

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.No.41015 of 2015
and
M.P.Nos.1 to 5 of 2015
and
W.M.P.Nos.77, 15547 & 25243 of 2016

1.N.Gopinath
2.K.Govindan
3.K.Kamaraj

... Petitioners

Vs.

1.The Tahsildar, Chengam Taluk,
Chengam, Thiruvannamalai Dt.
2.The Revenue Divisional Officer,
Thiruvannamalai - 606 601.
3.The District Employment Office,
Thiruvannamalai District,
Thiruvannamalai.
4.The State of Tamil Nadu,
Rep. by it's Secretary,
Labour and Industries Dept.,
Fort St. George,
Chennai - 600 009.
5.The State of Tamil Nadu,
Rep. by it's Secretary,
Revenue Dept., Fort St. George,
Chennai - 600 009.

... Respondents

Prayer: 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.No.A3/15334/2012 dated 17.12.2015 as published in the Tamil daily Dinamalar, Vellore edition dated 18.12.2015 quash the same consequently direct the 1st respondent to appoint the petitioners as the Village Assistant within a time to be stipulated by this Honourable Court 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).

Petitioners : Mr.R.Krishnan

Respondents : Mr.P.Rajalakshmi
Government Advocate

ORDER

This writ petition has been filed by the petitioners for the issuance of writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.A3/15334/2012 dated 17.12.2015 as published in the Tamil daily Dinamalar, Vellore edition dated 18.12.2015 quash the same consequently direct the 1st respondent to appoint the petitioners as the Village Assistant within a time to be stipulated by this Court 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).

2.The case of the petitioners is that they were registered their names on 29.01.1988, 18.12.1992 and 31.12.1993 respectively before the District Employment Office, Tiruvannamalai, after passing the examinations. Though the petitioners were registered their names, but they were not registered their Educational Qualification. Thereafter, they were registered their SSLC qualification on 06.07.2009 as additional qualification, therefore, the petitioners having qualification for the post of Village Assistant.

3.The 1st petitioner has received an interview card on 07.09.2007 for an interview on 21.09.2007 for the post of Village Assistant, but even after he attending the interview he was not selected and based on his enquiry, it was reported that based on the live register of seniority list maintained at the said employment office. When they made enquiries, they came to know that their juniors were appointed through the Employment Exchange.

4.On knowing about the juniors appointment, the petitioners were made representations and the 1st petitioner has sent a representation on 17.09.2012, which was received by the respondents on 20.09.2012, since in the representation, the 1st petitioner sought for the information about the juniors who were

appointed from 1988 till 03.01.2005. Though the petitioners were crossed the employment age, they were deprived the right of getting any appointment and on account of unjust and arbitrary denial.

5.The petitioners further stated that the Government has issued a G.O.Ms.No.98 P and A R Department, dated 11.08.2010 by relaxing the 5 years age for getting Government appointment on the ground of ban order issued earlier as per Section 54-B of Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987) making the age relaxation as a statutory rule under the proviso to Article 309 of the Constitution of India. Apart from this, the petitioners also stated that as per the 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 Department dated 04.12.1982, but these aspects were not considered by the respondents. The petitioners also stated that as per 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 petitioners on account of community as well as the reasons mentioned therein.

6.In this regard, the petitioners have been made representation to the respondents, but there was no reply from them. The 1st petitioner also crossed the age of 45 years, earlier he approached this Court and filed the writ petition in WP.No.32523 of 2012 and consider his case and passed final orders on 07.12.2012, this Court directed the 1st respondent to pass orders on the petitioners' representation.

7.Pursuant to the above order, the 1st respondent passed an order on 12.06.2013, by rejecting the petitioner's claim. Challenging the said order, the 1st petitioner filed another writ petition in W.P.No.20235 of 2013 and the same is pending before this Court. Though the 2nd petitioner after passing his qualification on SSLC registered with the employment office at Alangayam on 11.04.1988, which was transfer to the present District Employment Office at Thiruvannamalai on 03.05.1993. Therefore, he filed another writ petition in W.P.No.7197 of 2009 and in M.P.No.3 of 2008, with a direction to the respondents for reserve a post of Village Assistant on 20.04.2010.

