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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2019

Delivered on : 12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.18106 of 2018

Rajeswari

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Social Welfare and Nutritious Meal
Programme Department,
Fort St. George,
Secretariat,
Chennai-600 009.
- 2.The Director -cum- Mission Director,
Integrated Child Development Services Scheme,
No.1, Pammal Nallathambi Street,
Taramani, Chennai-600 113.
- 3.The District Collector,
Theni District, Theni.
- 4.The District Project Officer -cum-
Selection Committee for appointment of Main
Anganwadi Worker,
Theni, Theni District.
- 5.The Child Development Project Officer,
Chinnamanoor Region,
Theni District.

6.Tmt.Jagadeeswari

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned proceedings issued by the fourth respondent in Se.Mu.Na.Ka.No.2321/A1/2017, dated 01.08.2018 and quash the same insofar as relating to the appointment of main Anganwadi worker in respect of the Karichipatti Anganwadi Center (No.33624030219) Chinnamanoor Region, Uthamapalayam Taluk, Theni District and consequently, direct the respondents 3 to 5 herein to pass appropriate orders with effect of appointing the petitioner as main Anganwadi Worker in the said Karichipatti Center (No.33624030219) Chinnamanoor Region, Uthamapalayam Taluk, Theni District, by relieving the sixth respondent herein.



For Petitioner : Mr.A.Saravanan
For Respondents 1to5 : Mrs.J.Padmavathi Devi,
Special Government Pleader
For Respondent No.6 : Mr.R.Venkatesan,
For M/s.Right Law Associates

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O R D E R

Seeking to quash the order passed by the fourth respondent dated 01.08.2018, in and by which, the sixth respondent was appointed as Anganwadi Worker in Karichipatti Anganwadi Centre, Theni District and consequential direction, the petitioner has come up with the present Writ Petition.

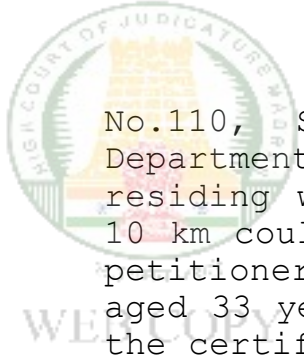
2. The brief facts of the case are as follows:

(i) The petitioner belongs to Most Backward Community and she studied upto plus two and completed teacher training course. She has enrolled her qualification in the District Employment office in the year 2005.

(ii) While so, on 15.08.2017, she applied to the fourth respondent seeking appointment to the post of main Anganwadi worker in Karichipatti Anganwadi Centre, Chinnamanoor Region, Uthamapalayam Taluk, Theni District, based on the notification published on 07.08.2017. Along with the application, she has also enclosed all the necessary certificates relating to education, residence proof, income certificate, community certificate, certificate regarding no one of her family members are in Government job, etc. After considering her eligibility criteria, the fifth respondent issued interview letter on 22.08.2017 in Na.Ka.No.108-Aa-2017 calling her to appear at 10.00 a.m., on 28.08.2017, in the office of the Child Development Project Office, Chinnamanoor, Karunkattankulam Municipality Middle School Campus, Chinnamanoor.

(iii) Insofar as the Karichipatti Anganwadi Centre, for which the petitioner applied, the sixth respondent and herself alone appeared for the interview. On completion of interview, she waited for her appointment, but, whereas, the fourth respondent appointed the sixth respondent by the impugned order dated 01.08.2018, though the petitioner possessed the requisite qualification in all aspects. Aggrieved over the same, the petitioner is before this Court.

3. The third respondent has filed a counter-affidavit contending *inter alia* that totally two persons filed applications for the post in question including the petitioner and the sixth respondent. Both of them studied upto 12th standard and attended the interview on 28.08.2017. The Anganwadi Centre is reserved for MBC/DNC non priority. Both the petitioner and the sixth respondent belong to DNC. The petitioner resides within 3 km from the centre, whereas, the sixth respondent resides within 7 km. As per G.O.(Ms)



No.110, Social Welfare and Nutritious Meal Programme (SW-7) Department, dated 14.05.2012, if no suitable candidate is available residing within 3 km from the Centre, a candidate residing within 10 km could also be considered, if she is otherwise eligible. The petitioner was aged about 30 years, but the sixth respondent is aged 33 years. In addition to that, the sixth respondent attached the certificate with regard to proficiency in computer application. Integrated Child Development Scheme is a novel scheme, which aims at the welfare, development and protection of the children aged upto 6 years. A knowledge in the computer application will help immensely to impart education to the children. Hence, based on the age seniority and computer knowledge, the sixth respondent was appointed to the said post. Thus, the third respondent prays for dismissal of the Writ Petition.

