



ABSTRACT

List of Backward Classes, Most Backward Classes and Denotified Communities – Inclusion of Transgender/Eunuch (Thirunangai/Aravani) in the list of Most Backward Classes – Recommendation of Tamil Nadu Backward Classes Commission – accepted - Orders issued.

Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department

G.O. (Ms) No.28

Dated: 06.04.2015

திருவள்ளூர் ஆண்டு 2046

ஐய, பங்குனி 23,

Read:

- 1) G.O.Ms.No.85, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 29.7.2008.
- 2) G.O.Ms.No.96, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 8.9.2008.
- 3) G.O.Ms.No.97, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 11.9.2008.
- 4) G.O.Ms.No.37, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 21.5.2009.
- 5) G.O.Ms.No.98, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 5.11.2009.
- 6) G.O.Ms.No.6, Backward Classes, Most Backward Classes and Minorities welfare (BCC) department, dated 11.1.2011.
- 7) Orders of Hon'ble Supreme Court of India, New Delhi, dated 15.4.2014 in W.P.(C) No.400/2012, filed by National Legal Services Authority.
- 8) Government letter No.8190/BCC/2012-4, Backward Classes, Most Backward Classes and Minorities welfare department, dated 20.6.2014.
- 9) From the Chairman, Tamil Nadu Backward Classes Commission, Chennai, letter No.263/BCC/2014, dated 22.8.2014.

ORDER

The Hon'ble Supreme Court of India in the order dated 15.04.2014 in W.P.(C) No. 400/2012, seventh read above, it has been declared, among other things, that (i) 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; (ii) the Centre and the State Government are directed 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.

2. In pursuance to the directions of the Supreme Court of India in *Indira Sawhney Vs. Union of India*, popularly known as Mandal Commission cases, the

Tamil Nadu Backward Classes Commission has been constituted in the State on 15.03.1993 among others, to examine and recommend upon the request relating to inclusion and complaints of over inclusion or – non inclusion of communities in the list of Backward Classes/Most Backward Classes. In the subject matter of classification of "Transgenders" as socially and educationally backward classes, as declared by the Hon'ble Supreme Court of India, was referred to the Tamil Nadu Backward Classes Commission in the letter eighth read above.

3. The Tamil Nadu Backward Classes Commission, in its letter ninth read above, has recommended that the Transgenders may be included in the "List of Most Backward Classes", under section 3(a) of 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] for the purpose of reservation in education and public employment and be extended with all welfare measures as Most Backward Classes for the following reasons: (i) the Supreme Court, after hearing the State, has taken judicial notice of their social and educational backwardness; (ii) the Transgenders are Most Backward in social, educational and economic front in this State; (iii) the Transgenders are comparable to orphans; and their caste or community from which they emerge cannot be fixed, in general, since Vedic period; (iv) they were identified in the past as criminal tribes, as observed by the Supreme Court, and hence fit to be treated on par with Most Backward Classes, (v) they are far worse than Scheduled Castes, but without the stigma of traditional practice of untouchability; and (vi) their present social, educational and economic status is likely to improve by their inclusion in Most Backward Classes; however, such inclusion may not have any significant impact on the castes and communities already included in the list of Most Backward Classes. Further, the case of Transgender is a rarest of rare exception to the general rule for inclusion in Most Backward Classes, as propounded by the Supreme Court. As such criteria, indicators or survey has not been warranted in this case. The Transgender persons are identified by the District Level Committees functioning under the Tamil Nadu Transgender Welfare Board, constituted by the Government; and such identified persons who are issued with "Transgender" identity cards by the said Board may be granted the privileges and benefits of Most Backward Classes.

4. The Government after careful examination have decided to accept the recommendations of Tamil Nadu Backward Classes Commission, in the light of the judgment of the Hon'ble Supreme Court of India in W.P.(C) No. 400/2012, and included in list of Most Backward Classes "Transgender or Eunuch (Thirunangai or Aravani)" in Sl.No. 36C of Schedule IV in G.O. (M.S.) No. 85 Backward Classes, Most Backward Classes and Minority Welfare Department, dated 29.07.2008. The Most Backward Classes in the State for reservation of seats in Educational Institutions and appointments or posts in the services under the State, from the date of issue of this order. Accordingly, necessary amendment is made to the "List of Most Backward Classes" notified in the Government order first read above, by the notification appended herein below.

5. The Commissioner of Revenue Administration and the District Collectors are requested to issue suitable instructions to the Certificate Issuing Authorities under their control to issue Most Backward Classes certificate to the persons identified as "Transgender or Eunuch (Thirunangai or Aravani)" by the Tamil Nadu Transgender Welfare Board, Chennai.

6. Accordingly, the following Notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION.

In exercise of the powers conferred by the clause (a) of section 3 of 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), the Governor of Tamil Nadu hereby makes the following amendment to the Backward Classes, Most Backward Classes and Minorities Welfare Department Notification No.II(1)/BCMBCMW/36(a)/2008, published at pages 1-9 of Part II-Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated the 5th September 2008.

AMENDMENT.

In the said Notification, in the Schedule, under the heading "IV-List of Most Backward Classes", after SI.No.36B and the entry relating thereto, the following SI.No. and the entry shall respectively, be inserted, namely:-

"36C. Transgender or Eunuch (Thirunangai or Aravani)".

(BY ORDER OF THE GOVERNOR)

K. ARULMOZHI,
PRINCIPAL SECRETARY TO GOVERNMENT

To

The Director of Stationery and Printing, Chennai 600 002.

(He is requested to publish the Amendment in the next issue of Gazette and send 500 copies of the notification to Government)

The Commissioner of Backward Classes and Minorities Welfare, Chennai 600 005.

The Director of Most Backward Classes and Denotified Communities, Chennai 600 005.

The Member Secretary,
Tamil Nadu Backward Classes Commission,
212, R.K.Mutt Road, Mylapore, Chennai 600 004.

The Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

The Commissioner of Technical Education, Chennai 600 025.

The Director of Medical Education, Chennai 600 010.

The Director of Adi Dravidar and Tribal Welfare, Chennai 600 005.

The Director of School Education, Chennai 600 006.

The Director of Collegiate Education, Chennai 600 006.

The Secretary, Tamil Nadu Public Service Commission,
Chennai 600 002 (with covering letter).
The Registrar, High Court of Madras, Chennai 600 104.(w.c.I)
The Registrar of all Universities in Tamil Nadu.
All District Collectors.
All Heads of Departments.
All Public Sector Undertakings.
All Departments of Secretariat.
The Director of Information and Public Relations,
Information and Tourism Department, Secretariat, Chennai 600 009.
The Publicity Officer, Public (TD & I) department, Chennai 600 009.
The Editor, Tamil Arasu, Chennai 600 002.
The Secretary to C.M., Chennai 600 009.
The Social Welfare and Nutritious Meal Programme department,
Secretariat, Chennai 600 009.
The Law department, Secretariat, Chennai 600 009.
The Personnel and Administrative Reforms department,
Secretariat, Chennai 600 009.

Copy to:-

The Special Personal Assistant to the Minister for
Backward Classes and Minorities welfare,
Chennai 600 009.
The Senior Private Secretary to the
Principal Secretary to Government,
Backward Classes, Most Backward Classes
and Minorities welfare department, Secretariat,
Chennai 600 009.

// Forwarded by Order //

P. H. J. J. J.

Section Officer

9/21