

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1799 of 2013
and M.P.No.1 of 2013

1.The Director of Public Libraries,
Chennai - 2.

2.District Library Officer,
Salem.

... Appellants

-vs-

1.V.Senthil Kumar
2.V.Gangadharan
3.P.Selvi
4.M.Gomathi

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.07.2011 made in W.P.No.7654 of 2007.

Petition filed Under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to Pro.Na.Ka. No. 4294 /04/A dated 31.10.2005 Pro.Na.K.No. 4294/04/A dated 31.10.2005 of the 2nd respondent and Pro.Na.Ka.No.15455/A2/2006 dt 19.12.2006 of the 1st respondent quash the appointments of the respondents 3 and 4 respectively therein as rural librarians and issue consequential directions to appoint the petitioners herein as rural librarians w.e.f.31.10.2005 with all consequential benefits.

For Appellants : Ms.A.Sri Jayanthi,
Spl. Govt. Pleader

For Respondents: Mr.Ravi for R1 & R2

JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH,J.]

This writ appeal is directed against the order of the learned single Judge, who, while declining to interfere with the appointment, was pleased to give a direction to the second appellant to consider the claim of respondents 1 and 2 in the light of the Government Order in G.O.Ms.No.50 School Education Department dated 11.04.2003.

2.Learned Special Government Pleader appearing for the appellants would submit that the appointment will be made subject to the performance in the interview and following communal roster, the posts were filled up by the appellants. Further more, the earlier procedure of appointing someone through employment exchange has been given up. Therefore, the appeal will have to be allowed.

3.Learned counsel appearing for respondents 1 and 2 would submit that what has been ordered by the learned single Judge is to consider the case of respondents 1 and 2. Therefore, no interference is required.

4.We find considerable force in the submission made by the learned Special Government Pleader. There is no material available to hold that any more vacancy is available. Admittedly, in the post for which respondents 1 and 2 were entitled to, some other person has been appointed. Further, as held by the Apex Court, an appointment cannot be made only based upon the seniority in the employment exchange. Such an appointment is also based upon the performance in the interview after adopting communal roster. Learned single Judge, in our considered view, was not right in holding that inasmuch as the appellants have not stated that there is no vacancy available, it could be presumed that there is a vacancy.

5.In such view of the matter, we are of the view that the order of the learned single Judge requires interference. Accordingly, the impugned order is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Director of Public Libraries,
Chennai - 2.

2.The District Library Officer,
Salem.

+1cc to Mr.M.Ravi, Advocate, S.R.No.9501
+1cc to the Government Pleader, S.R.No.9748

W.A.No.1799 of 2013

gp(CO)
kak(11/03/2019)