

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Wednesday, the Sixth day of March Two Thousand Nineteen

PRESENT

THE HON'BLE MR JUSTICE S. MANIKUMAR

AND

THE HON'BLE MR JUSTICE SUBRAMONIUM PRASAD

WP NO. 6052 OF 2019

GARCE BANU GANESAN

[PETITIONER]

Vs

1 STATE OF TAMIL NADU [RESPONDENT'S]
THROUGH THE MINISTRY OF SOCIAL WELFARE,
TAMILNADU STATE GOVERNMENT SECRETARIAT,
FORT ST. GEORGE, CHENNAI 600 009

2 STATE OF TAMILNADU
THROUGH THE GOVERNMENT OF SCHOOL EDUCATION,
TAMIL NADU GOVERNMENT, SECRETARIAT,
FORT ST. GEORGE, CHENNAI 600 009

3 STATE OF TAMILNADU
THROUGH THE DEPARTMENT OF HIGHER EDUCATION,
TAMILNADU GOVERNMENT, SECRETARIAT,
FORT ST. GEORGE, CHENNAI 600 009

4 STATE OF TAMILNADU
THROUGH THE DEPARTMENT OF LABOUR AND
EMPLOYMENT, TAMILNADU GOVERNMENT,
SECRETARIAT, FORT ST. GEORGE, CHENNAI 600 009

5 STATE OF TAMILNADU
THROUGH THE DEPARTMENT OF LAW, TAMILNADU
GOVERNMENT, SECRETARIAT,
FORT ST. GEORGE, CHENNAI 600 009

6 TAMILNADU TRANSGENDER WELFARE
BOARD, SOCIAL WELFARE DEPARTMENT,
NO.1, PANAGAL MALIGAI, BUILDING,
2ND FLOOR, NEAR KALAINAR ARCH,
JEENIS ROAD, SAIDAPET,
CHENNAI 600 009

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Writ Petitions under Article 226 of the Constitution of India praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a Writ of Mandamus directing the Respondents to a) frame and implement a reservations policy for transgender and intersex persons in public employment which provides for horizontal reservations for transgender and intersex persons, b) providing horizontal reservations for transgender and intersex persons in schools and higher education institutions including medical, technical, and professional education institutions, c) direct that the Tamilnadu State Transgender Welfare Board be empowered to issue identity cards to transgender and intersex persons to avail reservation in education and public employment, in accordance with the principal of self identification of gender identity and which should not require medical re-assignment, mental health assessment hormone or any other treatment as a pre-condition and without any biological examination, d) Direct that the Tamilnadu State Transgender Welfare Board ensure that it has adequate representation from the transgender and intersex community and has adequate powers to implement welfare schemes and benefits for transgender and intersex persons, and e) Pass any other order in the interests of justice and equity (in WP.6052/2019)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MS.JAYNA KOTHARI, SENIOR COUNSEL FOR M/S.SHLOKA NARAYANAN, Advocate for the petitioner and of MR.C.MUNUSAMY, Special Government Pleader for the 2nd Respondent and of MR.G.KATHIRVELU, Special Government Pleader on behalf of the 3rd Respondent and of MR.E.MANOCHARAN, Additional Government Pleader on behalf of the 4 to 6 Respondents the court made the following order:-

(Order of the Court was made by S.Manikumar,J)

A Transgender, claiming herself to be an activist, has sought for a writ of mandamus, directing the respondents to

- a. frame and implement a reservation policy for transgender and intersex persons in public employment which provides for horizontal reservations for transgender and intersex persons;
- b. provide horizontal reservations for transgender and intersex persons in schools and higher education institutions including medical, technical and professional educational institutions;
- c. direct the Tamil Nadu State Transgender Welfare Board be empowered to issue identity cards to transgender and intersex persons to avail reservations in education and public employment, in accordance with the principle of self-identification of gender identity and which should not require medical re-assignment, mental health assessment, hormone or any other treatment as a pre-condition and without any biological examination; and

d. direct the Tamil Nadu State Transgender Welfare Board ensure that it has adequate representation from the transgender and intersex community and has adequate powers to implement welfare schemes and benefits for transgender and intersex persons.

2. Supporting the prayer sought for, petitioner has relied on a decision of a Hon'ble Supreme Court, in NALSA Vs. UNION OF INDIA (2014 (5) SCC - 438) and a decision of this Court in W.P.No.31091 of 2013 (Swapna & Ors Vs. The Chief Secretary, Government of Tamil Nadu, Chennai), to provide reservation for transgenders.

3. Reliance has also been made on G.O.Ms.No.28, Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 6/4/2015, under which Backward Classes, Most Backward Classes and Minorities Welfare Department, which has brought out an amendment to the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994), and on the above, petitioner has sought for an amendment to be issued to Transgenders (Thirunangai or Aravani), providing reservation in public employment..

4. Material on record discloses that when the petitioner along with four others filed W.P.No.31091 of 2013, for a mandamus, directing the respondents therein, to permit transgender women to appear in all examination, under the category of female and transman, under the category of male and create a separate class or group for transgender people in all education and employment opportunities and consequently, to direct the respondents therein, to create 3% reservation, in the field of education and employment opportunities, for transgender persons, a Hon'ble Division Bench of this Court, vide, order, dated 5/7/2016, in W.P.No.31091 of 2013, has ordered as hereunder:-

"The issue raised is of beneficial consideration for employment of the members of Transgender Community.