8.Though the several persons were filed writ petition in W.P.Nos.124221 of 2009 batch, they were given appointment orders by the 1st respondent by his order for the 9 writ petitioners which was recorded by this Court on 05.10.2009. The writ petitions were finally disposed on 12.07.2011. Therefore,

in the said batch of writ petition, the 2nd petitioner has also entitled to get the appointment, since pursuant to the orders of this Court, post was reserved by the 1st respondent by his proceedings dated 04.04.2012, now the 1st respondent has called for applications for filling up 3 posts by the impugned proceeding dated 17.12.2005. Therefore, it is made clear that the 2nd petitioner is entitled and eligible to get one post of the above said 3 posts, since 9 petitioners were given appointment and they were appointed. While pending the writ petition, the present impugned order has been passed by the respondents which acts is totally illegal, since without any order of the Courts, the said impugned order has been passed.

9. In respect of 3rd petitioner that he passed 7th standard, since he belongs to Scheduled Caste and registered his name in the employment exchange on 27.10.1999 bearing registration No.10970 of 1999 and his father worked as then Village Servant for over a period of 30 years. For a short period, the 3rd petitioner was appointed as Village Menial of Periyakolapatti, since his father was died on 09.01.2007, he was called for interview on 25.04.2007 by the 1st respondent in his proceeding dated 10.04.2007, but thereafter, no intimation was received about the result of the interview. Therefore, the 3rd petitioner filed a writ petition in W.P.No.18181 of 2012 for issue of writ of Mandamus claiming appointing etc. by the petitioner. While pendency of the above writ petition on 24.08.2012 the 1st respondent has passed an order, thereafter on 10.07.2013, the final order was passed by this Court in the writ petition in W.P.No.24928 of 2013. The petitioners further stated that without notifying the 3rd writ petition filed by the petitioner is pending before this Court. The 1st respondent has issued the present impugned notification calling for the appointment, since when all the petitioners are available but the respondents without considering them for the said post issued the present notification. Therefore, challenging the said notification, the present writ petition has been filed.

10. A counter affidavit has been filed by the 1st respondent Tahsildar and he denied the entire allegations set out in the affidavit stating that the present impugned notification published in the Dinamalar dated 17.12.2015 has been issued based on the orders of the District Collector. Apart from this, a request made by the 3rd respondent District Employment Office, by furnishing a list of eligible candidates for the post of Village Assistant. According to the role of the reservation, these petitioners' names are among the list of candidates furnished by the 2nd respondent and thereafter, call letters were sent to all the candidates in the office communication dated

07.09.2007 directing these petitioners to attend the interview on 21.09.2007 and all the candidates including these petitioners were attended the interview on 21.09.2007. During the interview, the candidate knowledge to read and write in Tamil and Cycling were assessed, these writ petitioners were not considered of their performance in the interview, place of vacancy, communal rotation.

11.The 1st respondent also states that thereafter, the 1st petitioner has submitted a representation dated 17.09.2012 with a request to appointing him to the post of Village Assistant in Chengam Taluk, mentioning a few names of newly appointed Village Assistants. The 1st respondent has considered his representation dated 17.09.2012 and sent a reply dated 10.06.2013 to the 1st petitioner by stating that the appointment to the post of Village Assistant is not made merely on the basis of employment exchange seniority and selection is made in the consideration of his performance in the interview, place of vacancy, communal rotation, etc. Though the 1st petitioner challenged the said order in W.P.No.20235 of 2013, the 1st respondent also filed a detailed counter affidavit in the said writ petition and the same is pending.

12.The 1st respondent has stated that the 2nd petitioner is concerned, due to poorer than the performance of other candidates who attended the above interview held on 21.09.2007, these petitioners were not selected and the 2nd petitioner in WP.No.7197 of 2009, challenging his non-selection by applying age relaxation rules and in the pending writ petition an interim application in MP.No.1 of 2012 in WP.No.7197 of 2009, this Court directed the 1st respondent to keep one post of Village Assistant pending passing of final order by this Court in W.P.No.7197 of 2009, but the 1st respondent's notification dated 18.12.2015 does not cover the reserved post of Village Assistant and that post will remain reserved till the disposal of W.P.No.7197 of 2009.

13.The 1st respondent also states that the 3rd petitioner is concerned, his non-selection for appointment to the post of Village Assistant was due to application of 1:20 which was forced with the crucial date of 25.04.2007. Therefore, the 3rd petitioner's name was not sponsored by the Employment Exchange even after 1:5 ratio selections coming into force. Though the 3rd petitioner earlier appointed as Village Assistant and he served for one month only and thereafter, he ousted from service, as temporary Village Assistant. The 3rd petitioner has sent a representation on 30.04.2012 in this regard the 1st respondent has sent a detailed reply dated 24.08.2012, which was challenged in W.P.No.24928 of 2013 pending before this Court.

