

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.11700 of 2018 and

W.M.P.No.13671 of 2018

M.Gomathi

...Petitioner

Versus

1. The District Collector,
Nagapattinam
2. The District Revenue Officer,
Nagapattinam, Nagapattinam District
3. The Revenue Divisional Officer,
Nagapattinam, Nagapattinam District
4. The Tahsildar,
Kilvelur (Taluk),
Kilvelur (Post),
Nagapattinam District
5. R.Balaji ... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the 4th respondent relating to the order issued in Na.Ka.No.5485/2016/A2 dated 26.04.2018 and to quash the same and consequently direct the fourth respondent to allow the petitioner to continue her work.

For Petitioner : Mr.R.Chandrasekaran

For RR 1 to 4 : Mr.V.Kadhirvelu,
Special Government Pleader

For R5 : Mr.S.Sounthar

ORDER

As it appears from the averments made in the writ petition that the writ petitioner along with some others including the respondent No.5, were the candidates for selection to the post of Village Assistant of Kilvelur Village. Accordingly, after personal interview of the candidates by the fourth respondent vide Proceeding

Na.Ka.No.5485/2016 / A2/ dated 02.06.2017 the fifth respondent was selected and consequently given the order of appointment and he joined. Aggrieved by such selection of the fifth respondent to be illegal and arbitrary inasmuch as according to the petitioner the fifth respondent was not qualified to be appointed as he was having no eligibility being an under aged candidate and also other disqualification prescribed in Village Assisant Special Rules, preferred appeal before the 3rd respondent. So also three other unsuccessful candidates also filed appeal challenging such selection of the fifth respondent. The appellate authority after scrutinising the record, held the fifth respondent to be unqualified / ineligible for appointment as he was an under aged person being below 21 years of age on the crucial date i.e. 01.07.2016 cancelled his appointment. So also rejected the appeals of two others as one of them was over aged and another one did not participate in the selection process and directed the fourth respondent to appoint a suitable person. Accordingly the fifth respondent appointment was cancelled and petitioner was appointed by the fourth respondent. Challenging such order of the 3rd respondent, the fifth respondent preferred an appeal before the second respondent. The second respondent in such appeal set aside the order passed by the third respondent vide order dated 25.04.2018 on the ground that the same is suffering from the vice of non observance of the principle of Audi Alteram Partem, a salutary principle of natural justice and consequentially held the petitioner's appointment be cancelled and the fifth respondent be appointed and enquiry be made giving opportunity to the persons affected and to proceed against officials who are responsible for the lapses. The petitioner came to challenge the same in W.P.No.11549 of 2018 wherein notice has been issued. Thereafter, consequential order cancelling his appointment having been issued by the fourth respondent, he has filed this writ petition challenging the same with a prayer to quash such order of the fourth respondent and allow him to continue to function as Village Assistant pursuant to the order of appointment. The aforesaid facts are undisputed as revealed from record.

2. According to the petitioner, the fifth respondent being an ineligible candidate inasmuch as he was under aged one his appointment was illegal and as such rightly cancelled in the appeal filed and the third respondent rightly directed the fourth respondent to appoint a suitable person to the post and accordingly when the petitioner was appointed pursuant to the said order in the appeal, the same as such should not have been interfered with by the second respondent in the appeal of fifth respondent, so also the fifth respondent should not have been directed to be reinstated in the post especially when he is admittedly, an ineligible candidate being an under aged one.

3. In the counter / reply affidavit, the fifth respondent disputing the fact that he was ineligible being under aged, replied that he was eligible inasmuch as he was more than 18 years on the date of his appointment 02.06.2017, which is the minimum age of the candidates required for being considered to be appointed as Village Assistant and as such there was no ground to question his appointment by the petitioner, who was also over aged by the said date being more than 34 years of age. Furthermore, the third respondent having also ordered a detailed enquiry on such appointment, petitioner should not have filed the writ petition challenging such order and also the consequential order of the fourth respondent.

4. The fourth respondent in the reply affidavit has justified the order of the third respondent cancelling the appointment of the fifth respondent as he was under aged by the cut off date that is crucial date 01.07.2016 and also on the date of his appointment and also the order was passed hearing all the parties including fifth respondent and thereby not supported the order of the second respondent pursuant to which he passed the consequential order challenged by the petitioner.

5. The third respondent in its reply affidavit has averred that the minimum age prescribed as per G.O.Ms.No.155 of Revenue Department for appointment as Village Assistant being minimum 21 years of age by the cut off date that is crucial date 01.07.2016 and the fifth respondent having not attained the age of 21 years on that date, his appointment was rightly cancelled and the fourth respondent was rightly directed to appoint a suitable person examining the records and as such the same should not have been interfered with by the second respondent.

6. No independent affidavit filed by the second respondent. So far as the fifth respondent is concerned, it is submitted on his behalf that minimum age is 18 years for such appointment. However nothing having been brought to the notice of this Court indicating the fact that the minimum age as prescribed to be considered for appointment to the post of Village Assistant to be 18 years, otherwise also the third and fourth respondents have categorically pleaded that the minimum age is 21 years and it was also never brought to the notice by the fifth respondent that the petitioner was also unqualified to be appointed inasmuch as he has crossed the age cap of 40 years prescribed on the crucial date.