4. The sixth respondent also filed a counter-affidavit denying all the averments made in the affidavit filed in support of the Writ Petition and contended that G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.09.2010, that was relied on by the petitioner, speaks about the appointment to the post of Nutrition Meal Organizer and hence, the same is not applicable to the post of Anganwadi worker. The sixth respondent was appointed as per G.O.(Ms)No.110, Social Welfare and Nutritious Meal Programme (SW-7) Department, dated 14.05.2012. Apart from the above, she has acquired proficiency in computer course and at the time of interview, she was almost in the edge of age criteria prescribed in the above said G.O., dated 14.05.2012 and she is senior in age than the petitioner and hence, she was selected by the Selection Committee based on her merit and age. Therefore, the Writ Petition filed by the petitioner solely on residential status is liable to be dismissed, as it violates Article 16(2) of the Constitution of India.

5. Heard the submissions made on either side.

6. The learned counsel for the petitioner would submit that as per the Government Order in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.09.2010, the candidates for appointment to the post of Anganwadi Worker should reside within 3 km from the place of posting. However, in the present case, the sixth respondent resides more than 3 km from the Karichipatti Anganwadi Centre, but, whereas, the petitioner resides within 3 km. Thus, the sixth respondent is not eligible to be appointed to the post of main Anganwadi worker. Contending violation of G.O.Ms.No.163, dated 18.09.2010, the petitioner seeks to quash the impugned order insofar as the sixth respondent is concerned. In support of the contention, the learned counsel placed reliance upon the order of this Court dated **01.10.2012 in W.P. (MD) Nos.4451 of 2012, etc., batch [M.Muthulakshmi vs. The Secretary to the Government]**.



7. Per contra, the learned Special Government Pleader appearing on behalf of the respondents 1 to 5 would submit that G.O.(Ms)No.110, Social Welfare and Nutritious Meal Programme (SW-7) Department, dated 14.05.2012 prescribes the method of recruitment for Anganwadi Worker. Moreover, as per the aforesaid Government Order, if no suitable candidate residing within 3 km from the Centre is available, a candidate residing within 10 km could also be considered, if she is otherwise found eligible. The sixth respondent has also acquired proficiency in computer application and hence, considering the age seniority, educational qualification, leaving the residence, the sixth respondent is more eligible than the petitioner. In such circumstances, the fourth respondent has rightly appointed the sixth respondent and hence, the same need not be interfered with.

8. The learned counsel for the sixth respondent, concurring with the submission of the learned Special Government Pleader, contended that G.O.Ms.No.163, dated 18.09.2010 relied upon by the petitioner with regard to residential status is not applicable to the case on hand, since the said G.O. speaks about the appointment to the post of Nutrition Meal Organizer. The sixth respondent is possessing qualification in computer application. Apart from that, at the time of interview for the post of Anganwadi Worker, she was almost in the edge of age criteria prescribed in G.O.Ms.No.110, dated 14.05.2012 i.e., 33 years 7 months. She was senior in age of 3 years than the petitioner. Therefore, based on merit and age, she was selected for the post of main Anganwadi worker at Karichipatti Anganwadi Centre by the Selection Committee.

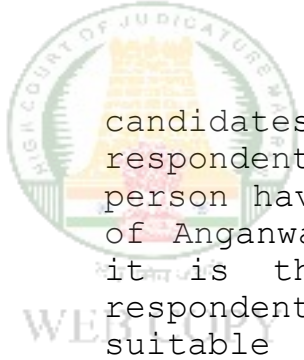
9. Added further, the learned counsel would submit that no citizen can be denied equality of opportunity in employment on the ground of residence alone under Article 16(2) of Constitution of India and hence, the Writ Petition is liable to be dismissed.

