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W.P.No.8030 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

CORAM:

THE HON'BLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.8030 of 2009

P.M.Santhi

... Petitioner

vs.

1. Revenue Divisional Officer,
Tiruchengode,
Namakkal District.

2. Tamil Nadu Public
Service Commission,
Rep.by its Secretary
Chennai 600 002.

3. Kulandaivelu

... Respondents

(R3 Suo motu impleaded vide order dated 08.03.2023 made in WP.No.8030 of 2009 by JSNPJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue writ of certiorarified mandamus calling for the records of the first respondent order in Na.Ka.7726-2007-D-dated 23.02.2008 and the 2nd respondent orders in Memo No.193/BST-B6/08 dated 09.09.2008 and Memo No.193/BST-B6/08 dated 17.02.2009 and quash the same



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consequently directing the 2nd respondent to issue appointment order as VAO to the petitioner.

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For Petitioner : Mr.J.Saravana Vel

For Respondents : Mr.S.Ravi Kumar
Special Government Pleader for R1
M/s.G.Hema
Standing Counsel for R2
No appearance for R3

ORDER

The writ petition has been filed to call for the records of the first respondent order in Na.Ka.7726-2007-D-dated 23.02.2008 and the 2nd respondent orders in Memo No.193/BST-B6/08 dated 09.09.2008 and Memo No.193/BST-B6/08 dated 17.02.2009 and quash the same consequently directing the 2nd respondent to issue appointment order as VAO to the petitioner.

2. The facts of the case in a nutshell:-

The petitioner was working as a LIC agent from the year 2001 and her husband suddenly passed away on 24.01.2006. Thereafter the petitioner applied for 'Destitute Widow' certificate on 10.08.2007 and the same was issued by the first respondent/Revenue Divisional Officer,



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Tiruchengode, Namakkal District on 30.10.2007. The petitioner resigned as LIC agent with effect from 30.10.2007. On 01.11.2007 the petitioner was provisionally selected for the post of Village Administrative Officer. Then one Kulandaivelu who is also a native of the petitioner's village had previous property dispute with the petitioner and several others gave a complaint to the Namakkal District Collector stating that the petitioner has obtained the 'Destitute Widow' Certificate by giving false/wrong information. Hence, the first respondent/Revenue Divisional Officer, Tiruchengode, Namakkal district by letter dated 11.01.2008 called the petitioner to appear before him on 23.01.2008 along with all original documents. On 23.01.2008 no enquiry was held and she received another notice dated 04.02.2008 from the first respondent to appear before him on 19.02.2008 for enquiry. The petitioner gave a detailed statement to the first respondent and reiterated that she is a destitute widow and coming within the parameters laid down for the same. The first respondent without considering the claim of the petitioner in a proper prospective cancelled the 'Destitute Widow' certificate by impugned order dated 23.02.2008. Consequently the second respondent/Tamil Nadu Public Service Commission cancelled the provisional selection of the petitioner as VAO by



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order dated 09.09.2008 and permanently debarred the petitioner by order dated 17.02.2009. Aggrieved by the above orders the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that an enquiry was conducted by the first respondent on 19.02.2008 and the statement of the petitioner was also recorded and the first respondent passed an impugned order dated 23.02.2008 cancelling the 'Destitute Widow' certificate issued to the petitioner and the same was challenged by way of this writ petition. The second respondent based on the order passed by the first respondent dated 23.02.2008 issued a show cause notice dated 09.09.2008 as why the petitioner should not be debarred permanently from appearing in all future examinations conducted by the TNPSC. The petitioner also gave an explanation to the above notice on 24.09.2008 and not satisfied with the explanation given by the petitioner, the second respondent passed an impugned order dated 17.02.2009 permanently debarring the petitioner from appearing in all the recruitment examinations conducted by the TNPSC. He further submitted that the order passed by the first respondent is based on presumptions and assumptions and not based on



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any oral evidence or documentary evidence. The order passed by the authority must be based on the oral evidence or documentary evidence and not on presumption or assumption, moreover he must apply his mind while passing the order. The authority must be very cautious while passing the order and must ensure that the order does not infringe the fundamental right of the person, against the principles of natural justice and must meet the ends of justice. The relevant portion of the impugned order dated 23.02.2008 is extracted hereunder:-

