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W.A.No.2704 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

W.A.No.2704 of 2021
and
CMP No.17542 of 2021

1. The District Collector,
Office of the District Collector,
Erode District, Erode – 638 011.
2. Personal Assistant (Development)
to the Collector,
Office of the District Collector,
Erode District, Erode – 638 011.

... Appellants

v.

1. Murisha Fathima
No.1/14, Vellankoil Main Road,
Kadukkampalayam (Post)
Gobichettipalayam Taluk,
Erode District – 638 476.

Now residing at

Murisha Fathima,
Residing at 132 Indira Nagar,
Polavakkalipalayam (Post)



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Gobichettipalayam Taluk,
Erode District – 638 476.

2. Special Officer/Block Development Officer,
Village Panchayat Union Office,
Gobichettipalayam Taluk, Erode District – 638 452.
... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against order dated 11.08.2021 made in W.P.No.20815 of 2019 on the file of this Court.

For Appellants : Mrs.V.Yamuna Devi
Special Government Pleader

For Respondents : Mr.V.Subramanian –R1
No appearance – R2

J U D G M E N T

(Delivered by Dr. ANITA SUMANTH..J)

The Writ Petitioner/R1 in this appeal belongs to the Muslim Backward caste category. She had responded to Notification bearing Na.Ka.No.1080/2018/B2 dated 26.03.2018 issued by the Special Officer of Rural Development and Panchayat Raj Department, Erode District calling for applications to fill the post of Panchayat Secretary in Kadukkampalayam Panchayat.



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2. The said Notification contains, at serial no.2, the details of the post and the reservation as follows:

ஊராட்சி செயலாளர் காலிப்பணியிடங்களின் விவரம்

வ.எண்.	ஊராட்சி செயலாளர் பதவியிடம் காலியாக உள்ள ஊராட்சியின் பெயர்	இனகழற்சி (Rotation)	இடஒதுக்கீடு (Turn)
1			
2	கடுக்காம்பாளையம்	1	(15) பிற்படுத்தப்பட்டோர் முஸ்லீம்கள்
3			

3. The conditions set out in the said Notification are as follows:

நிபந்தனைகள்

1.விண்ணப்பதாரர்கள் கல்வித்தகுதி, இருப்பிடம், சாதிச்சான்று, முன்னுரிமை சான்று ஆகியவைகளுக்கு ஆதாரம் கண்டிப்பாக இணைக்கப்பட வேண்டும்.

2.இனகழற்சி, கூயது மற்றும் கல்வித் தகுதியற்ற நபர்களிடமிருந்து வரப்பெறும் விண்ணப்பங்கள் நிராகரிக்கப்படும்.

3.ஒவ்வொரு கிராம ஊராட்சிப் பணியிடத்திற்கும் தகுதியின் அடிப்படையில் தனித்தனியே விண்ணப்பிக்க வேண்டும்.

4.விண்ணப்பதாரர் காலியிடம் அறிவிக்கப்பட்ட ஊராட்சிப் பகுதிக்குள் வசிக்க வேண்டும்.

5.தகுதியான விண்ணப்பதாரர் சம்பந்தப்பட்ட ஊராட்சியில் இல்லாவிட்டால் அவ்ஊராட்சியின் எல்லையை ஒட்டிய ஊராட்சியிலிருந்து விண்ணப்பிக்கும் தகுதி வாய்ந்த நபர்கள் பரிசீலனை செய்யப்படுவர்.

6.அரசு விதிகளின் படி இன காற்சி முறை பின்பற்றி நியமனங்கள் மேற்கொள்ளப்படும்.

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4. Along with the Writ Petitioner, several others had also applied to the post. By way of the order impugned in the Writ Petition, dated 26.03.2019, the Block Development Officer of Gobichettipalayam Taluk, Erode District rejected her candidature on the sole ground that she was not a resident of Kadukkampalayam Village. It is undisputed that the petitioner is qualified in all other aspects and her candidature has been rejected solely on the ground of residence.

5. The Writ Petition came to be allowed on 11.08.2021, Writ Court holding that the rejection of the application on that ground cannot be sustained. A positive direction was issued to the effect that the Writ Petitioner be accommodated to the post that she had applied for, within a period of four (4) weeks, while protecting the appointment and service of the person who had been appointed subsequently.

6. The last direction became necessitated on account of the fact that the appellants, i.e., District Collector and Personal Assistant (Development) to the Collector/A1 and A2 respectively, had, on rejection of the candidature of all applicants to Notification dated 26.03.2018, including the Writ Petitioner, issued a second Notification bearing



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Na.Ka.No.3409/2019/Aa2 dated 08.11.2019 calling for applications for the reserved post with the turn, Backward Class General.

