

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

W.P.No.20235 of 2013

N.Gopinath

.. Petitioner

Vs.

- 1.The Tahsildar,
Chengam Taluk Office,
Tiruvannamalai District.
- 2.The District Employment Office,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Labour and Industries Department,
Fort St. George, Chennai-9.
- 4.The Revenue Divisional Officer,
Tiruvannamalai-606 601.
- 5.V.Ravi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.A3/14760/2012 dated 12.06.2013 quash the same and consequently direct the 1st respondent to appoint the petitioner for the Village Assistant post based on the age relaxation and preference orders issued in G.O.Ms.Noo.1156 Personal and Administrative Reforms Department dated 04.12.1982. Rule 54-B and 12(d) of the Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987) within a time to be stipulated by this Court.

For Petitioner :Mr.R.Krishnan

For Respondents:Mrs.P.Rajalakshmi
Government Advocate

O R D E R

This writ petition has been filed by the petitioner for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.A3/14760/2012 dated 12.06.2013 quash the same and consequently direct the 1st respondent to appoint the petitioner for the Village Assistant post based on the age relaxation and preference orders issued in G.O.Ms.Noo.1156 Personal and Administrative Reforms Department dated 04.12.1982. Rule 54-B and 12(d) of the Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987) within a time to be stipulated by this Court.

2.The case of the writ petitioner is that the petitioner residing at Thukkapettai Village, Chengam Tauk, Tiruvannamalai District and he studied upto SSLC, but he failed to complete his course and he registered his name in the 2nd respondent employment office on 29.01.1988.

3.After registering his name in the employment exchange, the petitioner acquired Light Motor Car driving licence and this additional qualification was registered on 18.12.1992. Thereafter, in the year 1993, the petitioner has passed SSLC and obtained conductor licence, which was also entered as additional qualification in the 2nd respondent's office on 31.12.1993. But, the petitioner's SSLC qualification was not registered in the employment office.

4.After knowing the SSLC was not registered in the employment exchange, on 06.07.2009, the petitioner has registered the SSLC passed qualification as additional entry in the employment exchange. Since the petitioner belongs to Scheduled Caste and for the appointment of Village Assistant, the minimum qualification was qualified by him, but he has not registered the SSLC passed in the employment exchange, on 07.09.2007, the petitioner has received an interview letter for the post of Village Assistant to be appeared on 21.09.2007 and accordingly he appeared, but he was not selected.

5.After that, the petitioner made an enquiry to know about the result of the interview, but he was not selected by the selection authority and the selection was based only new list of seniority maintained by the office of the 2nd respondent. Therefore, believing and accepting the said selection procedure, this petitioner is waiting for another opportunity. However, he

was not called for further interview and the petitioner made an enquiry then only he came to know that the persons, who selected the names after registering of the petitioner were sponsored by the employment exchange where this petitioner's name was not sponsored.

6. On knowing about the information, the petitioner made a representation dated 17.09.2012 to the 2nd respondent, but the same was received by them on 20.09.2012. The petitioner states that on perusal of the representation dated 17.09.2012 will clearly shows that the petitioner's juniors were sponsored by the 2nd respondent and subsequently they were appointed. In fact, the petitioner has sent a representation dated 17.09.2012, he has set out the list of candidates whose names were registered from the employment exchange. From 1988 to till 03.01.2005 the names of appointees were sponsored by the 2nd respondent employment exchange and subsequently they were acquired in the list. It is further case of the writ petitioner is that the representation dated 17.09.2012 also will indicate that no rationale was follows, but arbitrarily lists was sent by the employment exchange without taking into account, the seniority of those, who were in the list and those who were nearing the age bar. On account of such arbitrary sponsor made by the 2nd respondent, the 1st respondent made the appointments of the petitioner's juniors. On account of such illegal and arbitrary action of the respondents 1 and 2, the petitioner deprived of getting any appointment from the employment exchange.