மனுதாரரது வாக்குமூலம் மற்றும் இதர ஆவணங்கள் பரிசீலனை செய்யப்பட்டது. திருமதி. சாந்தி என்பவர் எல்.ஐ.சி. முகவராகவும் வார்டு உறுப்பினராகவும் இருந்துள்ளார். கிராம நிர்வாக அலுவலர் பணியிடத்திற்கு தேர்வு செய்யப்பட்டவுடன் ஆதரவற்ற விதவை எனச் சான்று பெறும் பொருட்டு மேற்படி பணியிடங்களை ராஜினாமா செய்துள்ளார். இவரது வாழ்கையில் ஆதரவற்ற நிலையில் உள்ள விதவை என்ற நிலை இச்சான்று பெறும் முன்னர் இருந்ததில்லை. மேலும் தவறான தகவல்களை கொடுத்து சான்று பெற்ற இவர் பின்னிட்டுதான் வார்டு உறுப்பினர் பதவியையும் ராஜினாமா செய்துள்ளார். இவர் ஆதரவற்ற விதவை எனச் சான்று பெற்ற நாள் 30.10.2007 ஆகும். இவர் ஆதரவற்ற விதவை எனச் சான்று பெற்ற பின்னர்தான் அதாவது சான்று பெற்ற அன்றே எல்.ஐ.சி. முகவர் பதவியை 30.10.2007ல் ராஜினாமா செய்துள்ளார். பின்னர் வார்டு உறுப்பினர் பதவியையும் இவர் 21.11.2007ல் ராஜினாமா செய்துள்ளார். இவர் 2006-2007 ஆம் ஆண்டில் மட்டும் கமிஷனாக ரூ.73,192-45 பெற்றுள்ளார் எனின் சராசர் மாத வருமானம் ரூ.6,000-00 உள்ளது என அறிய முடிகிறது. தமிழ்நாடு அரசுப்பணியாளர் தேர்வாணையம்



மனுதாரருக்கு அனுப்பிய கடிதத்தில் மாத வருமானம் ரூ.4,00-00க்கு கீழ் இருப்பின் ஆதரவற்ற விதவை எனக் கொள்ளலாம் என உள்ளது. இவர் 2007-2008 ஆம் ஆண்டில் தொடர்ந்து எல்.ஐ.சி. முகவராக பணிபுரிந்திருப்பாரெனின் கண்டிப்பாக இவரது இலக்கினை எய்தி அதிக அளவு கமிஷன் பெற்றிருப்பார். ஏனெனின் 2001-2002 முதல் 2006-2007 வரை இவர் பெற்ற கமிஷன் விபரத்தை அளித்துள்ள எல்.ஐ.சி. கிளை மேலாளரின் கடிதத்தில் ஒவ்வொரு ஆண்டிலும் இவரது கமிஷன் தொகை உயர்ந்துள்ள இவ்விபரம் அறிய முடிகிறது.

4. During the course of the enquiry the petitioner has stated the details of the commission she received from the LIC as an agent from the year 2001-2008, in which, in the year 2006-2007 alone the commission was a sum of Rs.73,192.45/-, whereas in other years it was much below and as per rules for issuing the “Destitute Widow” certificate the monthly income should not exceed Rs.1,000/- and in this case the income of the petitioner in all other years is less than Rs.1,000/-.

5. The learned counsel for the petitioner submitted that in M.P.No.2 of 2009 dated 28.04.2009 this Court was pleased to grant interim stay of the operation of the second respondent order debarring the petitioner from appearing from future examinations to be conducted by the second respondent/TNPSC and the same was made absolute on 13.08.2021. He



further submitted that the first respondent mainly relied on the commission received from the LIC by the petitioner pertaining to the year 2006 & 2007 which is a sum of Rs.73,192.45/- and it exceeds the ceiling limit of the monthly income of Rs.1,000/- mandatory for issuance of destitute widow certificate. Hence he prays to quash the order passed by the first and second respondents and consequently to allow this writ petition.

