

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.24322 of 2009

and

M.P.No.1 & 2 of 2009

M.Srinivasan

.. Petitioner

Versus

1. The Commissioner,
Gudiyatham Municipality,
Gudiyatham.

2. The District Employment Officer,
District Employment Exchange,
Vellore.

3.R.Pandian

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records in the appointment order in Na.Ka.H1/7506/2008 issued by the first respondent dated 02.12.2008, to the 3rd respondent, and quash the same as arbitrary, illegal and biased and direct the first respondent to cancel the temporary appointment of the 3rd respondent and appoint the petitioner to the post of sanitary worker in the 1st respondent municipality.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel
for Mr.M.Nallathami

For R1 : Mr.V.Viswanathan

For R2 : Mr.P.Sanjay Gandhi
Additional Government Pleader.

For R3 : Mr.D.A.Sugumar

O R D E R

The prayer in the Writ Petition is seeking for a writ of Certiorarified Mandamus calling for the records in the appointment order in Na.Ka.H1/7506/2008 issued by the first respondent dated 02.12.2008, to the 3rd respondent, and quash the same as arbitrary, illegal and biased and direct the first respondent to cancel the temporary appointment of the 3rd respondent and appoint the petitioner to the post of sanitary worker in the 1st respondent municipality.

2. The case of the petitioner is that the petitioner belongs to Scheduled Caste and his educational qualification is 9th Standard. He had registered his name in the employment exchange on 28.12.1990 under registration No.24159/1990 and had renewed the registration without any default. On 29.08.2008, by proceedings in Na.Ka.No.H1/7506/2008, the first respondent after having received necessary permission for filling up the two vacant posts of sanitary workers in the first respondent-Municipality had requested the second respondent-Employment Exchange to sponsor the names of the eligible candidates as per their seniority of registration. Out of the two posts of sanitary workers, which were lying vacant on the first respondent-Municipality, one was reserved for BC/priority and another for others/Non-priority. The second respondent in order dated 19.09.2008 had forwarded 10 names as eligible candidates, 5 each in the category of BC/priority and others/non-priority and the petitioner's name also was sponsored by the second respondent on 19.09.2008. Therefore, the first respondent by a circular dated 16.10.2008 called the candidates including the petitioner to attend the interview to be held on 03.11.2008 at the office of the first respondent.

3. On the said date, interview was conducted to fill up the two vacancies for the post of sanitary workers. The petitioner was called for in the open competition category and he had also participated in the interview. However, he was not selected. The third respondent infact, a physically handicapped person had been selected as was also called for an interview in the open competition and he had also participated in the same.

4. The further case of the petitioner is that during the interview, the petitioner was able to find that all the fingers of the third respondent's right hand was amputated and also produced a certificate of 50% disability. Therefore, the petitioner insisted that the first respondent to refer the third respondent to the Municipality General Hospital to certify whether the third respondent was a eligible candidate for such post. Thereafter, the third respondent seems to have been declared to be an eligible candidate for the post, by the

Municipality General Hospital. Therefore, the third respondent was temporarily appointed in the post of sanitary worker by an order of first respondent in Na.Ka.H1/7506/2008 dated 02.12.2008.

5. It is also the case of the petitioner that, since the third respondent is physically handicapped person with 50% disability as had been certified by the doctors and all the fingers of his right hand since had been amputated, he can never be a fit person to be considered for the post of sanitary worker at the first respondent-Municipality. Therefore, the selection made by the Municipality selecting the third respondent as sanitary worker is totally a biased one.

6. The further case of the petitioner is that the appointment ought to have been made strictly on the basis of the seniority maintained in the employment exchange. In that case, out of five candidates attended the interview, the petitioner was the third candidate and the third respondent only is the last and 5th candidate. Therefore, even in that ground also the selection of the third respondent is bad. Therefore, the petitioner challenging the said appointment made in favour of the third respondent has come out with the present writ petition with the above said prayer.

7. Heard both sides.

8. Mr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioner would contend that first of all, the post which was filled with the third respondent is a post of sanitary worker at the first respondent-Municipality. Considering the nature of the job to be undertaken by the sanitary workers, certainly the third respondent would be a unfit person as ultimately his disability is 50% and is a permanently disabled person. He could not have been selected for the post of sanitary worker. The learned senior counsel would further contend that inspite of this factor, the reason for selection of third respondent would be that the third respondent is a relative of one of the Councilor of the Municipality at that time, so on the influence of the same, he would have been selected.

