



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.(MD)No.18008 of 2014 and M.P.(MD)No.1 of 2014 & 1 & 2 of 2015

G.KULATHURAL

.. Petitioner

Vs.

1. THE COMMISSIONER,
TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT.

2. K.SUBBULAKSHMI

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the 1st respondent in his proceedings Na.Ka.No. C1/255/2013-7, dated 10.01.2014 appointing the 2nd respondent as Revenue Assistant Grade I and quash the same and further direct the 1st respondent to appoint the petitioner herein as Revenue Assistant Grade I in the 1st respondent Municipality and pass such other or further orders.

For Petitioner	:Mr.PT.S.Narendravasan
For R1	:Mr.P.Athimoolapandian
For R2	:Mr.M.Saravanakumar

ORDER

The writ petition is filed challenging the order of the first respondent dated 10.01.2014 appointing the second respondent as Revenue Assistant Grade-I. Consequently, the petitioner is seeking for a direction to the first respondent to appoint her as Revenue Assistant Grade-I in the first respondent Municipality.

2. The case of the petitioner is as follows:-

She passed +2 and Junior Grade type writing in Tamil. She also passed higher diploma in Computer Application one year course and registered her name in the employment exchange on 06.05.2011. She belongs to Backward Community. She is a destitute widow. The competent authority viz., the Revenue Divisional Officer, Tenkasi through proceedings dated 20.03.2013 declared the petitioner as destitute widow. The first respondent Municipality called for list of eligible candidates to the post of Revenue Assistant from the employment exchange. The employment exchange forwarded the name of the petitioner and others including the second respondent. Based on such communication, the first respondent called upon the petitioner to appear for interview on 24.07.2013. The petitioner as well as the second respondent appeared before the first respondent for interview on the said date. The first respondent interviewed both. Even though the petitioner was fully qualified than the second respondent, the first respondent appointed the second respondent through the impugned order dated 10.01.2014. The upper age limit for the said post is 35 years, whereas, admittedly, the second respondent crossed the age limit of 35 years. Therefore, the appointment of the second respondent is illegal.



3. The first respondent filed counter affidavit, where it is stated as follows:-

Tenkasi Municipality appointing Committee is the recruiting authority in respect of the Revenue Assistant Grade-I post. On receipt of the list of candidates from the District Employment Exchange, Tirunelveli, the first respondent sent call letters to five persons and requested them to appear before the said Committee on 24.07.2013. Out of five candidates, the writ petitioner and the second respondent alone have appeared before the selection committee. The appointing committee considered the employment seniority, educational qualification and the oral test and thereafter selected the second respondent to the post of Revenue Assistant Grade-I. The writ petition is filed after a lapse of eleven months from the date of appointment. Rule 11 of the Tamil Nadu Municipal Rules, 1970 exempts the application of age limit prescribed in the special rules in respect of the candidates belonging to any of the Schedule Castes, Schedule Tribes or Backward Classes to the post included in service for which the special rules prescribe a qualification lower than the B.A. or B.Sc., degree of any University, if the candidate possesses a general educational qualification higher than the minimum general educational qualification. The petitioner passed 10th standard with 278 marks and passed +2 in 2 attempts and she is having technical qualification in type writing lower grade only. However, the second respondent completed 10th standard with 330 marks and passed +2 in one attempt and passed M.A. degree and also having technical qualification of English and Tamil Higher grade and short hand Tamil and English lower grade. Further, the second respondent is also having 14 years employment seniority than the writ petitioner. Therefore, the appointing committee considered the above qualification and by applying the Rule 11 of the Tamil Nadu Municipal Service Rules 1970, the second respondent was appointed to the said post.

4. The second respondent also separately filed a counter affidavit justifying the order of appointment. The sum and substance of the counter affidavit filed by the second respondent is in line with the counter affidavit filed by the first respondent.

5. The learned counsel for the petitioner submitted that when the upper age limit is fixed as 35 years, the respondents cannot appoint the second respondent who is admittedly over aged. He further submitted that Rule 11 of the Rules, has no application in the facts and circumstances of the present case. He further submitted that the petitioner being a destitute widow ought to have been preferred than the second respondent.