6. Per contra, the learned Special Government Pleader appearing for the first respondent relied on the counter affidavit filed by the first respondent and drew the attention of this Court to the paragraph No.2 and the relevant portion is extracted as below:-

“The petitioner had worked as LIC agent from 2001 to 2008 and got commission of Rs.6,000/- per month. She had also worked as Councilor in a Panchayat. She has got an ancestral property of 0.89.0 hec of land. She lived in a joint family along with her mother in law and others in own house. Her yearly income was calculated at Rs.6,000/- and more, before she applied for the issue of a “Destitute Widow” certificate. But as per the instruction of Government the “Destitute Widow” certificate to be issued to the persons whose income should be less than Rs.4,000/- per month. But the petitioner has given wrong information at the time of enquiry and hid so many information and obtained the “Destitute Widow” certificat from the then Revenue Divisional Officer. Then based on the complaints, notice has been issued to the petitioner to appear



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before the Revenue Divisional Officer, Tiruchengode for enquiry. The petitioner has appeared before the Revenue Divisional Officer, Tiruchengode on 19.02.2008 and gave her statement”.

7. Counter affidavit was also filed on behalf of the second respondent/ TNPSC and the learned Standing Counsel appearing for the second respondent drew the attention of this Court to paragraph Nos.2 and 5 of the counter affidavit.

2. The Commission, in its Notification (Advertisement No.096), dated 26.12.2006, invited applications for appointment by direct recruitment to the post of Village Administrative Officer, 2006 in the Tamil Nadu Ministerial Service. The petitioner P.M.Santhi was one among the candidates who had applied to the Commission for direct recruitment to the said post. In her application she claimed as a Destitute Widow and produced the Destitute Widow Certificate obtained from RDO, Tiruchengodu in support of her claim as a Destitute Widow.

5. It is stated that the Collector of Namakkal by his reply dated 07.03.2008, to this respondent's office letter dated 11.01.2008, stated that in the enquiry conducted by the RDO, Thiruchengode it is revealed that the petitioner Tmt.P.M.Santhi was working as a LIC agent from 2001 to 2008 and also the Panchayat Union Ward Member. Suppressing the crucial and relevant material she has obtained the Destitute Widow Certificate on 30.10.07. The enquiry further revealed that she has resigned the post of LIC agent on 30.10.07 and the post of Panchayat Union Ward Member on 21.11.07. It is submitted that on the date of application for the Destitute Widow Certificate by the petitioner i.e., on 10.08.2007 she was not a Destitute Widow. Hence, the Destitute Widow Certificate issued to her was cancelled



by the RDO, Tiruchengodu. Therefore, based on the enquiry report received from the Collector of Namakkal District, the provisional selection of the petitioner was cancelled by the Commission, as the petitioner is not a Destitute Widow.

8. Heard both side and perused the materials available on record.

9. In this case, the second respondent/TNPSC in its notification (Advertisement No.096) dated 26.12.2006 invited applications for appointment by direct recruitment to the post of Village Administrative Officer, 2006 in the Tamil Nadu Ministerial Service. The petitioner also applied to the Commission for direct recruitment to the said post and in the application she claimed as a Destitute Widow and the second respondent by letter dated 26.09.2007 requested the petitioner to furnish the “Destitute Widow” certificate in a prescribed format along with other original documents to consider the application for the VAO post. The Destitute Widow certificate was issued by the Revenue Divisional Officer Thiruchengode Namakkal district/ first respondent herein on 30.10.2007 in the prescribed format and the original documents were verified for the provisional selection for the post of VAO as per TNPSC letter dated



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10. The first respondent acted on the complaint given by the Kulandaivelu / third respondent to the District Collector Namakkal which ended in cancellation of the Destitute Widow certificate dated 30.10.2007. The petitioner was not having the Destitute Widow certificate on the date of application i.e., on 10.08.2007 and only based on the letter dated 26.09.2007 written by the second respondent/TNPSC, the petitioner submitted the Destitute Widow certificate issued by the first respondent/Revenue Divisional Officer Namakkal district dated 30.10.2007. The petitioner was asked to produce the above certificate since she claimed the job under Destitute Widow quota for her category. The second respondent/TNPSC based on the order passed by the first respondent/Revenue Divisional Officer, Tiruchengode, Namakkal district cancelling the Destitute Widow certificate dated 30.10.2007 issued to the petitioner has issued a show cause notice dated 09.09.2008 and subsequently passed an order dated 17.02.2009 permanently debarring the petitioner from appearing in the examinations conducted by the TNPSC.