9. The further contention of the learned senior counsel for the petitioner attacking the selection of the third respondent is that there were five candidates called for the interview. Out of the five, only three persons attended the interview including the petitioner and the third respondent. Therefore, if at all, the first respondent would have selected the proper person among the three who attended the interview, the selection would have been made either in favour of the second candidate or the third candidate namely the petitioner herein. Without selecting the petitioner, the last and 5th candidate,

i.e., the third respondent have been selected without considering the comparative merit of the three candidates attended the interview. Therefore, the actual presumption shall be that the third respondent would have been selected only with the influence of one of the Councilor of the first respondent-Municipality and therefore the very selection and ultimate order of appointment in favour of third respondent is totally bad and vitiated and in that view, the interference of this court is very much essential.

10. Per contra, the learned Standing Counsel appearing for the first respondent-Municipality has contended that there were twenty posts of sanitary workers sanctioned by the Government to the first respondent- Municipality. Out of which since two posts of sanitary workers were vacant for the year 2008, as per the directions issued by the State Government, initially first respondent-Municipality has called for suitable persons from the near by public sector undertakings namely Arakonam Steel Plant, Tamil Nadu Telecommunication Ltd, ELCOT Ltd, Tamil Nadu Housing Board, and Census Department. As per the communications received from all these offices, there are no suitable candidate available for filling up the post of sanitary worker at the first respondent-Municipality. Separate letters were received from these organizations. Only thereafter by a letter dated 29.08.2008, the first respondent-Municipality had requested the second respondent-Employment Exchange to send a list of suitable candidates based on the Employment Exchange seniority for interview for consideration of appointment for the post of sanitary workers (2 vacancies) one is for priority basis and another one is for non-priority basis.

11. The learned counsel would further submit that pursuant to the said request made by the first respondent, the second respondent had sponsored 10 candidates, 5 for each category to fill up the two post of sanitary workers. In as for as the petitioner and third respondent are concerned, their names were also sponsored by the second respondent-Employment Exchange by the list of candidates dated 19.08.2008 under the caption of "List of Candidates for the post of Sanitary Workers, Open Competition and Non-Priority". There were 5 candidates name separately in the Open Competition, including the petitioner's name and the third respondent. Therefore, interview was conducted on 03.11.2008. The interview was conducted by the Appointment Committee of the first respondent-Municipality consisting of the Chairman, one Councilor and the Commissioner of the Municipality on 03.11.2008. Out of the five candidates under this open competition non-priority category, two candidates namely C.Prema Mani and A.C.Saravanan did not attend the interview. The remaining candidates namely M.Kumar, M.Srinivasan (petitioner herein) and R.Pandian (3rd respondent herein) attended the interview. After the interview, the

Appointment Committee headed by the Chairman of the Municipality with two members namely one Councilor D.Parameshwari and the Commissioner of the first respondent-Municipality had selected the 5th candidate (3rd respondent herein) and as per the resolution of the said Committee, the third respondent was appointed temporarily for the post of sanitary worker by an order of the first respondent-Municipality dated 02.12.2008.

12. The learned counsel for the first respondent-Municipality would further contend that, though the names of five persons were sponsored by the second respondent, only three attended the interview. Since it is a selection post by direct appointment, out of the three, the Appointment/Selection Committee had selected only the 5th candidate based on his performance.

13. In so far as the claim made by the petitioner, that the third respondent since is a physically handicapped person with 50% disability, his appointment is bad, the learned counsel for the first respondent-Municipality would contend that after the interview, the third respondent was referred to Government Medical College and Hospital, Vellore by proceedings of first respondent dated 28.11.2008 to give a report/certificate after examining the physical fitness of the third respondent.

14. Pursuant to which by letter dated 28.11.2008, the Dean of the Government Medical College and Hospital, Vellore forwarded the physical fitness certificate for the third respondent to the first respondent-Municipality and in the said certificate, the Chairman and other members of the Medical Board of Government Medical College and Hospital, Vellore had signed and according to them the disability is only 40% and he would be a fit person for consideration for appointment to the post of Sweeper at the first respondent- Municipality. Only after getting this certificate from the the dean of the Government Medical College and Hospital, Vellore, the order of appointment was issued by the first respondent to the third respondent.

15. The learned counsel for the first respondent had further contended that from the date of appointment, the 3rd respondent had been working without any inconvenience and he was very comfortable in discharging his duties as a sanitary worker. In this regard some photographs showing that the third respondent was in work spot and was able to do all works expected from a sanitary worker had been produced. Therefore, the first respondent in making an appointment of the 3rd respondent has followed all procedure strictly in accordance with the established law and there is no cause or anything which was instrumental in making the appointment of the third respondent as alleged by the petitioner and therefore the learned counsel submits that the impugned order may not require any interference

from this Court.

