



W.P.(MD).No.17059 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.17059 of 2017
and
W.M.P.(MD).No.13628 of 2017**

G.Kaliammal

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Block Development Officer,
Block Development Office,
Vasudevanallur,
Sivagiri Taluk,
Tirunelveli District.

3.C.Amutha Dhurachi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order passed by the first respondent in his proceeding Na.Ka.No.N9/20247/2016, dated 11.03.2017 and quash the same as illegal and consequently, directing the respondents to appoint the petitioner.



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For Petitioner : Mr.G.R.Sathish
For K.P.Sankara Kumara Kuruparan

For R1 & R2 : Mr.S.R.A.Ramachandran
Additional Government Pleader

For R3 : No Appearance

ORDER

This Writ Petition is filed to quash the order dated 11.03.2017 and consequently direct the respondents to appoint the petitioner.

2. Through the impugned order, the first respondent has issued an appointment order to the third respondent. The contention of the petitioner is that she is more eligible than the third respondent, but the official respondents have granted the appointment to the third respondent which is illegal.

3. The brief facts as stated in the affidavit is that the petitioner is residing in the above address with 2 daughters and her husband died on 11.07.2011 and she belongs to MBC and has passed the 5th Standard. She is eking out her livelihood as Agriculture Coolie and facing more difficult situation to run her family and to bring up her children. The first respondent issued a notification



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dated 02.03.2017 to fill up the post of Cook Assistant. On 01.03.2017, the first respondent sent a call letter to the petitioner for an interview and the petitioner attended the interview on 11.03.2017. Since she is more eligible than other persons to be appointed as Cook Assistant since she comes under widow priority category and she was awaiting the appointment order. However, the first respondent has selected the third respondent, despite petitioner's merit. Aggrieved over the appointment order, the present Writ Petition is filed.

4. The respondents have filed a counter stating that the first respondent issued a paper publication on 11.03.2017 calling for applications from the eligible candidates to fill up 556 vacancies for the post of Cook Assistant in Tirunelveli District. Pursuant to the notification, 6 applications were received for the said post in the Panchayat Union Elementary School, Thirumalapuram. The call letters were sent to the applicants for the interview scheduled to be held on 11.03.2017. Except one applicant, five have appeared before the District Selection Committee consisting of District Collector, Assistant Director of Panchayat (Noon Meal), Block Development Officer (Noon Meal), Vasudevanallur Panchayat Union. The District Collector vide proceedings dated 11.03.2017 appointed the third respondent as Cook Assistant in the



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Panchayat Union Elementary School, Thirumalapuram. The petitioner has projected the case that she is a widow and that was not taken into consideration at the time of appointment for the post of Cook Assistant. After following all procedures like communal roaster and other guidelines, the Cook Assistant post was filled up. The vacancy of Cook Assistant post in Thirumalapuram Panchayat Union Elementary School meant for Most Backward and De-notified Communities and it is not meant for any priority categories. Therefore, the petitioner cannot claim any appointment based on widow priority. Once the post itself is for non-priority category, she cannot seek appointment based on her widow certificate. Moreover, the petitioner is residing at Naranapuram Village which is far away from the said School but within 3 kms. The third respondent aged about 33 years at the time of appointment, whereas, the petitioner is 27 years of age. The third respondent studied 6th standard, whereas the petitioner studied 5th standard. In view of the above, the third respondent is more meritorious than that of the petitioner. Hence, the third respondent was appointed to the said post. The petitioner is creating sympathy, because she is a widow having two children. On the other hand, the third respondent is also having 2 daughters and she also a deserted woman. Therefore, the third respondent is the appropriate choice for the said post than the petitioner. The



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petitioner has not raised any allegation violating the procedure contemplated under the relevant Government Orders. Hence, the respondents prayed to dismiss this Writ Petition.

5. Heard Mr.G.R.Sathish, for K.P.Sankara Kumara Kuruparan, learned counsel for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader for the respondents 1 and 2 and perused the records.

