

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.33613 of 2019

and

W.M.P.Nos.34078 & 34079 of 2019

C.Tamilmaran

...Petitioner

Vs

1. The Principal Secretary to Government,  
Revenue Department,  
Fort St. George, Chennai - 600009.
2. The Principal Secretary /  
Commissioner of Revenue Administration,  
Chepauk, Chennai - 600005.
3. The District Collector,  
Thanjavur District.
4. The Revenue Divisional Officer  
Kumbakonam, Thanjavur District
5. The Taluk Tahsildar,  
Thiruvidaimarudur,  
Thanjavur District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Letter (Ms) No.631, Revenue Department, Dated 07.11.2008 and quash the same and direct the respondents to do the recruitment process for appointment to the post of Village Assistant as per the qualification prescribed in the Special Rules for the Village Assistants without prescribing any maximum qualification and accordingly consider the petitioner's case for appointment to the post of Village Assistant.

For Petitioner : Mr.P.Rajendran

For Respondents: Mrs.K.Bhuvaneswari, AGP

O R D E R

This writ petition has been filed challenging the impugned Government letter dated 07.11.2008 and seeking for a consequential direction to consider the petitioner for appointment to the post of Village Assistant.

2.The petitioner has registered his name in the District Employment Office, Thanjavur in the year 2012. The petitioner had passed post graduate degree and he has obtained the qualification of M.Sc (Physics).

3.The Tahsildar, Thiruvidadaimarudur, issued a notification dated 28.08.2019 inviting applications for appointment to the post of Village Assistants. As per the notification, the minimum qualification that is prescribed is V Standard (passed) and the notification does not prescribe for any maximum qualification.

4.The petitioner applied for the said post and he did not receive any letter calling for interview. When he enquired in the office of the fifth respondent, he was informed that he was not called for enquiry, since he was over qualified and that there is a Government letter dated 07.11.2008, which prescribes the maximum qualification of X Standard (failed). Aggrieved by the same, the present writ petition has been filed before this Court.

5.The learned counsel for the petitioner submitted that the notification prescribed only the minimum qualification of V Standard and no maximum qualification was prescribed. The learned counsel further submitted that the candidature of the petitioner cannot be rejected on the ground of over qualification. In order to substantiate his submission, the learned counsel brought to the notice of the Court, the order passed by this Court in W.P.Nos.25075 of 2019, etc. dated 02.01.2014.

6.Per contra, Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents submitted that the notification was issued calling for applications to fill up the post of Village Assistants. The learned counsel submitted that totally 113 applicants were called for and 75 persons attended the interview and the appointment is yet to be finalised. The learned counsel further submitted that even though the notification did not prescribe for any maximum qualification, it is covered by the Government letter dated 07.11.2008, which specifically states that the maximum qualification is X Standard (failed). The learned counsel therefore submitted that the petitioner is not eligible to be considered for appointment to the post of Village Assistant.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The only issue which requires consideration before this Court is as to whether the petitioner can be disqualified for being considered for the selection to the post of Village Assistant, merely on the ground that he is over qualified. The notification in question specifically provides only for a minimum qualification of V Standard (pass). It does not prescribe for the maximum qualification. However, the concerned authority is placing reliance on the Government letter dated 07.11.2008, which prescribes the maximum qualification as X Standard (fail).

9.At this juncture, it will be more relevant to take into consideration the Judgement that was cited by the learned counsel for the petitioner, which has been referred supra. The relevant portions in the Judgement is extracted hereunder.

6. Per contra, learned Additional Government Pleader appearing for the respondents would submit that the educational qualification mentioned in G.O. Ms. No.521 makes it clear that the Village Assistants either should have passed 5th standard or should be a fail candidate in 10th standard and therefore, no candidate who possess higher qualification which is more than 10th standard or 12th standard, should not be appointed as Village Assistants, being the last grade in the revenue service. Learned Additional Government Pleader submitted that although the petitioners underwent the process of selection and after verification they were appointed, only during the crisis of review, the District Collector came to know that in the appointment of the petitioners, prescribed qualifications were not followed. Learned Additional Government Pleader raised a plea that if the petitioners have been appointed with higher qualifications i.e. 10th standard or 12th standard, that would create future problem to the department. Therefore, the District Collector rightly taken a decision to review the appointment of the petitioners and issued the impugned notices calling upon to submit their explanation as to why their services should not be terminated.

7. As the petitioners have possessed more qualifications as per G.O. Ms. No.521, this Court is unable to espouse the contentions raised by the learned Additional Government Pleader appearing for the respondents. Firstly, the issue raised in the present writ petition has been squarely covered by the judgment of this Court, as rightly canvassed by

the learned counsel for the petitioners in a batch of writ petitions dated 22.09.2011, the learned Single Judge while relying upon the judgment of the Apex Court in the case of Mohd. Riazul Usman Gani vs District and Sessions Judge, Nagpur, AIR 2000 SC 919 : (2000) 2 SCC 606 held that a criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. When this Court has already taken a view that an employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not prescribe the qualification on the ground that the qualification prescribed is minimum, higher qualification cannot become a disadvantage to the candidate.