7. The relevant portion of the second Notification dated 08.11.2019 reads as follows:

ஊராட்சி செயலர் காலிப்பணியிடங்களின் விவரம்

வ.எண்.	ஊராட்சி செயலர் பதவியிடம் காலியாக உள்ள ஊராட்சியின் பெயர்	இனசுழற்சி (Rotation)	இடஒதுக்கீடு (Turn)
1			
2	கடுக்காம்பாளையம்	1	28 மிகவும் பிற்படுத்தப்பட்டோர் மற்றும் சீர்மரபினர்

8. After considering all the applications received in response to Notification dated 08.11.2019, a candidate was selected and an order of appointment was issued bearing Letter No.1/2020 dated 24.02.2021. It is relevant to note that the appointment of that candidate was itself made subject to the pendency of W.P.No.20815 of 2019, which is the Writ Petition paving the way for the present Writ Appeal.

9. The second Notification dated 24.02.2021 was also the subject matter of two Writ Petitions, one, W.P.No.326 of 2021 is filed by one P.A.Shahabudeen. His status is unknown. That Writ Petition has come to



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be closed on 10.09.2024 with the Court recording that the relief sought had become infructuous.

10. The second Writ Petition was filed by the present Writ Petitioner in W.P.No.33680 of 2019. The prayer in that Writ Petition was for a Writ of Certiorarified Mandamus calling for, and quashing Notification dated 08.11.2019. That Writ Petition was dismissed on 03.12.2019, however, protecting the interests of the Writ Petitioner on the ground that W.P.No.20815 of 2019 was pending at that juncture. The Writ Court has noted, at paragraphs 7 and 8, as follows:

7. The petitioner had participated in the selection to the post of Panchayat Secretary in the year 2018. The candidature of the petitioner was rejected on the ground that the petitioner has fabricated documents to show her residence, within the village. If the petitioner succeeds in the writ petition, the petitioner will be entitled for the consequential relief and the petitioner will be considered for appointment to the post of Panchayat Secretary. Therefore, the petitioner will have to necessarily wait for the disposal of the writ petition. The petitioner cannot be permitted to stop the process that has been initiated by the 4th respondent for filling up the post of Panchayat Secretary.

8. The petitioner cannot be permitted to stall the process of appointment initiated by the 4th respondent. What the petitioner failed to achieve by way of interim order in the earlier writ petition which is pending in WP.No.20815 of 2019, is now being attempted to be achieved by filing a fresh writ petition. This process adopted by the petitioner cannot be accepted.



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11. We are thus of the considered opinion that noting the trajectory of events as aforesaid, i.e., challenge to the rejection of the Writ Petitioner's application, her success in W.P.No.20815 of 2019 dated 11.08.2021, the protection afforded to the Writ Petitioner under order dated 03.12.2019 in W.P.No.33680 of 2019 and the caveat in order of appointment dated 24.02.2021 to the successful candidate under the second Notification, the interests of the Writ Petitioner have been sufficiently protected. Her success or otherwise in regard to her application would, in our considered view hinge on our decision in this Writ Appeal.

12. The appellants have not disputed the fact that the original Notification issued on 26.03.2018 has been kept in vacuum, to be revived depending on the decision in this Writ Appeal. It has never been the stand of the appellants that the original Notification had lapsed in any way and all actions of the Department in the interim have been subject to the result of this Writ Appeal.

13. The submissions of Mrs.Yamuna Devi, learned Special Government Pleader appearing for the appellants are that Notification



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dated 26.03.2018 is categoric to the effect that the Writ Petitioner ought to have been a resident in Kadukkampalayam Taluk in order to render herself eligible for the post she aspired for. She draws attention to the நிபந்தனைகள் (conditions) to state that residence is a critical factor for her eligibility.

14. She would also submit that the petitioner, merely with a view to bypass the eligibility criteria had taken on rent the property at No.1/14, Vellankoil Main Road, Kadukkampalayam Post, Gobi Taluk, Erode District ('property'/'subject property'). Such conduct should not be encouraged as it would pave the way for persons from neighbouring villages to enter into the village in question solely to secure employment.

15. Learned SGP has also taken efforts to obtain certificates/affidavits from the land owner from whom the Writ Petitioner had obtained the house on rent. She does not dispute the position that as on the date of submission of the application on 10.04.2018 (received by the appellants on 11.04.2018), the Writ Petitioner had taken on rent the subject property.