10. In support of the contention, the learned counsel for the sixth respondent relied upon the following decisions:

- (i) **P.Vasantha v. District Collector [2007(6) MLJ 402].**
- (ii) **Unemployed Secondary Grade Teachers Welfare Association v. The State of Tamil Nadu & another [2008 Writ L.R. 747].**
- (iii) **U.O.I. v. CAT [2008(5) MLJ 226].**
- (iv) **S.Manjula v. The District Collector, Sivagangai District [2013(2) CWC 900].**
- (v) **W.P.(MD)No.14212 of 2011, dated 26.06.2014 [Subbulakshmi v. The District Collector, Madurai District].**

11. I have considered the rival submissions and perused the materials available on record meticulously.

12. Admittedly, the petitioner appeared for the interview for the post of main Anganwadi worker in Karichipatti Anganwadi Centre, pursuant to the interview call letter dated 22.08.2017 sent by the fifth respondent. In the said interview, totally two



candidates had participated including the petitioner and the sixth respondent. According to the petitioner, she is the most qualified person having all eligibility criteria to be appointed to the post of Anganwadi worker, as per G.O.Ms.No.163, dated 18.09.2010. But, it is the submission of the learned counsel for the sixth respondent that as per G.O.Ms.No.110, dated 14.05.2012, if no suitable candidate residing within 3 km from the centre is available, a candidate residing within 10 kms could also be considered, if she is otherwise found eligible. According to the petitioner, she satisfied all such requirements. But, it is the submission of the sixth respondent that she has acquired proficiency in computer application, which is important nowadays, to equip the children and also she is senior in age by 3 years.

13. Regarding violation of Article 16(2), it is profitable to rely upon the judgment in **P.Vasanth v. District Collector [2007 (6) MLJ 402]**, the relevant portion of which read thus:

"17. Therefore, if the contentions of the petitioners is to be accepted then the preference should be given solely on the basis of the residence, and that will be hit by Article 16(2) of the Constitution. However, considering the fact that the post requires constant attention towards the children and the availability of the person in a nearby area is preferable and a proximity of distance by the eligible candidates may be constitutionally permissible but the selection cannot be solely on the ground of residential preferences to the exclusion of other criteria has to be accepted as it will hit Article 16(2) of the Constitution. As rightly contended by the official respondents, the proximity of residence/locality is only a preference and not a qualification by itself. Once it is established that none of the selected candidates are otherwise disqualified they cannot be edged out of consideration only on the ground that they were not being the residents of the locality.

18. Further, preferring a candidate from a particular hamlet to the exclusion of candidates from other hamlets in the same Village Panchayat Union or in respect of Panchayat Union Centres preferring the candidates from only one village to the exclusion of other villages living in the same panchayat union may also be arbitrary and in many times, it may also result in violating the communal roster being followed."

14. It is also well settled position that the appointment of Anganwadi worker, which is a public employment, cannot be based on the residential area of the candidate alone.

15. In view of the foregoing reasons, this Court is of the view that distance alone is not the eligible criteria to appoint a person to the post of Anganwadi worker. In the case at hand, the fourth respondent, considering the age, educational qualification and all other aspects, except the residence, appointed the sixth respondent as Anganwadi Worker, which, in my considered view, does not call for any interference at the hands of this Court.

16. The Writ Petition is dismissed with the above observation. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

SML

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Social Welfare and Nutritious Meal
Programme Department,
Fort St. George,
Secretariat,
Chennai-600 009.
2. The Director -cum- Mission Director,
Integrated Child Development Services Scheme,
No.1, Pammal Nallathambi Street,
Taramani, Chennai-600 113.
3. The District Collector,
Theni District, Theni.
4. The District Project Officer -cum-
Selection Committee for appointment of Main
Anganwadi Worker,
Theni, Theni District.
5. The Child Development Project Officer,
Chinnamanoor Region,
Theni District.

+1CC TO MR.RIGHT LAW ASSO, Advocate Sr. No. 53180

Order made in

W.P. [MD] No.18106 of 2018

Delivered on: **12.03.2019**