

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7902 of 2009

M.Jayanthi

.. Petitioner

Versus

1.The District Collector,
Nagapattinam,
Nagapattinam District.

2.The Child Development Project Office,
Thalaignayuru,
Nagapattinam District.

3.Selvi

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records relating to the proceedings of the respondents 1 and 2 dated 27.02.2009 and quash the same and set aside the appointment made by way of interview in pursuant to these proceedings and direct the respondents 1 and 2 to appoint the petitioner for the post of Assistant in the said Anganvadi Centre.

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.R.S.Selvam,
Government Advocate for R1 & R2

Mrs.C.K.Vishnupriya, for R3

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O R D E R

The petitioner has prayed for issuance of writ of certiorarified mandamus to quash the proceedings of the 1st and 2nd respondents dated 27.02.2009 and to set aside the order of appointment made by way of interview in pursuant to the said proceedings and further direct respondents 1 and 2 to appoint

the petitioner for the post of Servant in the Anganvadi Centre.

2.The case of the petitioner is that she has passed 10th Std in the year 1991 and she hails from Hindu Parayan Community and residing with husband and children at the address given in the writ petition and registered her name in District Employment Office, Nagapattinam on 12.05.1993. When the post of Servant in Anganvadi Centre was to be filled up, applications were invited and the petitioner was called for an interview on 12.01.2009. She also participated in the interview conducted by the second respondent and submitted that she got good marks in the interview and she has fulfilled all the conditions of the second respondent and she would be selected for the said post. The petitioner was surprised that the third respondent was selected, who is far away from the Anganvadi Centre and got less marks than the petitioner and the selection was unconstitutional and violative of principles of natural justice. The petitioner would submit that the first respondent had appointed the third respondent on the recommendation of the second respondent who is not at all qualified to hold the post. She would also submit that she is residing 32 metres from the Anganvadi Centre and the appointment of 3rd respondent is in violation of Articles 14 and 16 of the Constitution of India.

3.The learned counsel for the petitioner would submit that communal rotation had not been followed and the petitioner was denied the opportunity of being selected for the post.

4.The respondents filed a counter statement wherein, it is stated that as per the Government of India Letter No.F.No.1-15/03 CD-1, Ministry of Human Resource Development, Department of Women and Child Development, no reservation for SC/STs and OBCs in the process of selection to the post of Anganvadi Worker/Helper has been provided under the ICDS Scheme, since the Anganvadi Workers are not Government employees as their employment is based on non-standard special time scale of pay. The qualification for the candidates appearing for the said post is all married women in the age group of 20 to 35, residing within 3 km of the said centre and minimum qualification is 10th Std for appointment, reservation or communal rotation for the candidates is not followed and the appointment is also not made through the Employment Exchange. Hence, there is no violation of Article 14 and 16 of Constitution of India. The appointment for Anganvadi Centres is made through the recommendation of the committee consisting of the District Programme Officer, ICDS of that District and Primary Health Centre's Medical Officer and Child Development Project Officer. As the same was issued by concerned District Collector in accordance with the

G.O.Ms.No.186 SW & NMP Department dated 04.10.2007 and Government Letter No.355/SW-7 (1)/08 SW & NMP Department dated 20.03.2008 and the selection of candidates for the said post was conducted by the said 3 members, there is no bias in the selection of the 3rd respondent. The third respondent is residing within 2 km radius of the centre and she has completed higher secondary course (10 & +2) and she has answered all the questions posed in the interview by the committee members and the third respondent is qualified and having higher educational qualification, which was preferred by the said committee of members and the appointment was made only on the basis of merit. This selection was done, since the children are in the age group of 3 to 5 and they have to be educated properly on the basis of all the materials and other things ought to be handle by the said workers. Hence, the selection of the third respondent is in accordance with law and there is no bias in the said selection. It is seen from the report filed by the respondents regarding the interview list for Vepamarathadi Village, P.Selvi who has been selected and stands No.1 belong to the same village and her age was 31 years, completed +2, she belongs to MBC and residing within the radius of 2 km, having three children and doing agricultural activity.

5.The petitioner herein stands fourth in the list residing within 30 metres, age about 33 years, 10th Std pass and belongs to SC. There are three candidates who were selected and attended interview having +2 qualification and rest of them are 10th Std. The third respondent belongs to MBC and her age is only 31 years and she was selected for the said post. Regarding the communal rotation, the respondents have produced G.O.Ms.No.142 Social Work and Nutrition Meal Scheme. As per order No.149, dated 20.11.2009, the vacancies were filled up by the concerned District Collectors regarding the post of Anganvadi Workers and only for the nutrition scheme communal rotation was followed. The writ appeal was filed before this Court and this Court on 19.04.2010 has passed the following orders :-

"In the light of the above, this Court has no hesitation to reject the stand taken by the respondent State and by giving a positive direction to provide for Reservation in terms of TamilNadu Act 45/1994, and also in the light of the interim order dated 20.04.2004 passed by the Supreme Court in W.P.(C) No.196 of 2001 in People's Union for Civil Liberties, Rajasthan Vs. Union of India and to provide for reservation for SC/STs. Till such time they provide such rules of reservation, the State is forbidden to fill up such large number of posts (as many as 20,000 posts) without due representation to SC/ST Communities ignoring the Constitutional mandate."

6.Hence, based on the above judgment, the Government has passed an order that even for ICDS Project, Micro Anganvadi Workers, Anganvadi Helper and for the MGR Nutrition Meals Centre for the post of Cook and Helper, when the selection is made by direct recruitment, the communal rotation ought to have been followed. Hence, only from the date 06.10.2007 onwards, the communal rotation was to be followed by the authority which considering the appointment of persons to be Anganvadi Workers. Hence, the plea of the petitioner cannot be accepted, since the petitioner while filing the application in the year 2009 was 33 years and now she would have completed 43 years. Only based on the above committees recommendation, the third respondent was selected and non selection of the petitioner was not based on bias but only considering on the other aspects regarding the age and qualification she was not selected. Hence, the petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT

To

1.The District Collector,
Nagapattinam,
Nagapattinam District.

2.The Child Development Project Office,
Thalaignayuru,
Nagapattinam District.

+1 cc to Mr.M.Thamizhavel, Advocate Sr.No.52178

PA (CO)
CSL/13.02.2019

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