11. The first respondent mainly relied on the commission received by the petitioner pertaining to the period 2006-07 which is a sum of Rs.73,192.45/- by which it is presumed by the first respondent that the monthly income of the petitioner will be Rs.6,000/- and the relevant portion of the impugned order is extracted hereunder:-

மனுதாரரது வாக்குமூலம் மற்றும் இதர ஆவணங்கள் பரிசீலனை செய்யப்பட்டது. திருமதி. சாந்தி என்பவர் எல்.ஐ.சி. முகவராகவும் வார்டு உறுப்பினராகவும் இருந்துள்ளார். கிராம நிர்வாக அலுவலர் பணியிடத்திற்கு தேர்வு செய்யப்பட்டவுடன் ஆதரவற்ற விதவை எனச் சான்று பெறும் பொருட்டு மேற்படி பணியிடங்களை ராஜினாமா செய்துள்ளார். இவரது வாழ்கையில் ஆதரவற்ற நிலையில் உள்ள விதவை என்ற நிலை இச்சான்று பெறும் முன்னர் இருந்ததில்லை. மேலும் தவறான தகவல்களை கொடுத்து சான்று பெற்ற இவர் பின்னிட்டுதான் வார்டு உறுப்பினர் பதவியையும் ராஜினாமா செய்துள்ளார். இவர் ஆதரவற்ற விதவை எனச் சான்று பெற்ற நாள் 30.10.2007 ஆகும். இவர் ஆதரவற்ற விதவை எனச் சான்று பெற்ற பின்னர்தான் அதாவது சான்று பெற்ற அன்றே எல்.ஐ.சி. முகவர் பதவியை 30.10.2007ல் ராஜினாமா செய்துள்ளார். பின்னர் வார்டு உறுப்பினர் பதவியையும் இவர் 21.11.2007ல் ராஜினாமா செய்துள்ளார். இவர் 2006-2007 ஆம் ஆண்டில் மட்டும் கமிஷனாக ரூ.73,192-45 பெற்றுள்ளார் எனின் சராசர் மாத வருமானம் ரூ.6,000-00 உள்ளது என அறிய முடிகிறது. தமிழ்நாடு அரசுப்பணியாளர் தேர்வாணையம் மனுதாரருக்கு அனுப்பிய கடிதத்தில் மாத வருமானம் ரூ.4,00-00க்கு கீழ் இருப்பின் ஆதரவற்ற விதவை எனக் கொள்ளலாம் என உள்ளது. இவர் 2007-2008 ஆம் ஆண்டில் தொடர்ந்து எல்.ஐ.சி. முகவராக பணிபுரிந்திருப்பாரெனின் கண்டிப்பாக இவரது இலக்கினை எய்தி அதிக அளவு கமிஷன் பெற்றிருப்பார்.



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ஏனெனின் 2001-2002 முதல் 2006-2007 வரை இவர் பெற்ற கமிஷன் விபரத்தை அளித்துள்ள எல்.ஐ.சி. கிளை மேலாளரின் கடிதத்தில் ஒவ்வொரு ஆண்டிலும் இவரது கமிஷன் தொகை உயர்ந்துள்ள இவ்விபரம் அறிய முடிகிறது.

12. It is pertinent to note that the petitioner was appointed only as an agent of the LIC during October 2001 and she is not an employee of LIC. The duty of the agent is to bring business to the Corporation by making the customers to take policy of the LIC for which commission will be paid by the Corporation to the petitioner. It is only the commission that will be paid by the Corporation to the petitioner and it is not the salary paid by the Corporation. In the statement submitted by the petitioner during the enquiry wherein she had disclosed the commission and the same is mentioned in the impugned order passed by the first respondent dated 23.02.2008. The relevant Tabular column is extracted as below:-

வருடம்	பெற்ற கமிஷன் தொகை
2001-2002	ரூ. 7139-90
2002-2003	ரூ. 7998-51
2003-2004	ரூ. 9526-47
2004-2005	ரூ. 19712-87
2005-2006	ரூ. 44321-93
2006-2007	ரூ. 73192-45
2007-2008	ரூ. 5767-45

the commission she received from the LIC from the period she was



appointed i.e., in the year 2001 to the date of resignation on 31.10.2007 and in which only during the period 2006-07 for one year the commission received by the petitioner was a sum of Rs.73,195.45/- and it is in this year only the petitioner lost her husband on 24.10.2006 and in order to get more income she was compelled to do more business out of which as a result she got more commission from the Corporation. In regard to the other years the commission received from the Corporation annually was very meagre for the years 2001 – 2004, it was less than 10,000/-, for the year 2004-2005 it was Rs.19,712.87, for the year 2005-2006 it was Rs.44,321.93, for the year 2006-2007 it was Rs.73,192.45 and for the year 2007-2008 it was Rs.5,767.45/-