6. It is seen that Thirumalapuram Panchayat Union Elementary School is allotted for Most Backward and De-notified Communities without priority category. Since the post is not allotted to the priority category, therefore, the petitioner cannot claim the under “priority category”. However, on perusing the marks given to the candidates, it is seen that the respondents have taken age, educational qualification, distance to award marks. The respondents have taken priority category to award marks alone, to be more specific even though the priority was not allotted to the said post, the priority was taken as one of the qualification to grant marks. Six candidates had submitted applications, but only five candidates appeared for selection process. The details of marks awarded to the candidates is as follows:



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நேர்முகத் தேர்வு நேர்காணல் புத்தகத்தி ன் வரிசை எண்	விண்ணப்பதாரர் பெயர் மற்றும் முகவரி	வழங்கப்பட்ட மதிப்பெண்கள் விபரம்					மொத்த மதிப்பெண் கள்
		வயது	கல்வித் தகுதி	தூரம்	முன்னுரிமை		
1	B.வீரலட்சுமி க/பெ ராஜதுரை 125, முத்தாலம்மான் கோவில் தெரு திருமாலபுரம்-6277 60	4	8	10	-	-	22
2	சீ.அமுதாதுரைச்சி த/பெ சீனிச்சாமி 1/139 மாரியம்மன் கோவில் தெரு திருமாலபுரம் இராமநாதபுரம்-627 758	6	8	10	10	-	34
3	கோ.காளியம்மாள் க/பெ (லேட்) ஆ.கோமதி சங்கர் 3/110A பள்ளிக் கூடத் தெரு நாரணபுரம்-627758	4	10	6	10	-	30



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4	க.பத்மாவதி க/பெ சி.கணேச மூர்த்தி 1/114 முத்தாலம்மன் கோவில் தெரு திருமாலபுரம் சிவகிரி-627750	4	4	10	10	-	28
5	சு.கௌரி செல்வி ச.கார்த்தீசன் 37/36 அமிர்த விநாயகர் கோவில் தெரு 10வது வார்டு இராயகிரி சிவகிரி-627764					-	
6	பா.தங்கம் க/பெ.பாலசுப்பிரம ணியம் 2/35 நந்தவனம் தெரு 2வது வார்டு இராமநாதபுரம்-627 760	6	6	10	-	-	22

7. As far as age of the candidates is concerned, the third respondent was awarded 6 marks, since she is 33 years old and the petitioner was awarded 4 marks, since the petitioner is 27 years old at the time of appointment. As far as



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the educational qualification is concerned, the third respondent was granted 8 marks, since the third respondent has passed 6th standard and the petitioner was granted 10 marks, since she has passed 5th standard. As far as distance is concerned, third respondent belonged to the same village and was granted 10 marks whereas the petitioner belonged to nearby village and she was granted 6 marks.

8. When it comes granting marks for priority category, both the petitioner and the third respondent were granted 10 marks. While granting 10 marks for priority category, the respondents have taken certificate produced by both the petitioner as well as the third respondent. The petitioner has produced the widow certificate issued by the Tahsildar, whereas the third respondent has produced an agreement executed by the third respondent and her ex-husband. Now the question arises whether such a private agreement can be relied on for the category of desertion. This Court is of the considered opinion that such private agreement cannot be relied on and therefore, the marks awarded by taking a private agreement cannot be entertained and, in such circumstances, the petitioner is in a better footing. At this juncture, the learned Additional Government Pleader submitted even though the post is allotted non priority



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category, while considering the candidates priority was taken into consideration for granting marks. But the fact remains that the 3rd respondent had produced only private agreement, which cannot be legally sustainable document.

9. Since the third respondent is working from 2017 onwards, this Court is not inclined to disturb the third respondent. The petitioner claimed that in the same Village, one Cook Assistant post is vacant. However, the learned Additional Government Pleader submitted that the Cook Assistant post was not vacant at the time of the recruitment process and it is a subsequent vacancy and hence it cannot be cited for granting appointment.

10. This Court is of the considered opinion that the petitioner ought to be granted equity relief, since the recruitment is not proper as stated supra. Therefore, even though it is the subsequent vacancy, the respondents shall grant an appointment to the petitioner. Hence, the respondents are directed to issue an appointment order to the petitioner. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.



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11. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The Block Development Officer,
Block Development Office,
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S.SRIMATHY, J.

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