7. The writ petitioner states that even after the illegal appointment, the petitioner's juniors were appointed, but even then there are 3 posts are vacant and hence the writ petitioner is filing the writ petition, if the petitioner appointed to any one of the post.

8. The Tamil Nadu Village Assistant Service Rules for the appointment to the post of Village Assistant, the Rule 2 states that the appointment to the post shall made by direct recruitment and as per Rule 3, the 1st respondent Tahsildar is the appointing authority. Taluk is a separate unit. Rule 4 provides for reservation as per General Rule 22 of the Tamil Nadu State and Subordinate Service Rules. The minimum educational qualification is Vth standard. Upper age limit is 35 for M.B.C., S.C., S.T. and B.C. Rule 7 stipulates that the candidate appointed must belong to the Village or adjoining village. The reason for such rule is that the services of the village assistant is such that his services is required at odd hours and during urgency. Therefore, this rule is belonging to

the village or adjoining village has some basis and the same was ignored by the 1st respondent while making the selection and appointing the candidates by the same respondent.

9.The writ petitioner also states that the Government of Tamilnadu has issued G.O.Ms.No.98 P and A.R. Dept. dated 11.08.2010 by relaxing 5 years age for getting Government appointment on the ground of ban order issued earlier. The State Government brought Rule 54-B of the Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987) making this age relaxation as a statutory rule under the proviso to Article 309 of the Constitution of India. This amendment is with effect from 17.07.2006 and this is applicable to the petitioner's case also. This age relaxation of 5 years is applicable to the petitioner.

10.The writ petitioner also states that yet another order was also issued by the Government by relaxing 5 years age on account of the waiting period in the live register of the 2nd respondent vide G.O.Ms.No.21 Labour and Employment Department dated 02.02.2000. Preference shall be given to those who are nearing the age bar vide G.O.Ms.No.1156 Personal and Administrative Dept. dated 04.12.1982. But, these aspects has not been considered by the respondents. The General Rules also provide for relaxation and exemption, on account of the omissions and commissions made by the respondents. The petitioner also states that Rule 12(d) of Tamil Nadu State and Subordinate Service Rules contemplates that the maximum age limit prescribed in the Special Rules shall not apply to the petitioner on account of community as well as the reasons mentioned therein. Further the General Rules also provide for relaxation and exemption. Therefore, on 06.11.2012, the petitioner sought for information from the 2nd respondent under the Right to Information Act and he is yet to get reply.

11.In such circumstances, the petitioner has made a representation, but there is no reply. Any further delay will be detrimental to the petitioner's interest and already he has crossed 42 years. Even the said age relaxation orders issued by the Government may not benefit the petitioner, if immediate and prompt action is not taken. Therefore, challenging the order of rejection passed by the 1st respondent on 12.06.2013, this writ petition has been filed on various grounds.

12.The impugned order of the 1st respondent is totally contrary of law and the Rules cited supra,

13.It is the case of the writ petitioner is that while passing the impugned order, the 1st respondent Tahsildar failed to take into account the purpose and the object for which the 3rd respondent was pleased to issue orders in G.O.Ms.No.1156 dated 04.12.1982. The other ground raised by the writ petitioner is that though the petitioner's name is registered in the year 1992, but his juniors were sponsored by the 2nd respondent and subsequently they were appointed by the 1st respondent Tahsildar.

14.The writ petitioner also states that the petitioner's serial number in the list sponsored by the 2nd respondent is 32 (Scheduled Caste), but over looking this, the 1st respondent appointed many juniors to the petitioner not only in age, but also in the said list by over looking the priority and preference contemplated in favour of the petitioner. Though the 5th respondent is shown in serial number 37 in the list sponsored by the 2nd respondent and appointed by the 1st respondent. Therefore, he filed the present writ petition for the above prayer.