8. Secondly, when all the petitioners were sponsored by the District Employment Exchange for the post of Village Assistants, the selection committee after considering the educational qualifications and also all the other eligibility criteria that were complied with by all the candidates i.e. the knowledge of reading and writing in Tamil and further qualification of having the knowledge of cycling and physical fitness, appointed the petitioners. Therefore, after the petitioners joined their duty, the joining reports were also forwarded to the Taluk Office through Headquarters Thasildar. Although they have been discharging their duties as Village Assistants ever since they joined in the said post, simply for the reason that they have possessed higher qualification i.e. pass in 10th standard or 12th standard, the respondents ought not to have issued the impugned notices calling for explanation as to why they should not be terminated from service on account of ineligibility to the post of Village Assistants, within three days from the date of receipt of the copy of the impugned notice. Even though a pass in 5th standard or fail in 10th standard was prescribed as qualification for the post of Village Assistants, possessing the higher qualification viz., pass or fail in 10th standard or 12th standard, can never be considered as disqualification. Therefore, this Court is of the considered view that no employer can throw up his hands in despair and devise the method denying appointment to a person, who otherwise meets the

requisite qualifications, on the ground that he is having higher qualification, since possessing higher qualification cannot be a disadvantage to the department.

10.The above Judgement squarely covers the issue that has been raised in the present writ petition. In the above Judgement, this Court has placed reliance upon the Judgement of the Honourable Supreme Court in Mohd. Riazul Usman Gani vs District and Sessions Judge, Nagpur, reported in (2002) 2 SCC 606. The Honourable Supreme Court has categorically held that the application made by a candidature cannot be rejected on the ground that he is over qualified/more qualified and such rejection was held to be arbitrary and irrational. This Court has also held that a notification can only prescribe for a minimum qualification and a higher qualification cannot become a disadvantage for the petitioner.

11.In the present case, the petitioner has been sponsored by the District Employment Exchange, Thanjavur for the post of Village Assistant and the petitioner is possessing the qualification prescribed in the notification. Incidentally, it is also seen that the Government letter dated 07.11.2008 has also been withdrawn by a subsequent letter issued by the Government dated 09.10.2012.

12.In the considered view of this Court, the ground on which the candidature of the petitioner has been rejected is totally arbitrary and irrational and the same requires interference of this Court. Therefore, there shall be a direction to the fifth respondent herein to consider the application made by the petitioner and permit the petitioner to participate in the selection and the oral interview and thereafter decide the inter se merits between the candidates and make the selection to the post of Village Assistant, strictly in accordance with the notification and the relevant rules.

13.This Writ Petition is accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

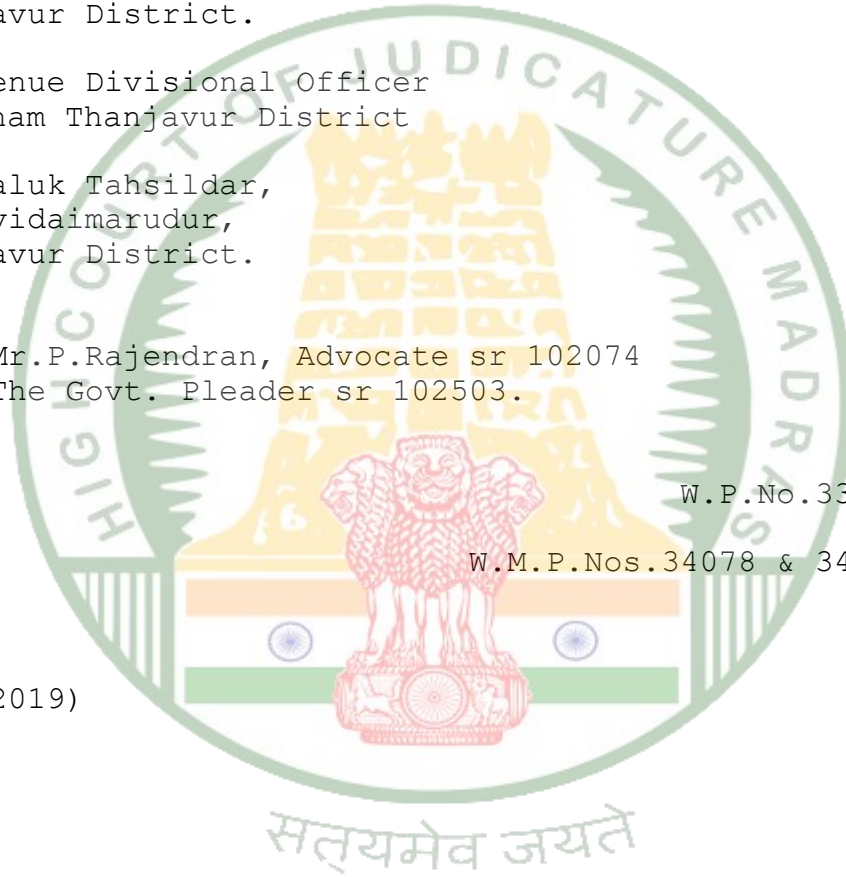
To

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Thiruvidadaimarudur,  
Thanjavur District.

+1 CC to Mr.P.Rajendran, Advocate sr 102074  
+1 CC to The Govt. Pleader sr 102503.

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SAI (CO)  
SP(11/12/2019)



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