16. The learned counsel appearing for the third respondent would contend that, the third respondent has lost only two fingers in the right hand and therefore that would not be anyway impediment in discharging his duty as sanitary worker. All these eight years from the date of appointment, the 3rd respondent has been discharging his duties to the utmost satisfaction of everyone of the first respondent-Municipality and he has also produced some photographs to show that the third respondent was in action in the field to do sanitary work. He has also submitted that in the year 2011, the third respondent was regularised by the first respondent-Municipality and therefore he is continued as regular employee of the first respondent for all these years.

17. This court have considered the rival submissions made by the learned Senior Counsel for the petitioner and the learned counsel for the respondents and also perused the materials placed before this court.

18. The two contentions mainly raised by the learned Senior Counsel on behalf of the petitioner would be that firstly the third respondent is a physically handicapped person with disability of 50%. He cannot be a fit person to be suggested to the post of sanitary worker. Secondly, inspite of his handicap he had been appointed by the first respondent not on any merits but, only on the basis of the influence, the third respondent had received from one of the Councilor of the first respondent-Municipality at that time and these two factors would go to show that the appointment action in favour of third respondent is bad and therefore the same needs to be interfered with.

I 19. In respect of these two contentions made by the learned senior counsel, the first respondent-Municipality has given details to show that the two posts of sanitary worker, which were sanctioned at the first respondent- Municipality to fill up the same after having accepted the report of nil suitable candidate from other public sector undertakings, the first respondent had requested the second respondent to sponsor names in two categories. So far as in the second category namely, non-priority open competition five names were sponsored including the petitioner and the third respondent.

20. It is note worthy to state that, it is not merely based upon the employment registration seniority, The appointment would be directly made. The seniority in the employment exchange would be the basis for sponsoring candidates, who are otherwise eligible for the said post. To fill up the two posts, five candidates were sponsored by the second respondent-Employment Exchange. Therefore, the same cannot be found fault

with. Out of the five only three had attended the interview including the petitioner and the third respondent. Out of the three, the Selection/Appointment Committee headed by the Chairman selected only the third respondent and therefore the third respondent was referred to the medical board of the Vellore Medical College and Hospital. The Medical board after having fully examined the physical fitness of the third respondent had forwarded the communication with certificate by which the physical fitness of the third respondent was found fit for the purpose of appointment of sanitary worker, as the disability was fixed only at 40%. With this physical ability, the third respondent is able to perform the duties of the sanitary worker of the first respondent-Municipality and the same is proved beyond doubt as there is no other complaint from any corners neither as a worker nor on the work done by the third respondent to the first respondent-Municipality for all these years.

21. In respect of the other contention made on behalf of the petitioner that the appointment of the third respondent was made only pursuant to the influence which the third respondent was able to get from one of the erstwhile Councilor is concerned, the said Councilor has not been made as a party in this writ petition. Assuming that one of the erstwhile Councilor is the relative to the third respondent, that itself would not be the ground to reject the merits of the third respondent. Moreover when this court called the original records for perusal, the learned Standing Counsel appearing for the first respondent, produced the original records, where the minutes were recorded according to which, the appointment committee headed by the Chairman of the Municipality along with two members namely one D.Parameswari, erstwhile Councilor and the Commissioner of Municipality had selected the third respondent and a resolution to that effect has also been passed unanimously. The said Councilor namely D.Parameshwari is not the relative of the third respondent. Therefore, this court cannot accept the arguments advanced on behalf of the petitioner, that only because of the influence of the esrtwhile Councilor, the third respondent was appointed in the said post, as there is no merit in that contention.

22. Even after the interview the candidature of the third respondent was referred to the medical board of the Medical College and Hospital, Vellore and by letter dated 28.11.2008 attached with a certificate dated 26.11.2008 issued by the Medical Board consisting of the Chairman and two other members of the medical board was forwarded to the Municipality. According to the said physical fitness certificate, the third respondent was found to be fit for the considered post since his disability was found to be only 40%. Only after satisfying with such proceedings as well as physical fitness certificate of the

medical board of the Government Medical College and Hospital, Vellore, the first respondent had issued an order of appointment to the third respondent and from the date of appointment, as it is rightly pointed out by the learned counsel for the first and third respondents, the third respondent has been discharging his duties without any inconvenience.