7. I have heard the counsel for the parties. During the course of hearing, it was brought to the notice of this Court that the aforesaid G.O.Ms.No.155 of Revenue Department of the Government of Tamil Nadu dated 26.03.2010 prescribed the minimum age of 21 years and maximum age of 40 years to be considered for the post of Village Assistant by the counsel for petitioner as well as the counsel appearing for the

Government respondent. Therefore, their contention that since taking into consideration aforesaid, the fifth respondent who admittedly was below 21 years on the crucial date that is 01.07.2016, his appointment was illegal and as such when the third respondent after hearing the parties cancelled such appointment in the appeal filed and given direction to the fourth respondent to select a suitable person having requisite qualification and accordingly, the petitioner was appointed, the same should not have been interfered in the appeal filed by the fifth respondent. Therefore, the impugned order passed by the second respondent is unsustainable and consequentially the order of the fourth respondent cancelling the appointment of the petitioner submits the counsel for the petitioner.

8. Hence, considering the aforesaid facts and submissions made that this Court is of the opinion that the order of the fourth respondent being unsustainable and therefore cannot be sustained but in the aforesaid facts and situations when the proceeding of the selection process has not been placed before this Court in what manner the petitioner was appointed, this Court instead of reinstatement of the petitioner disposes of this writ petition with a direction to the fourth respondent to scrutinise the candidature of all the candidates, who were the applicants for the said post in the aforesaid process of selection in accordance with criteria of G.O.Ms.No.155 of Revenue Department dated 26.03.2010 and exclude the ineligible candidates and continue with the process of selection taking into consideration the eligible candidates and also the criteria for selection of such village assistant and complete the same within a period of 15 days from the date of receipt of a copy of this Order.

9. However, till then the aforesaid post shall continue to remain vacant and to be managed by giving the charge of same by another Village Assistant from the adjoining village. Needless to say in view of my aforesaid order, all the appeals pending in this regard with the authorities shall stand closed. Furthermore while parting of this case, it is made clear that for consideration of the criteria, the cut off date 1.7.2016 shall be taken into consideration.

10. With the aforesaid order, this writ petition stands disposed of. Consequently, connected miscellaneous petition stands closed. However, in the circumstances there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Nagapattinam
2. The District Revenue Officer,
Nagapattinam, Nagapattinam District
3. The Revenue Divisional Officer,
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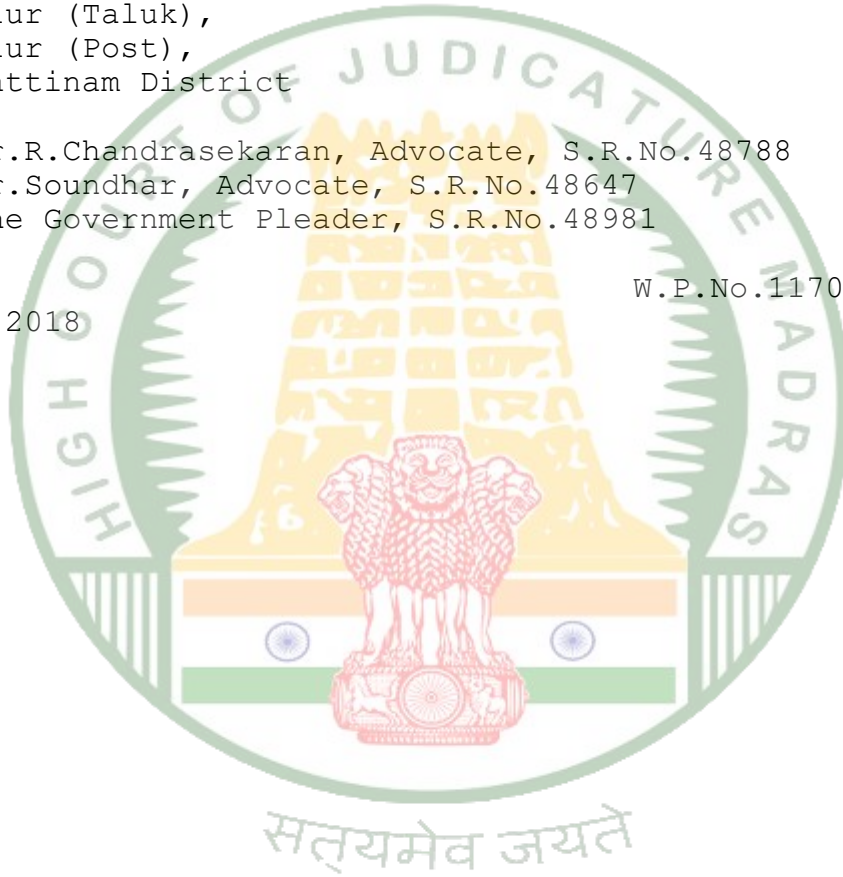
+1cc to Mr.R.Chandrasekaran, Advocate, S.R.No.48788

+1cc to Mr.Soundhar, Advocate, S.R.No.48647

+1cc to the Government Pleader, S.R.No.48981

W.P.No.11700 of 2018

SMI/06.08.2018



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