

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.37970 of 2004

Selvi @ Poovathal

... Petitioner

Vs.

The Corporation of Coimbatore,
rep. by its Commissioner,
Coimbatore.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Na.Ka.No.18964/02/MC2 dated 21.11.2002 passed by the respondent, quash the same and consequently direct the respondent to give appointment to the petitioner as a sweeper forthwith, without reference to educational qualification.

For Petitioner : Mr.V.Ajay Khose

For Respondents : Mr.S.R.Sivakumar

O R D E R

This petition has been filed to quash the order of the respondent dated 21.11.2002 and to direct the respondent to give appointment to the petitioner as Sweeper, without reference to any educational qualifications.

2.The petitioner's husband one P.Nachiappan joined the services of the respondent Corporation as Sanitary Worker / Sweeper on 11.09.1985. After rendering 12 years of service, her husband died on 24.10.1997, due to illness. Immediately, after the death of her husband, she made an application for employment on compassionate ground. Since her application contained two names i.e., Selvi and Poovathal, the Authorities got confused and not satisfied with the same, her application was rejected. Hence, she got a Certificate from the Tahsildar, Coimbatore (North) certifying that the person with the names Selvi and Poovathal was one and the same. But, the petitioner has not filed the said Certificate in time to the authorities. Therefore, the competent authority rejected her application on

the grounds that the application was made after three years and the petitioner did not possess the required educational qualifications.

3.The learned counsel appearing for the petitioner would submit that there is no prescribed qualification for the last grade servant for compassionate appointment and it is sufficient to know read and write.

4.This petition has been filed in the year 2004. At that time, the age of the petitioner was 41 years. After a period of 14 years, I do not find anything survives for adjudication in this Writ Petition and further, this Court cannot relax the qualifications, beyond the time prescribed in the scheme.

5.The appointing authority is competent to fix eligibility criteria for selection of compassionate appointment in a particular post. Normally, the Court, while exercising discretionary jurisdiction, cannot relax the educational qualification fixed by the appointing authority, unless the order of the appointing authority is arbitrary and not exercise the power available in the relevant rules or guidelines.

6. This Court's view is supported by the Hon'ble Supreme Court by the judgment rendered in Civil Appeal No.6468 of 2012 in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari and another, the relevant portions of which are extracted hereunder:

"7.The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent

situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216; J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812).

8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: "The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."

9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object (s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to

have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 436).

10. In State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1) SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

7. In view of the categorical decision of the Hon'ble Supreme Court and the lack of qualification as well as the time barred application, I am not inclined to interfere with the order passed by the respondent.

Accordingly, this Writ Petition is dismissed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps

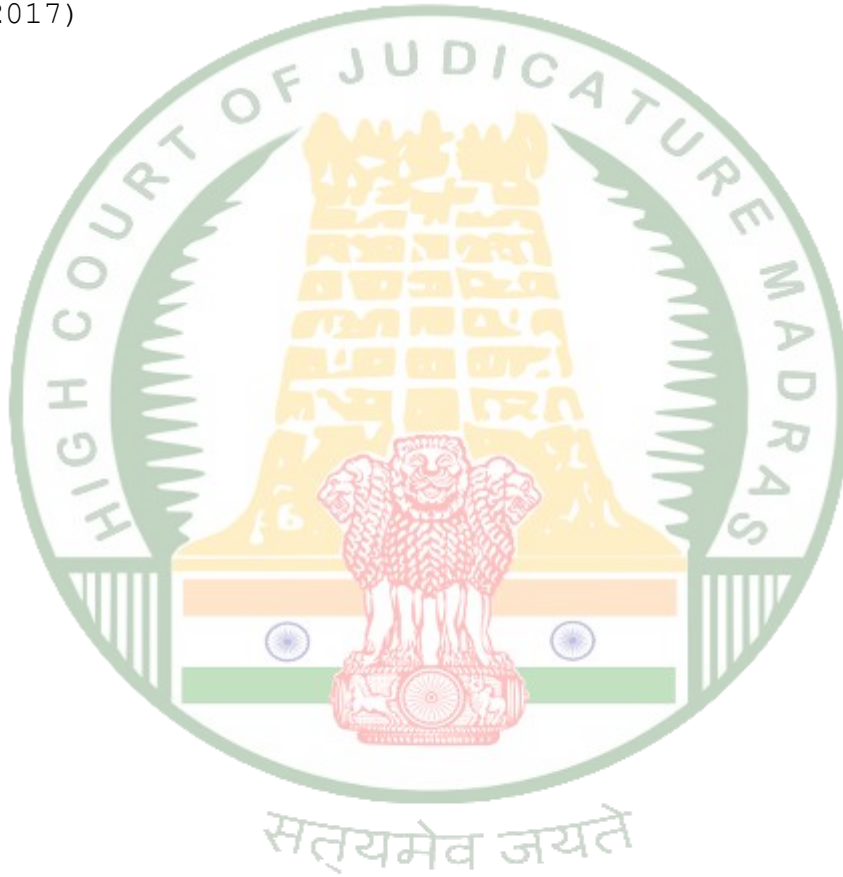
To

The Commissioner,
Corporation of Coimbatore,
Coimbatore.

+1cc to Mr.R.Siva Kumar, Advocate, S.R.No.65383

W.P.No.37970 of 2004

SS (CO)
GN (10/10/2017)



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