the case of *V.Vasanthakumar v. The Chief Secretary* [W.P.No.12951 of 2017, dated 28.4.2018] and the same were upheld by this court.

3.5. Reliance is placed on the judgment of the Apex Court in the case of *State of U.P. and others v. State Law Officers Association and others*, (1994) 2 SCC 204, to submit that the government and public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period and although the contract in some cases prohibited the lawyers from accepting the private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The Apex Court, in the said case, further observed that the mode of



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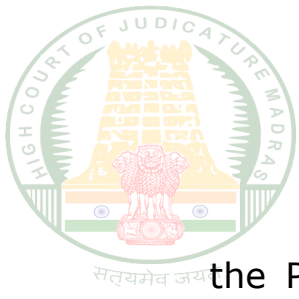
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appointment of lawyers for public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious.

3.6. It is further submitted by learned Advocate General that the petitioner is seeking further directions to frame new rules to ensure adequate reservation for women, scheduled castes, scheduled tribes and minorities. The framing of rules is a legislative policy and the writ petition, as such, may not be entertained.

4. We have considered the submissions canvassed by learned counsel for the parties.

5. The appointment of Law Officers of High Court of Madras and its Bench at Madurai is governed by the Rules of 2017. The methodology of appointment of the Law Officers is provided in Rule 5 of the Rules of 2017. The appointment of



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the Public Prosecutor and Additional Public Prosecutor shall be in consultation with the High Court in accordance with Section 24 of the Code of Criminal Procedure, 1973. The appointment of Additional Advocate General; State Government Pleader; Government Pleader; Special Government Pleader; Additional Government Pleader; and, Government Advocate shall be made by the government.

6. The government shall invite applications in the format prescribed in Annexure-I from eligible candidates. The applications then are forwarded by the government to the Advocate General of Tamil Nadu for scrutiny. A Selection Committee is constituted to select the Law Officers.

7. The Selection Committee comprises the Advocate General as the Chairman; the Secretary (Public) – Member; the Secretary (Home) – Member; and, the Secretary (Law) – Member. The Selection Committee has to be satisfied about



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the qualification, experience, integrity, reliability, appearance in court, advocacy, legal acumen, quality of drafting pleadings, reported and unreported judgments, academic background, general reputation and antecedents of the candidates.

8. The government after ascertaining the antecedents of the candidates selected by the Selection Committee may appoint such person as a Law Officer of the State for the specified post. The Law Officers so appointed shall hold office during the pleasure of the government.

9. The government also has the power to appoint any eligible advocate as government Law Officer temporarily for a period of not more than six months in a post falling vacant due to resignation or otherwise, considering the exigency.

10. The manner of removal of Law Officers is provided in Rule 7 of the Rules of 2017 and the disqualifications for Law



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Officers are prescribed in Rule 8 of the Rules of 2017.

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11. It would appear that a detailed procedure is prescribed for selecting Law Officers.

12. The relationship between an advocate and his client is *uberrima fides*, i.e., one of active confidence and trust. The government is the custodian of public interest. It is the obligation and the duty of the government to protect the public interest to its optimum extent and in the best possible manner. This duty mandates the government to engage the most proficient, competent and capable persons to represent it, *inter alia*, the public interest. Ergo, in the selection of Law Officers, the government is duty bound to make earnest efforts to choose the best. In view of that, while selecting the Law Officers, merit ought to be the sole consideration. The methodology adopted for selecting the Law Officers naturally has to be transparent and the invitation of the applications

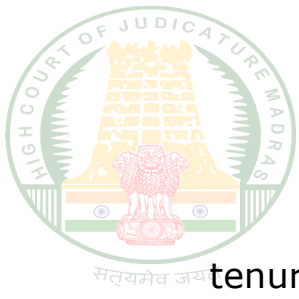


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should be broad-based, so as to enable the government to select the most competent, capable and meritorious lawyers to represent it as Law Officers. Eventually, they would be safeguarding the public interest.

13. The relationship between the government and the Law Officer is purely a professional relationship and not that of a master and servant. The Law Officers engaged by the government, during their performance of the duty, are not holding any civil post. They are also not government servants and/or government employees. The appointment of these Law Officers is at the pleasure of the government. The *sine qua non* is that the Law Officers selected by the government should be duly qualified, competent and worthy to represent it. The determination of their engagement is also at the pleasure of the government. So also, the Law Officer engaged by the government has a right to terminate his services with the government. It cannot be said that their appointment is a



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tenure appointment.

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14. As the Law Officers engaged by the government do not hold a civil post, nor the relationship of master and servant exists, Article 16(4) of the Constitution of India would not be applicable. The criterion to apply the reservation policy would not be attracted. Reliance can be placed on a Division Bench judgment of the Aurangabad Bench of the Bombay High Court in the case of *Govindrao Namdeorao Shirsat v. State of Maharashtra and others*, (2001) 4 LLN 178.

15. The Apex Court in the case of *State of Uttar Pradesh v. Ramesh Chandra Sharma and others*, AIR 1996 SC 864, observed that the appointment of a legal practitioner as a District Government Counsel is only a professional engagement terminable at will and is not appointment to a post under the government.



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16.1. In *State of Karnataka v. Umadevi (3) and others*, supra, relied upon by learned counsel for the petitioner, the Apex Court observed that the public employment in a sovereign socialist secular democratic republic has to be as set down by the Constitution and the laws made thereunder. The employment by the government and its instrumentalities has to be on the basis of the procedure established in that behalf. Equality of opportunity is the hallmark and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Any public employment has to be in terms of the constitutional scheme. In the said case, the Apex Court observed that a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.



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16.2. The aforesaid judgment of the Apex Court was concerning the procedure and methodology in public employment. The said judgment would be relevant in cases where the rules for public employment are not adhered to or the public employment is made in an arbitrary manner. The engagement of the Law Officers by the government is not on a civil post, nor these Law Officers are government employees. The judgment of the Apex Court in the case of *State of Karnataka v. Umadevi (3) and others*, supra, as such, cannot be pressed in. The same is altogether on a different premise.

17. In the case of *Sambhaji S.Tope v. State of Maharashtra*, supra, the government had decided to terminate the engagement of the existing Law Officers without observance to the procedure prescribed under the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984. The discontinuance of the engagement of the existing Law Officers by the government



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was in breach of Rule 30(6) of the Rules of 1984. It is in that premise the Division Bench of the Bombay High Court set aside Clause 7 of the advertisement issued for appointing Government Pleaders. The tenure of engagement of the existing Law Officers in that case has not yet expired. Their engagement was sought to be discontinued without observing the procedure under Rules 30(6) of the Rules of 1984. The said judgment would not benefit the petitioner.

18. The reliance placed by the petitioner and the impleading applicants on the government orders and office memoranda providing for reservation even to contractual employees or any appointment above 45 days would not be of any avail. The said government orders and office memoranda would apply to those who are in employment of the government or the local bodies or the institutions. However, as discussed supra, the engagement of the Law Officers by the government is not on a civil post and these Law Officers are not



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the employees of the government.

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19. In view of the aforesaid discussion, it cannot be held that reservation – vertical and/or horizontal needs to be provided while appointing the Law Officers by the government. The procedure is laid down. The procedure laid down does not suffer from the vice of arbitrariness, nor it can be said that the procedure is not transparent.

The writ petition, as such, stands dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.15804 and 15805 of 2017; 19278 of 2019; and 20622 of 2023 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

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THE HON'BLE CHIEF JUSTICE
AND
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