



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.6299 of 2011

and

M.P. (MD) .Nos.1 and 2 of 2011

M.Murugan

.. Petitioner

Vs .

1. The District Collector,
Theni District,
Theni.

2. The Assistant Director of Town
Panchayats, Madurai Zone,
Madurai -20,
Madurai District.

3. The Executive Officer,
Vadugapatti Town Panchayat,
Vadugapatti,
Theni District.

4. M.Lakshmi

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.79 of 2010, dated 28.02.2011, on the file of the 3rd respondent and quash the same as illegal and consequently direct the respondent No.3 to appoint the petitioner in the post of Sweeper within a stipulated time.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents 1 to 3

: Mr.D.Muruganandham,

Additional Government Pleader

For 4th respondent

: Mr.G.Karnan

ORDER

<https://hcservices.ecourts.gov.in/hcservices/>
This writ petition has been filed by the petitioner challenging the appointment order of the 4th respondent as Sweeper and for consequential direction to the 3rd respondent to appoint the

petitioner to the post of Sweeper within a stipulated time.

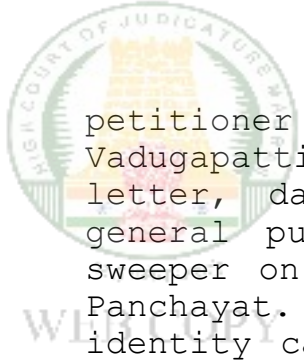
2. The case of the petitioner is that he had been working as Sweeper at Vadugapatti Town Panchayat on daily wage basis for the past ten years. While so, the Town Panchayat notified recruitment of two posts of Sweeper. One post was reserved for Scheduled Caste and another post was reserved for General Category. The Employment Exchange sponsored totally five candidates for General Category, in which the petitioner was placed at serial No.3 and the 4th respondent herein was placed at Serial No.5. After attending the interview and certificate verification, the petitioner came to know that the third respondent appointed the 4th respondent herein. The grievance of the petitioner is that though he has employment seniority and he is better qualified than the 4th respondent herein and he has been working on daily wage basis for the last ten years, the third respondent, without considering the said aspects, has illegally appointed the 4th respondent herein as Sweeper. Therefore, the petitioner has come up with this petition challenging the appointment order of the 4th respondent herein.

3. The learned counsel appearing for the petitioner has reiterated the above averments.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the seniority in the employment exchange alone cannot be the criteria for selection and even the seniors to this petitioner have not been selected in this case. Further, it is not true that the petitioner was a daily wage employee for the past ten years. The 4th respondent is deserted from her husband and she survives with her two children. The appointment committee, after following all the rules and regulations, has appointed the 4th respondent herein. He would further submit that now there is a vacancy in the Panchayat due to the retirement of one Amavasai. The third respondent, vide his proceedings in Na.Ka.No.79 of 2011, dated 22.10.2018, has assured that the case of the petitioner will be considered, if the name of the petitioner is sponsored through the employment exchange. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. A perusal of the list of candidates forwarded by the Employment Exchange for Open Category would clearly show that the petitioner is senior to the 4th respondent herein and he is better qualified than the 4th respondent herein. Though the third respondent herein has denied the continuous service of the petitioner on daily wage basis for ten years, he has not produced any documents in support of the said contention. On the contrary, the petitioner has produced a certificate, dated 03.04.2012, given by the headmaster of V.K.S.Memorial Middle School, Sedapatty, Vadugapatty, Theni District, wherein it is clearly stated that the



petitioner had been working as sweeper from 2003-04 to 2009-10 under Vadugapatti Town Panchayat. The petitioner has also produced a letter, dated 18.03.2012, given by 9th ward community head and general public stating that the petitioner has been working as sweeper on daily wage basis from 2002 onwards in Vadugapatty Town Panchayat. In addition to that, the petitioner has also produced an identity card issued by the Tamil Nadu Sweeping Employees Welfare Board in the year 2009. The documents produced on the side of the petitioner would go to show that the petitioner has been continuously working in Vadugapatty Town Panchayat on daily wage basis. Further, the official respondents have failed to explain as to why the petitioner has not been selected and as to how the 4th respondent was selected. Therefore, this Court finds some force in the contention of the learned counsel for the petitioner.

7. It is seen that the 4th respondent, who is stated to be a deserted woman, has been working as Sweeper from 01.03.2011 onwards. Now almost 7-1/2 years have gone. Admittedly, in this case, there are two other candidates who are senior to the petitioner participated in the interview, but they were also not selected to the post. Therefore, it cannot be stated that the petitioner alone has been discriminated. But, those candidates are not before this Court and therefore, this Court need not consider their case. In view of the above, this Court is not inclined to interfere with the impugned order. The learned Additional Government Pleader, on instructions, submitted that a vacancy has arisen due to retirement of one Ammavasai and that the case of the petitioner will be considered, if the name of the petitioner is sponsored through the employment exchange.

8. However, considering the facts and circumstances and also considering the length of service and age of the petitioner, this Court is of the view that ends of justice would be met if a direction is given to the respondents 1 to 3 to appoint the petitioner as Sweeper in the vacancy that arisen due to the retirement of Ammavasai, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that this order is passed only based on the peculiar facts and circumstances of the case and the same shall not be treated as a precedent.

9. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1. The District Collector,
Theni District,
Theni.

WEB COPY

2. The Assistant Director of Town
Panchayats, Madurai Zone,
Madurai -20,
Madurai District.

3. The Executive Officer,
Vadugapatti Town Panchayat,
Vadugapatti,
Theni District.

+ 1 CC TO Mr.G.KARNAN, ADVOCATE IN SR No. 93303
+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 93650
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 93843

GCG

TE/BK/SAR-1 : 14/12/2018 : 4P/7C

Order made in
W.P (MD) No.6299 of 2011
31.10.2018