6. Per contra, the learned counsel for the respondents 1 and 2 reiterated their contentions raised in the counter affidavits and supported the order of appointment made in favour of the second respondent.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

8. The point for consideration in this case is as to whether the grievance of the petitioner viz., the appointment of the second respondent is vitiated on the ground that she is over aged, is well founded?



9. The following is the comparative statement of respective qualifications of the petitioner and the second respondent, as found in the counter affidavit:-

Name	Employment Number	Employment Seniority	Date of Birth	Educational qualification	Technical qualification	Priority
Kulathurai (writ Petitioner)	TNT 1994 F0000 74143 S.F.0 6/05/2010	4 years	15.05.1985	+2	Typewriting Tamil (Lower Grade)	General Widow
Subbulakshimi (2 nd respondent)	TNT 1994 F0000 7543 S.F.2 0/06/1990	14 Years	25.05.1975	+2, M.A.	Typewriting Tamil & English (Higher Grade) Shorthand (Tamil & English)	General Ex-serviceman legal heir

10. The above statement is not in dispute. The only dispute is with regard to the age of the second respondent. The case of the petitioner is that the second respondent ought not to have been selected to the said post, when admittedly she has crossed the upper age limit of 35 years. No doubt, the second respondent has crossed the upper age limit of 35 years. But whether such age limit can be applied to the case of the second respondent to deny the appointment is the question that has to be considered and decided in this case only by going through the relevant Rule. The relevant Rule 11 of the Tamil Nadu Municipal Service Rules 1970 reads as follows:-

"The age limit prescribed in the special rules shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes to a post included in service for which the special rules prescribe a qualification lower than the B.A. or B.Sc., degree of any University, if the candidate possesses a general educational qualification higher than the minimum general educational qualification.

Explanation.- For the purpose of this rule, a pass in the pre-University Examination shall be deemed to be a qualification higher than that referred in rule 10.

A candidate who has rendered war service is eligible to deduct from his age the period of his war service for the purpose of computing his age for appointment.

Ex-servicemen up to 45 years of age of in the case of persons not belonging to Scheduled Castes, Scheduled Tribes and Backward Classes, and up to 50 years of age in the case of persons belonging to Scheduled Castes/Scheduled Tribes and



Backward Classes are eligible to be considered for appointment, if they are otherwise qualified without referring each case to Government for relaxation for the age rule.

Released bonded labourers up to 40 years of age who are in possession of identify certificate issued by competent authority are eligible to be considered for appointment, if they are otherwise qualified and sponsored by Employment Exchange."

11. From the perusal of the said Rule, it is made clear that the age limit prescribed in the Special Rules is not applicable to the appointment of the candidate belonging to any of the Schedule Caste, Schedule Tribe or Backward Classes to a post included in service for which the special rules prescribe a qualification lower than the B.A. or B.Sc., degree of any University, if the candidate possesses a general educational qualification higher than the minimum general educational qualification.

12. In this case, the petitioner is +2 passed candidate with type writing Tamil (lower grade). On the other hand, the second respondent is a M.A. degree holder with type writing Tamil and English (higher grade) and also shorthand Tamil and English. When the minimum educational qualification prescribed to the above said post is less than the B.A. or B.Sc. as stated in the Rule 11 of the said Rules, the second respondent having acquired the higher educational qualification than that of the minimum prescribed educational qualification, certainly, Rule 11 of the said Rules, comes to her rescue while considering the age limit. Therefore, the appointment was rightly made in favour of the second respondent by considering all the above aspects, with which, I find no infirmity or irregularity.

13. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

THE COMMISSIONER, TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT.

+1cc to MR.P.T.S.NARENDRAVASAN, ADVOCATE IN SR : 11909

+1cc to MR.P.ATHIMOOLA PANDIAN, ADVOCATE IN SR : 11987

+1cc to MR.M.SARAVANAKUMAR, ADVOCATE IN SR : 11966

Rj2

SR : 19.03.2015 : 4p/5c

W.P (MD) No.18008 of 2014

12.03.2015