2. In respect of the aforesaid, learned counsel for the petitioner, while referring to G.O (Ms) No.28 Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department, dated 6/4/2015, post the judgment of the Hon'ble Supreme Court in National Legal Services Authority Vs. Union of India and Others (2014 (5) SCC 438), submits that there are only 3328 transgenders in Tamil Nadu who have been issued the identity cards. It is her submission that instead of giving reservation as part of MBC category, it may be useful by giving a percentage or a post-based reservation, i.e, say at least one post be made available in different categories.

3. We are of the view that the aforesaid plea, thus, merit consideration and we direct the second respondent to look into the same in consultation with all the relevant departments and a

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decision be taken in this behalf within six (6) months from today.

4. Writ petition accordingly stands disposed of. No costs."

5. Directions have already been issued in writ petition No.31091 of 2013, dated 5/7/2016. Having regard to the averments and materials available on record, and taking note of the order, made in W.P.No.31091 of 2013, dated 5/7/2016, we direct Mr.E.Manoharan, learned Special Government Pleader, to take notice on behalf of the respondents 1, 4, 5 and 6 and get suitable instructions, on the averments and the prayer sought for. Directions issued already by this Court, should be respected and steps to be taken. Learned Additional Government Pleader, is directed to get instructions, on the steps taken, towards implementation of the order, made in W.P.No.31091 of 2013, dated 5/7/2016.

6. Mr.C.Munusamy, learned Special Government Pleader is directed to take notice for the second respondent and Mr.G.Kathiravelu, learned Special Government Pleader would take notice for the Department of Higher Education, Secretariat, Fort St. George, third respondent.

7. Post on 21/3/2019.

-sd/-

06/03/2019

/ TRUE COPY /

A. Laxmi 14/3/19
Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE MINISTRY OF SOCIAL WELFARE, STATE OF TAMIL NADU
TAMILNADU, STATE GOVERNMENT SECRETARIAT,
FORT ST.GEORGE, CHENNAI 600 009

2 THE GOVERNMENT OF SCHOOL EDUCATION, STATE OF TAMILNADU
TAMIL NADU GOVERNMENT, SECRETARIAT,
FORT ST.GEORGE, CHENNAI 600 009

3 THE DEPARTMENT OF HIGHER EDUCATION, STATE OF TAMILNADU
TAMILNADU GOVERNMENT, SECRETARIAT,
FORT ST.GEORGE, CHENNAI 600 009

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**4 THE DEPARTMENT OF LABOUR
AND EMPLOYMENT, STATE OF TAMILNADU,
TAMILNADU GOVERNMENT, SECRETARIAT,
FORT ST.GEORGE, CHENNAI 600 009**

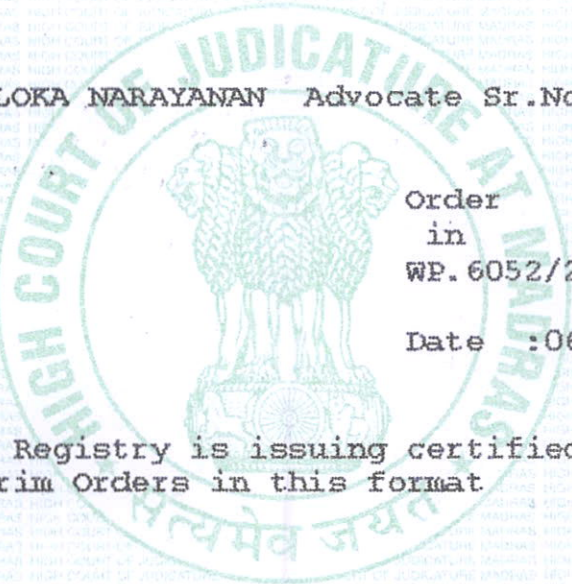
**5 THE DEPARTMENT OF LAW,
STATE OF TAMILNADU, TAMILNADU GOVERNMENT,
SECRETARIAT, FORT ST.GEORGE, CHENNAI 600 009**

**6 TAMILNADU TRANSGENDER
WELFARE BOARD, SOCIAL WELFARE DEPARTMENT,
NO.1, PANAGAL MALIGAI, BUILDING,
2ND FLOOR, NEAR KALAINAR ARCH,
JEENIS ROAD, SAIDAPET,
CHENNAI 600 009**

C.C. to M/S.SHLOKA NARAYANAN Advocate Sr.No.3314

**Order
in
WP. 6052/2019
Date :06/03/2019**

**From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format.
RRI 13/03/2019**



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THE DEPARTMENT OF LABOUR
AND EMPLOYMENT, STATE OF TAMILNADU
TAMILNADU GOVERNMENT, TIRUPUR
POST BOX NO. 1000, TIRUPUR

THE DEPARTMENT OF LABOUR
STATE OF TAMILNADU, TAMILNADU GOVERNMENT,
TIRUPUR, TAMILNADU, INDIA

TAMILNADU TRANSPORT
CORPORATION, TAMILNADU GOVERNMENT,
NO. 1, LAWRENCE ROAD, TIRUPUR,
TAMILNADU, INDIA

ORDER OF THE REGISTRAR

Order
in
No. 3314/19
Date: 19/3/19

From 26.2.2001 the Registry is having certified
copies of the orders in the form
No. 19/3/2019

HIGH COURT OF JUDICATURE	
MADRAS	
S. R. No.....	3314
Carbon Copy application made.....	6/3/19 200
Application Returned.....	200
Application Represented.....	200
Copy made ready.....	14/3/19 200
Copy delivered.....	19/3/19 200
<i>19/3/19</i>	<i>19/3/19</i> Section Officer C.C.C. Section

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