

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Wednesday, the 8th day of December 2021 / 17th Agrahayana, 1943
WP(C) NO. 29247 OF 2019(S)

PETITIONER:

KABEER C. AGED 33 YEARS S/O. SRAJU C., CHORAMPADATH HOUSE,
PAVUKKONAM POST, VANNIYAMKULAM VIA, PALAKKAD-679 522.

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY, DEPARTMENT OF SOCIAL JUSTICE, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. DIRECTOR, DEPARTMENT OF SOCIAL JUSTICE, THIRUVANANTHAPURAM-695 001.
3. SECRETARY TO GOVERNMENT, DEPARTMENT OF LAW, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

ADDL R4 IMPEADED

4. SECRETARY TO THE GOVERNMENT, SOCIAL JUSTICE AND
EMPOWERMENT DEPARTMENT, UNION OF INDIA, NEW DELHI

IS IMPEADED AS ADDL. RESPONDENT No.4 PER ORDER DATED 08.12.2021 IN
WPC

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to call for records from the respondents the action taken subsequent to the Transgender Policy, 2015 for implementation of the policy objectives.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 30/11/2021 and upon hearing the arguments of M/S KALEESWARAM RAJ, THULASI K.RAJ, MAITREYI S.HEGDE & VARUN C.VIJAY, Advocates for the petitioner, STATE ATTORNEY FOR R1 TO R3, ASSISTANT SOLICITOR GENERAL OF INDIA FOR Addl.R4, SRI V.TEK CHAND, SENIOR GOVERNMENT PLEADER and of SRI.SURIN GEORGE IPE, SENIOR GOVERNMENT PLEADER, the court passed the following:

P.T.0

S. MANIKUMAR, CJ & SHAJI P. CHALY, J.

W.P.(C) No. 29247 of 2019

Dated this the 8th day of December, 2021.

ORDER

S. MANIKUMAR, CJ

One of the directions issued by the Hon'ble Apex Court in **National Legal Services Authority v. Union of India and others** [(2014) 5 SCC 438, to the Central as well as State Governments at paragraph 135.3 was to take steps to treat the Transgenders 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.

Reference can also be made to paragraph 67 of the aforesaid judgment, which reads thus: सत्यमेव जयते

“67. 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.”

2. The petitioner has sought for a declaration that the Transgenders are entitled to reservation for employment under the State as well as admission to Government educational institutions based on Articles 14, 19 and 21 of the Constitution of India and also for a writ of mandamus directing the respondents to frame and implement a reservation policy in favour of Transgenders, both in public employment and in Government Educational Institutions. The State Government have not filed any statement or report as to the steps taken for implementing the directions in paragraph 135.3 of the judgment in *National Legal Services Authority*.

Even though directions have been issued to the Central and State Governments to take steps to treat the Transgenders 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, Central Government has not been not made as a

party to the writ petition.

3. Ms. Thulasi K. Raj, learned counsel for the petitioner, submitted that the Government of Kerala have issued a Government Order to provide reservation for Transgenders in the matter of admission to educational institution, but there is no material before us as regards the steps taken, in particular, the employment. She seeks time to implead the Central Government. However, as directions have already been issued by the Hon'ble Apex Court as stated supra and taking note of the pendency of the writ petition from the year 2019 onwards, exercising the power under Article 226 of the Constitution of India, we deem it fit to implead the Secretary to the Government, Social Justice and Empowerment Department, Union of India, New Delhi, as additional respondent No. 4. Registry to effect consequential changes.

4. Learned Assistant Solicitor General of India takes notice for the impleaded respondent. Secretary to the Government, Social Justice and Empowerment Department, Union of India, New Delhi, additional 4th respondent, is directed to file a statement of facts or counter affidavit, as the case may be, on the aspect of steps taken for providing reservation in cases of admission in educational institutions and for public appointments with reference to paragraph 67 of the

judgment in *National Legal Services Authority* and the reliefs sought for.

Post the matter on 05.01.2022.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