15.The respondents 1 and 2 were filed counter affidavit separately, by denying the allegations set out by the petitioner. The 2nd respondent states that the writ petition itself is not maintainable, since the writ petitioner crossed the employment age, the 1st respondent also states that the 1st respondent Tahsildar is the appointing authority for the post of Village Assistant in Chengam Taluk and request made by the 1st respondent to the 2nd respondent to send a list of eligible candidates for the post of Village Assistants according to role of reservation. The 2nd respondent in his letter dated 24.08.2007, furnished a list of candidates for selection to the post of Village Assistants. The writ petitioner's name is one among the list of candidates furnished by the 2nd respondent and call letters were sent to all the candidates in the 1st respondent office communication dated 07.09.2007 directing them to attend interview on 21.09.2007. Though the petitioner and other candidates attended the interview held on 21.09.2007, during the interview, the candidates knowledge to read and write in Tamil and Cycling were assessed. The writ petitioner was not selected in consideration of his performance in the interview, place of vacancy, communal rotation.

16. Though the petitioner has sent a representation dated 17.09.2012 to the 1st respondent and the 2nd respondent to appoint him to the post of Village Assistant in Chengam Taluk, mentioning a few names of newly appointed Village Assistants. The 1st respondent also considered his representation dated 17.09.2012 and sent a reply dated 10.06.2013 to the petitioner that appointment to the post of Village Assistant is not made purely on the basis of employment exchange seniority and selection is made in consideration of his performance in the interview, place of vacancy, communal rotation, etc.

17. The respondent also states that the age was not at all a factor in his non-selection, but in consideration of his performance in the interview, place of vacancy, and communal rotation, this candidate was rejected. Therefore, the impugned order dated 12.06.2013 has been passed by the 1st respondent, considering in a proving manner. The 2nd respondent District Employment Officer has filed a counter by stating that the writ petitioner Mr.N.Gopinath has registered his qualifications, in the office of the 2nd respondent and his registration details are as follows:

"Name : N.Gopinath
Address : S/o.Narayanasamy,
18-A, Masoothi St,
Thukkapettai, Chengam Tk.
Regn.No. : TMD1993M00014888
Date of Birth : 15.03.1970
Community : Scheduled Caste
Qualifications registered with Seniority:
SSLC Failed X02.10 SF 29.01.1988
SSLC Passed X01.10 SF 06.07.2009
Conductor Licence 371.40 SF 31.12.1993
LMV 986.40 SF 18.12.1992"

18. Though the petitioner was eligible for the post of Village Assistant in the year 2007 and he was not selected for the post of Village Assistant, during the relevant period of 2007. Thereafter, the Tahsildar Chengam has notified 5 posts of Village Assistant vide their Letter No.A3/907/2012 Dt. 25.04.2012 to the District Employment Officer, Tiruvannamalai. The qualification, age and reservation prescribed for the post is as follows:

"Qualification

V Std passed

Age	SCA/SC/ST	40 Years
	MBC/BCO	35 Years
	OC	35 Years

Category : SCA/GL/PY-1 Post, SC/GL/PY-1 Post
MBC/GL/PY-1 Post, BC/GL/PY-1 Post
OC/GL/PY-1 Post
Rule 12 (d) not applicable"

19.The respondent also states that the petitioner was not registered under any priority category, since he was a Non-priority candidate. All the candidates sponsored by the District Employment Officer are priority candidates. Since he was a non-priority candidate, his name was not sponsored for the Priority vacancies. As per the G.O.Ms.No.21 Labour and Employment Department (W2) Dated 02.02.2000 stated as follows:

"SSLC க்கும் குறைவான கல்விதகுதி உடைய வேலைவாய்ப்பு, அலுவலக பதிவுதாரர்களுக்கு உச்ச வயதுவரம்பில் சலுகையை வேலைவாய்ப்பு, அலுவலகங்களில் பதிவு செய்து வேலைக்கு காத்திருக்கும் ஒவ்வொரு முடிவற்ற 3 ஆண்டுகட்கும், 1 வருடம் என்று அதிகபட்சமாக 5 ஆண்டுகள் (Subject to maximum 5 Years) வயதில் உச்ச வயது வரம்பில் சலுகை அளிக்க அரசு முடிவு செய்து அதன்படி ஆணையிடுகிறது."

