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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

Writ Appeal No.2135 of 2019
and
C.M.P.No.14385 of 2019

- 1 THE DISTRICT TREASURY OFFICER
VELLORE
- 2 THE SUB TREASURY OFFICER
ARAKKONAM VELLORE DIST
- 3 THE DIRECTOR OF TREASURIES
AND ACCOUNTS GOVERNMENT OF TAMILNADU
CHENNAI APPELLANTS

Vs

- 1 M.VELMURUGAN
S/O MUTHUKRISHNAN 30/16 ATHIPATTAN STREET
DR.AMBEDKAR NAGAR ARAKKONAM TK VELLORE
DIST-631001
- 2 THE DISTRICT EMPLOYMENT OFFICER VELLORE ... RESPONDENTS

APPEAL filed under Clause 15 of the Letters Patent to set aside the order dt. 17/12/2018 made in WP No.21905/2016 in common order in WP NO.21905/2016 and 21906/2016 and allow this WA.

Prayer in WP No.21905/2016 : Writ Petition filed undr eArticle 226 of the Constitution of India praying to issue a writ of certiorari mandamus to call for the entire records relating to the impugned order dated 09.06.2016 made in Na.Ka. 350/2016/A2 passed by the 1st respondent quash the same as ultra vires and consequentially direct the 1st respondent to reinstate the petitioner in the same post or some other similar post with all other attendant benefits and pass such further or other orders as this Hon'ble Court may deem fit.



For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

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J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.,)

INTRODUCTARY:

This is a very strange case of cancellation of appointment of a candidate belonging to Scheduled Caste community whose appointment made on 29.10.2013 was cancelled by order dated 09.06.2016 solely on the ground that the communal roster was not followed by the appointing authority, while making the appointment notwithstanding the fact that the very initiation of action of cancellation was only after declaration of probation. The first respondent who was not at fault for ignoring the communal roster by the appointing authority was punished by the appellants after a period of four years in spite of the fact that there was no fraud played by him and only after forwarding the names by the Employment Exchange, taking into account the seniority, the appointment was made.

BRIEF FACTS:

2. The Treasury Officer, Vellore pursuant to the permission granted by the Commissioner, Treasuries and Accounts Department, by order dated 28.09.2013 called upon the District Employment Officer, Vellore to sponsor the names of male candidates for appointment to the post of Office Assistant. The communication dated 03.10.2013 was very specific that in view of the nature of appointment and the job of an Office Assistant, who had come to Chennai regularly, only the names of the male candidates should be sponsored. The Employment Officer, Vellore sponsored the names of three candidates. The first respondent was one among such candidates.

3. The name of the first respondent was registered in the Employment Exchange way back on 20.06.1991 and it was the first employment call given to him pursuant to the sponsorship made by the Employment Exchange. The first respondent and two others were interviewed by the appointing authority and thereafter by order dated 29.10.2013 he was appointed as Office Assistant. He was put on probation. The probation was declared on 06.11.2014.

4. The Treasury Officer, Vellore long after declaring the probation of the first respondent issued a notice to him to show cause as to why his appointment should not be cancelled on



account of the failure on the part of the appointing authority to follow the communal roster. The first respondent appears to have submitted his explanation on 12.04.2016.

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5. The Treasury Officer, Vellore without any reference to the explanation submitted by the first respondent passed an order dated 09.06.2016 cancelling the appointment. The said order was challenged by the first respondent before the Writ Court in W.P.No.21905 of 2016.

6. The Writ Petition was taken up for hearing along with another petition filed by Thiru.V.Elumalai, whose appointment was also cancelled. The learned single Judge found that the first respondent was not responsible for his appointment as Office Assistant. It was pursuant to the sponsorship made by the Employment Exchange in response to the requisition received from the Treasury Officer, the name was forwarded and thereafter, he was appointed. The learned single Judge therefore set aside the order passed by the District Treasury Officer and allowed the Writ Petition. Feeling aggrieved by the said order, the appellants have come up with this intra Court appeal.

SUBMISSIONS:

7. The learned Special Government Pleader appearing on behalf of the appellants contended that the post in question was reserved for women. The District Treasury Officer without following the roster made a request to the Employment Officer to sponsor the names of male candidates. According to the learned Special Government Pleader, the appointing authority was not justified in making the appointment of the first respondent in a post ear marked for women as per roster.

DISCUSSION:

8. There is absolutely no dispute that the name of the first respondent was registered in the Employment Exchange, Vellore on 20.06.1991. He was not given a call for appointment at any point of time before receiving the requisition from the District Treasury Officer, Vellore in 2013 calling upon the Employment Officer, Vellore to sponsor the names of three male candidates as per seniority in the employment registration for appointment to the post of Office Assistant. It is also a matter of record that there was a specific mention in the letter calling upon the Employment Officer, to sponsor only male candidates, as the job of the Office Assistant involves constant travel to Chennai. It is also found that even in the notification issued, it was mentioned that the post is ear marked only for male candidates.



9. The District Employment Officer, Vellore sponsored the name of the first respondent and two others pursuant to the communication sent by the District Treasury Officer. The appointing authority interviewed the candidates and only thereafter the first respondent was appointed. The appointment order was issued on 29.10.2013. The first respondent was put on probation. The probation was declared on 06.11.2014.

10. The appointing authority long after the appointment of the first respondent and that too after declaring his probation, initiated proceedings for cancellation of the appointment for the simple reason that roster was not followed by the appointing authority in the matter of appointment of the first respondent and another candidate. The appointing authority has no case that the first respondent played a fraud and got the appointment. The first respondent was not at all responsible for the action taken by the appointing authority calling upon the District Employment Officer to sponsor the male candidates instead of women for a post earmarked for women as per roster.

11. The first respondent submitted his explanation to the show cause notice issued by the District Treasury Officer. In the said representation the first respondent pleaded that he worked for a continuous period of more than three years and as such, his appointment should not be cancelled at that point of time. The appointing authority cancelled the appointment by order dated 09.06.2016 without even making a reference to the explanation submitted by the first respondent.

12. The name of the first respondent was registered in the Employment Exchange way back on 20.06.1991. Since he was appointed as Office Assistant in the District Treasury Department, Vellore, his name was removed from the roll of the Employment Exchange.

13. The only reason which made the appointing authority to cancel the appointment appears to be the failure to follow the roster point. Nothing prevented the appellants to adjust the roster by allotting the next post reserved for male to a woman and thereby save the appointment of the first respondent.

CONCLUSION:

14. We are of the view that the appellants were not justified in passing the order impugned before the Writ Court cancelling the appointment of the first respondent. There is absolutely no merit in the case pleaded by the appellants.



15. We therefore dismiss the intra Court appeal without any liability to pay costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1. THE DISTRICT EMPLOYMENT OFFICER VELLORE

2 THE DISTRICT TREASURY OFFICER
VELLORE

3 THE SUB TREASURY OFFICER
ARAKKONAM VELLORE DIST

4 THE DIRECTOR OF TREASURIES
AND ACCOUNTS GOVERNMENT OF TAMILNADU
CHENNAI

+1cc to Government Pleader SR.No.59690

Writ Appeal No.2135 of 2019
and
C.M.P.No.14385 of 2019

PM(CO)
GMY(19/08/2019)