



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 13.07.2017

Pronounced on : 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.A.[MD].No.302 of 2013
and
M.P.(MD) No.1 of 2013

P.Thamin Moon Ansari

... Appellant/petitioner

Vs.

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Revenue Divisional Officer,
Thenkasi Taluk, Tirunelveli District.

3.The Tahsildar,
Thenkasi Taluk, Tirunelveli District.

4.Kanagaraj ... Respondents / Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 09.03.2012 in WP(MD)No.340 of 2011 on the file of this Court.

Prayer in WP(MD). 340/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.Aa3/5599/2010 dated 03/01/2011 and quash the same and consequently direct the respondents to appoint the petitioner as Village Assistant of kambaneri village, Tenkasi Taluk, Tirunelveli district based on the interview conducted by the 3rd respondent on 15/11/2010 as per Rule 7(c) of the Tamil Nadu village Assistants Special Rules vide G.O.Ms.No. 521, Revenue (SER.VII(2) Department dated 17/06/1998.

For Appellant : Mr.K.Mahendran for
Mr.P.Arun Jayatram

For Respondents 1 to 3 : Mr.T.S.Md.Mohideen
Additional Government Pleader
Mr.M.Murugan for R4 (in SR stage)



JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

The unsuccessful writ petitioner is on appeal, questioning the order dated 09 March 2012 in W.P.(MD) No.340 of 2011.

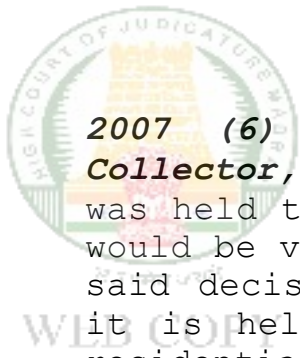
2.The writ petitioner belongs to Valasai village in Kambaneri Panchayat, Valliyoor Taluk, Tirunelveli District. He passed S.S.L.C. in the year 2002. He subsequently enrolled himself in the District employment exchange. He is also a physically handicapped person. When vacancies arose in the post of Village Assistant in Tirunelveli District, the writ petitioner's name was also sponsored. The writ petitioner possessed all the prescribed qualifications for the said post. He was called for interview on 15 November 2010. But, the fourth respondent Kanagaraj was ultimately appointed as Village Assistant of Kambaneri Puthukudi Part I village, Tenkasi Taluk, Tirunelveli District.

3.According to the petitioner, the order dated 03 January 2011 issued by Tahsildar, Tenkasi appointing the fourth respondent herein as Village Assistant of Kambaneri, Puthukudi Part I village was contrary to the express provision set out in Rule 7 of the special rules governing Village Assistants issued vide G.O.Ms.No.521 Revenue (Set.VII(2) Department dated 17 June 1998. Rule 7(c) of the said rules no doubt states that the persons appointed to the post shall belong to the village to which he is appointed or the adjoining village, if no suitable candidate is available from that village.

4.According to the petitioner, when a suitable candidate is very much available in Kambaneri village, there was no justification in appointing the fourth respondent, who is neither from the village in question nor the adjacent village. Complaining that Rule 7 (c) of the said special rules stood contravened, he filed the instant writ petition.

5.The contention of the writ petitioner did not find favour with the learned single Judge, who dismissed the writ petition by order dated 09 March 2012. Aggrieved by the same, the present intra court appeal has been filed.

6.Tr.K.Mahendran, learned counsel appearing for the appellant/writ petitioner forcefully contended that while deciding the correctness of the order appointing the fourth respondent herein, the aforesaid rule was not applied by the learned single Judge. But, unfortunately for the appellant, even though the said rule is very much in the statute book, it is patently being violative of Article 16(2) of the Constitution of India. The learned single Judge placed reliance on the decision of the Division Bench of this Court reported in



2007 (6) MLJ 402 - P.Vasantha and Others V. The District Collector, Dindigul District, Dindigul and Others, in which, it was held that giving preference based on residential qualification would be violative of Article 16(2) of Constitution of India. The said decision had been followed by another Division Bench, where it is held that the selection of candidates on the basis of residential parameter would be violative of Article 16(2) of the Constitution of India.

7.The learned Additional Government Pleader appearing for the respondents 1 to 3 brought to our attention a recent decision of the Division Bench reported in **2017(1) CWC 161 - M.Saraswathy V. The District Collector, Vellore District**. It was observed in the said decision that such eligibility condition for recruitment for public services contravenes the constitutional rights guaranteed under Article 14 and 16 of the Constitution of India.

8.In view of the consistent ex-position of law with regard to the stipulation of such residential parameter in the recruitment rules, we have to necessarily hold that the learned single Judge was right in dismissing the writ petition. When we dismiss this writ petition, we are only respectfully following the several earlier decisions of this court. We find no merit in this appeal.

9.Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AE)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1.The District Collector,Tirunelveli District, Tirunelveli.

2.The Revenue Divisional Officer,
Thenkasi Taluk, Tirunelveli District.

3.The Tahsildar,
Thenkasi Taluk, Tirunelveli District.

+1cc to M/S.K.MAHENDRAN, Advocate SR.No.68240
+1cc to Special Government Pleader, SR.No.68702

Arul/skm

MAS/SKN-RSK/SAR1:02.08.2017:3P-6C

judgment made in
W.A. [MD].No.302 of 2013
26.07.2017