14.The 1st respondent also states that while pendency of all the three writ petitions, the present notification dated 18.12.2015 was issued in the Dinamalar, which was challenged by the writ petitioner before this Court. The 1st respondent also states that the provisions in the Special Rules for Tamil Nadu Village Assistant Service Rules are not applicable to the facts and circumstances of the petitioners' case. In these writ petitions, since the petitioners were not selected for the appointment as Village Assistant in consideration of their performance in the interview on 21.09.2007 which was poorer than the performance of other candidates who attended the above interview, these writ petitions are filed by the petitioners which are not maintainable and the 1st respondent prayed this Court for dismissal of the above writ petitions.

15.I heard Mr.R.Krishnan, learned counsel appearing for the petitioners and Mrs.P.Rajalakshmi, learned Government Advocate appearing for the respondents and perused the entire records.

16.It is admitted fact that these petitioners were registered their names in the employment exchange on 29.01.1988, 18.12.1992 and 31.12.1993 respectively, but these petitioners were not selected for the reason that though they were called for the interview in the year 2007, but their performances are very poorer than the other candidates, who attended the above interview.

17.This Court finds that all the three petitioners were completed their SSLC and the respondents were known very well that these petitioners are also at the end of the employment age. When all the three petitioners were qualified in their SSLC, the respondents cannot say that they are unable to read and write in Tamil which is not agreeable one. Since, a person, who completed the SSLC cannot believed that he has not able to read and write in Tamil. Apart from this, they are all at the end of the employment age and if they will not get the employment, they never get the appointment in future.

18.In the counter affidavit, the 1st respondent had simply stated that during the interview conducted on 21.09.2007, these petitioners' performance are poorer than the other candidates, who attended the above interview, but what is the purpose whether they are very poorer in the read and write in Tamil and Cycling, but the respondents were simply stated that these petitioners are altogether very poorer than the other candidates, who attended the interview, which cannot be acceptable one. Since the petitioners are belongs to Scheduled Caste community, the 1st respondent also not stated, who are the candidates appointed under the Scheduled Caste category.

19.It is my absolute view that this kind of post, the respondents, who should not measured the performance in equivalent, other than the higher post during the interview. But the respondents must have noted about the employment seniority and crossing the employment age.

20.Like this appointment namely, the Village Assistant is an ordinary lower category post, and only they should have the capacity of read and write in Tamil and also about the Cycling, but the respondents particularly, the 1st respondent cannot be say that they follow the performance strictly in the interview is absolutely not required in this case.

21.Therefore, it is made clear that the petitioners are make out the case before this Court and they can be given appointment, since they are the seniors in the employment exchange and also the employment age and since all the petitioners are now at present absolutely crossed the employment age.

22.Though the petitioners were make out the case seeking for quash the impugned notification, but when the petitioners were participated in the interview proceedings, they cannot be questioned the impugned notification except to change the selection list, but pursuant to the notification dated 17.12.2015, the selected candidates were appointed and they are serving in the respondents office. Therefore, at this stage, quashing the impugned notification as well as the selection of appointment of the selected candidates, which will definitely put to suffer and the selected candidates were also put up considerable service. Apart from this, as per G.O.Ms.No.1156 Personal and Administrative Department dated 04.12.1982 and 12 (d) of the Tamil Nadu State and Subordinate Service Rules (Volume I of Tamil Nadu Service Manual 1987), the petitioners are eligible for age relaxation.

23.In the result:

(a) this writ petition is disposed of with a direction to the petitioners to make fresh representations to the 1st respondent/Tahsildar, Chengam Taluk, within a period of 15 days from the date of receipt of a copy of this order;

(b) on receipt of the representations from the petitioners within the stipulated period of time of 15 days, the 1st respondent/Tahsildar, is hereby directed to consider the petitioners' name for the appointment of Village Assistant and to pass appropriate orders by giving personal opportunities to the petitioners, 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 1 of Tamil Nadu Service Manual 1987);

(c) the said exercise shall be done within a period of eight weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Tahsildar, Chengam Taluk,
Chengam, Thiruvannamalai District.
2. The Revenue Divisional Officer,
Thiruvannamalai - 606 601.
3. The District Employment Office,
Thiruvannamalai District,
Thiruvannamalai.
4. The Secretary,
Labour and Industries Department,
Fort St. George,
Chennai - 600 009.
5. The Secretary to Government,
Revenue Department, Fort St. George,
Chennai - 600 009.

+1cc to Mr.A.Sivaji, Advocate, S.R.No.13258
+1cc to the Government Pleader, S.R.No.13586

WP.No.41015 of 2015 and
M.P.Nos.1 to 5 of 2015 and
WMP.Nos.77, 15547 & 25243 of 2016

MN(CO)
CA(24/10/2017)