16. To be noted, that the last date for receipt of application was on 11.04.2018. There is no dispute on the position that (i) the application



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was submitted on 10.04.2018 (ii) the last date for submission of the application was 11.04.2018 and (iii) the lease deed executed by the Writ Petitioner is dated 09.04.2018 and was duly enclosed with her application on 10.04.2018. These dates and events are important as they establish that the writ petitioner's application had, technically, been complete in all respects, including on the aspect of residence.

17. Learned Special Government Pleader draws attention to the representation that had been made by the residents of Kadukkampalayam Village, where they state that the village has been historically occupied by only Hindu community. They hence would express their displeasure on the appointment of a person from another community as Panchayat Secretary. We will deal with this aspect of the matter a little later in the order.

18. She also brings to note that the instructions to applicants issued by the Tamil Nadu Public Service Commission, effective from 20.09.2021 contains a stipulation in Serial No.3-E entitled 'Qualification' to the effect that the qualifications of a candidate responding to Notifications by the Tamil Nadu Public Service Commission, should be satisfied as on date of the Notification itself.



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19. With this, she would submit that the order of the Writ Court accepting the position that eligibility as on the date of application would suffice, is contrary to the relevant provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the Tamil Nadu Public Service Commission Rules. She reiterates that the effective date for reckoning eligibility would be the date of Notification and not the date of application.

20. Per contra, Mr.V.Subramanian, learned counsel for the Writ Petitioner, would defend the order of the Writ Court pointing out that the settled position of law to reckon effective date, in a situation where the relevant date has not been prescribed by the Notification itself, would be the last date for submission of application.

21. To this end, he relies on the following cases:

- 1.*Mrs.Rekha Chaturvedi v. University of Rajasthan and others*¹
- 2.*Suman Verma v. Union of India & Others*²
- 3.*Ashok Kumar Sonkar v. Union of India & Others*³
- 4.*The State of Bihar & Others v. Madhu Kant Ranjan & Another*⁴
- 5.*Sudhir Singh & Others v. State of U.P. & Others*⁵
- 6.*Sakshi Arha v. The Rajasthan High Court & Others*⁶

1CDJ 1993 SC 235

2CDJ 2004 SC 1057

3CDJ 2007 SC 206

4CDJ 2021 SC 1064

5CDJ 2023 SC 990

6CDJ 2023 SC 512



22. He takes us in detail through the aforesaid decisions to buttress the proposition as aforesaid.

23. We have heard both learned counsel in detail and also perused the material records.

24. The facts in this matter are undisputed and have been captured in the paragraphs supra. The legal issue to be decided in this matter is as to whether the relevant date for reckoning eligibility of a candidate and satisfaction of eligibility criteria would be the date of Notification or the last date of submission of the application.

25. The judgments of the Supreme Court that have been cited are instructive in this regard. The first judgment that has been brought to our notice is *Mrs.Rekha Chaturvedi*⁷, which considers this very question. In that case, the issue was whether the requisite qualification of the candidates must be examined with reference to the date of selection or with reference to an anterior date, being the date of submission of the application itself.

26. In that context, the Court has settled the position that it would be improper to consider satisfaction of conditions as on the date of

7 Foot Note Supra (1)



selection. This is for the reason that selection may take place on an indefinite date, well into the selection process, and sometimes long past the close of receipt of applications. In such circumstances, it would leave the field wide open for persons to acquire qualification even after the Notification period has ended or the last date for submission of applications has expired.

27. This they believe is not the proper way to approach the matter, as the candidate must render himself qualified as on the last date for submission of the applications. At paragraph 5 they reiterate the position that *'the only certain date for the scrutiny of the qualifications will be the last date for making the applications'*. At paragraph 6, they set out some guidelines in this regard, which are extracted below:

We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. it is for this purpose that we lay down the following guidelines for the future selection process: A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its ordinance/Statutes. B. The candidates selected must be qualified as on the last date for making applications for the posts in question, or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration,



as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

28. The above decision has been followed in several subsequent cases, cited by the learned counsel for the Writ Petitioner.

29. The case of *Suman Verma*⁸ is apposite to the facts of the present case. In that case, the candidate was an aspirant for the post of Extra Departmental Branch Post Master. One of the requirements was that the candidate must possess agricultural land. The candidate in that case had ensured that she was the beneficiary in a gift deed for agricultural land and had included the necessary document along with her application that had been filed prior to the last date for such submission.