23. In this context, it needs a mention about the Statement of Objects and Reasons before the Parliament to bring the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".

24. According to the Statement of Objects and Reasons, the meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992, adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. India is a signatory to the said Proclamation and it is necessary to enact a suitable legislation to provide the following:

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- (vi) to make special provision for the integration of persons with disabilities into the social mainstream.

25. When there is a Special Legislation of Parliament enacted and the same is in full operation and there are a number of Judgments from Courts of Law to state that even a disabled person is not able to do the work which he has done so far,

alternative employment must be given to the incumbant and because of his physical disability he should not be denied equal opportunity. If this object of the legislature is taken in mind certainly the selection made by the first respondent-Municipality in favour of the third respondent cannot be found fault with.

26. Even the very arguments advanced by the learned Senior Counsel for the petitioner that appointment shall be made only based on the seniority and since the petitioner is senior to the third respondent, he should have been selected and appointed, cannot be accepted for the simple reason that only for the purpose of sponsoring the name, the registration at Employment Exchange seniority has to be followed. Thereafter the selection would be made by the employer in the manner known to law and in this case itself the procedure established under law has been followed by the selection Committee which appoints a person out of the three attended the interview. The third respondent was selected and appointed based on his own merits and therefore absolutely there is no need for any interference in the appointment of the third respondent. In that view of the matter, this Court is of the view that no infirmity is found in the impugned order. In the result, the Writ Petition is liable to be dismissed.

27. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/
Assistant registrar(CO)

TRUE COPY//

sub assistant registrar

rm

To

1. The Commissioner,
Gudiyatham Municipality,
Gudiyatham.
2. The District Employment Officer,
District Employment Exchange,
Vellore.

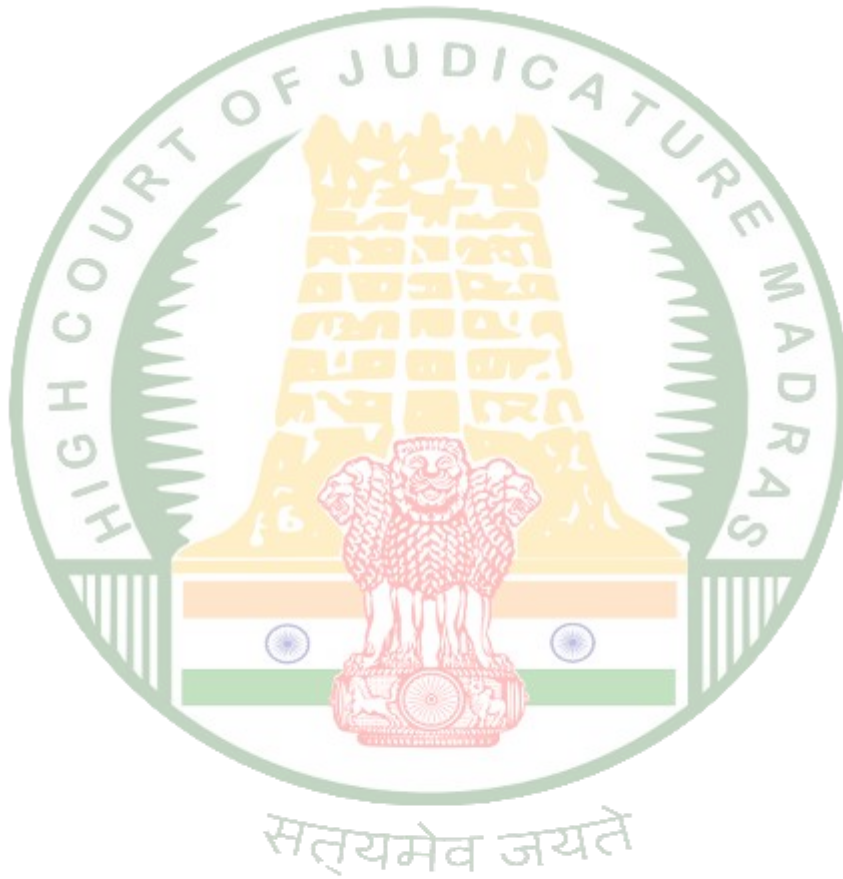
+1 CC to M/s. S. Ramesh Kumar, Advocate for petitioner 65763

+1 CC to Mr. V. Viswanathan, Advocate for Respondent No 1

+1 CC to M/s D A. Sugumar, Advocate for the respondent No 3

W.P.No.24322 of 2009

KJ
sp/11/1



WEB COPY