As per the above G.O., age relaxation can be given to SSLC failed candidates only since the petitioner has passed SSLC, he was not eligible for relaxation of age as per G.O.No.21, Labour and Employment Department. Therefore, he was not sponsored for the Post of Village Assistant and therefore the action of District Employment Officer is proper. Therefore, both the respondents prayed this Court for dismissal of the writ petition.

20.I heard Mr.R.Krishnan, learned counsel appearing for the petitioner and Mrs.P.Rajalakshmi, learned Government Advocate appearing for the respondents and perused all the materials available on record.

21.It is made clear that this petitioner is belongs to Scheduled Caste. In the counter affidavit filed by the 2nd respondent in page Nos.2 and 3 stated that the petitioner belongs to Scheduled Caste Community. Thus being the case, the 2nd respondent Employment Exchange ought to have sponsored the petitioner as candidate to the 1st respondent, since he has eligible for age relaxation. Even otherwise, if the petitioner is not registered in his name in the priority category under the

2nd respondent, it is pointed out by the 2nd respondent, the writ petitioner should sponsor by the 2nd respondent because the 2nd respondent had well known that the petitioner is belongs to Scheduled Caste and he is eligible for age relaxation and his name should be sponsored for the said Village Assistant post.

22.Pursuant to that, he would have taken appropriate steps by directing the 2nd respondent to sponsor the petitioner's name since the petitioner belongs to Scheduled Caste and though as per the G.O.Ms.No.1156 Personal and Administrative Reforms Department dated 04.12.1982, the petitioner is eligible for age relaxation and preference should be given to the petitioner in this case.

23.Ignoring all this, both the respondents were failed in exercising their lawful duty and in fact the 2nd respondent employment exchange miserably failed in their duty in sponsoring this petitioner's name. When the writ petitioner is fully eligible for the post and both the respondents 1 and 2 were well known that the writ petitioner is not sponsored and appointed in the post, in future he will not get any appointment since the writ petitioner has crossed the age limit.

24.Therefore, this Court comes to a conclusion that the writ petitioner is eligible for the appointment of Village Menial. Hence, the order passed by the 1st respondent in Na.Ka.A3/14760/2012 dated 12.06.2013, is liable to be set aside and accordingly it is set aside.

25.In the result:

(a) this writ petition is allowed, by setting aside the order passed by the 1st respondent in Na.Ka.A3/14760/2012 dated 12.06.2013;

(b) the 1st respondent/Tahsildar, Chengam Taluk, is hereby directed to call for the name list of the petitioner from the 2nd respondent/District Employment Officer, Tiruvannamalai, within a period of 15 days from the date of receipt of a copy of this order;

(c) on receipt of the sponsor from the 2nd respondent/District Employment Officer, Tiruvannamalai, the 1st respondent is hereby directed to consider the appointment of the petitioner, based

on the age relaxation and preference orders issued in G.O.Ms.No.1156 Personal and Administrative Reforms Department dated 04.12.1982. Rule 54-B and 12(d) of the Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987);

(d) the said exercise shall be done within a period of 8 weeks thereafter. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

- 1.The Tahsildar,
Chengam Taluk Office,
Tiruvannamalai District.
- 2.The District Employment Office,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Labour and Industries Department,
Fort St. George, Chennai-9.
- 4.The Revenue Divisional Officer,
Tiruvannamalai-606 601.

+ 1 cc to M/s.A.Sivaji, Advocate,SR.13378

+ 1 cc to The Govt.Pleader, SR.13587

W.P.No.20235 of 2013

MN (CO)
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