30. The Supreme Court held that such compliance would be sufficient for satisfaction of the condition that was stipulated in the

⁸ Foot Note Supra (2)



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Notification. The ratio of this case enures on all fours to the benefit of the Writ Petitioner.

31. In the case of *Ashok Kumar Sonkar*⁹, the Supreme Court notes the dichotomy of views between three Hon'ble Judges of the Supreme Court in the case of *Ashok Kumar Sharma and another V. Chander Sekher*¹⁰, where the coram comprises of Dr.Thommen,J, V.Ramaswami, J and R.M.Sahai,J.

32. Two Hon'ble Judges, Dr.Thommen and V.Ramaswami,JJ had opined that it would suffice that a candidate may be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications. R.M.Sahai,J opined that not possessing requisite qualification as on the date of application would be fatal to the candidature.

33. A review application was filed and the matter was once again placed before a three Judges Bench in *Ashok Kumar Sharma and others V. Chander Sekhar*¹¹. The issue that was crystallised is as follows:

(1)Whether the view taken by the majority (Hon'ble Dr Thommen and V.Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he

9 Foot Note Supra (3)

10 (1993) Supp.(2) SCC 611

11 (1997) 4 SCC 18



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was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?

34. The Bench concurred with the opinion of R.M.Sahai,J holding that his opinion was an authority for the proposition that in the absence of a cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as the relevant date for ascertaining the qualifications of the candidate.

35. This position finds reiteration in the case of *Madhu Kant Ranjan*¹², where at paragraph 9, the Bench states as follows:

9.As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application from, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 – original writ petitioner did not produce the photocopy of the NCC 'B' certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC 'B' certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC 'B' certificate.

¹² Foot Note Supra (4)



36. Reference has also been made to the case of *Sakshi Arha*¹³, which is presently pending reference before the Larger Bench in view of the split verdict that has been issued. We do not believe that this case would be relevant to the present matter, as it turns on the production of a community certificate by the candidate.

37. Ajay Rastogi,J had opined that a community certificate may be produced even subsequent to the last date for submission of applications, whereas, Bela M.Trivedi,J has opined that when a person applies under a particular reserved category, he or she is required to have the certificate of that particular category on hand and if such certificates were obtained subsequent to the date of their application or subsequent to the last date of submission of the applications, such certificates could not be said to be valid. That is not the issue arising in the present case.

38. In light of the decisions noted by us in the paragraphs supra, we hold that it would suffice that the Writ Petitioner has established her residence in Kadukkampalayam Taluk prior to the last date of submission of application.

13 Foot Note Supra (6)



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39. We are pained to note the contents of representation dated 01.10.2018 which has been made '*on behalf of the local people*' to the District Collector. This representation contains several signatures, stated to be of the residents of that village. The contents of the representation or objections to the appointment of the Writ Petitioner are on the ground that '*for the past 50 years, no Muslim family has been living in that Panchayat*'.

40. The representors state that the entire Panchayat comprises of Hindus alone, and that persons who are not attached to the Panchayat, being the Writ Petitioner, had forged and created a fake document for the purpose of obtaining an appointment.

41. There is no merit in the allegation that the documents produced by the Writ Petitioner to establish her residence are fake or forged. In fact, learned Special Government Pleader would fairly accede to the position that the property was in the possession of the Writ Petitioner for two years after her having taken it on rent. Hence, the question of the Writ Petitioner clandestinely putting forth the cause of possession does not arise and her claim as a resident is genuine.



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42. Over and above that, what is unfortunate is that the objection is wholly and solely based on the community/religion of the writ petitioner. This approach is deprecated and has to be discouraged. We posed a query to the learned counsel for the Writ Petitioner to obtain instructions on whether in spite of stiff resistance of the village residents, the Writ Petitioner still pursues her case for appointment in that village. We were heartened when learned counsel reported that she is still interested in obtaining her appointment on legitimate and constitutional grounds.

43. This Writ Appeal is dismissed. Consequence be given within a period of six (6) weeks from date of receipt of a copy of this order.

44. A candidate has already been appointed pursuant to second Notification dated 08.11.2019, and the Writ Court has protected that appointment. As that appointee is stated to have has put in five years of service as on date, the State will accommodate that candidate also in an appropriate position taking into account his locational preference with full continuity of service. No costs. Connected Miscellaneous Petition is also dismissed.

Sl
Index:Yes
Neutral Citation:Yes

[A.S.M., J] [G.A.M., J]
12.12.2024



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Speaking order

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To

Special Officer/Block Development Officer,
Village Panchayat Union Office,
Gobichettipalayam Taluk, Erode District – 638 452.



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Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

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