13. In G.O.Ms.No.395, Personnel and Administrative Reforms (per.S) Department, dated 04.11.1993 the definition of destitute widow is given and the same is reproduced hereunder:-

1. Definition of “Destitute Widow”

The term “destitute widow” is hereby defined as a widow whose total monthly income from all sources is not more than Rs.1,000/- (Rupees One Thousand Only) including any family pension or other receipts including income from private practice in the case of professionals. A divorcee will not, however, be treated as a “widow”.



As per the notification dated 08.07.2008 by which an amendment was brought down where the expression Rs.1,000/- only shall be substituted by the expression Rs.4,000/- only.

14. The main criteria to apply for the Destitute Widow certificate is that the monthly income of the applicant should not exceed Rs.1,000/- as per the G.O.Ms.No.395 Personnel and Administrative Reforms (per.S) Department, dated 04.11.1993 and in the present case the income of the petitioner for total seven years as a LIC agent in which four years commission received from Corporation is less than Rs.1000/- p.m. and for other three years it is more than 1000/- per month. Even as per the G.O.Ms.No.395, Personnel and Administrative Reforms (per.S) Department, dated 04.11.1993 and as well as the subsequent notification dated 08.07.2008 amending the **expression sum of Rs.1000 to 4,000/- the income of the petitioner is less than the above mentioned amount.** In any aspect the income of the petitioner is not above the amount mentioned by the above mentioned GO and notification.

15. From the above findings of the first respondent it can be



construed that the first respondent presumed/assumed that the monthly income of the petitioner was Rs.6,000/- based on her LIC commission of Rs.73,192.45 during the year 2006-2007.

16. The first respondent has not taken into consideration the commission of the petitioner received for the other 6 years period where she was an LIC agent.

17. The period of appointment of the petitioner as a LIC agent is for total 7 years 2001 to 2008 and even in the counter affidavit of the first respondent which is extracted supra it is mentioned that the petitioner has worked as LIC agent from 2001 to 2008 and got **commission of Rs.6,000/- per month is not sustainable for the reason it is based only on the commission the petitioner received for the year 2006-2007** and not considered the commission received for the other years.

18. It is pertinent to mention that as per the notification dated 08.07.2008 the monthly income amount has been substituted by Rs.4,000/- in the place of Rs.1,000/- and even in the counter affidavit of the first



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respondent it is stated that as per the instruction of the Government the “Destitute Widow Certificate” to be issued to the persons whose income should be less than Rs.4,000/-. **Even if the notification which is issued subsequent to the period 2007-2008 is taken into consideration, the monthly commission of the petitioner is less than that for 6 years much below Rs.4,000/- except for the year 2006-2007 which was mainly relied and taken into consideration by the first respondent for cancelling the “Destitute Widow Certificate” issued to the petitioner. The first respondent mainly relied on the commission paid by the LIC to the petitioner for the one year period 2006-2007 and erroneously arrived at the conclusion that the monthly income of the petitioner was Rs.6,000/- and it is a clear case of non application of the mind. The authority passing the order must apply his mind while passing the order and the same should not be based on assumption and presumption and such order is non-est in law.**

19. **The impugned order passed by the first respondent is purely on presumptions and assumptions and the conclusions based on presumption and assumptions and the same is non-est in law. The**



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Destitute Widow certificate was cancelled by the first respondent mainly on the complaint given by the third respondent/Kulanthaivelu who had previous property dispute with the petitioner and he is the one who gave a complaint to the District Collector, Namakkal stating that the petitioner has received the Destitute Widow certificate by giving wrong information and not by any Government authorities.

20. In view of the above factum of the case, this Court is of the considered view that the order passed by the first respondent/RDO Tiruchengode, Namakkal district dated 23.02.2008 and the consequently order dated 09.09.2008 passed by the second respondent are liable to be quashed and the same is hereby quashed.

21. In the result the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is also closed.

11.04.2023
(1/2)

dpq
Index : Yes /No
Speaking Order : Yes/No



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J. SATHYA NARAYANA PRASAD, J.

dpq

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11.04.2023