



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Orders Reserved</i>	<i>Orders Pronounced</i>
03.07.2019	30.08.2019

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No.328 of 2016

and

WMP(MD) Nos.254 to 256 of 2016

G.Madathi

.. Petitioner

vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Commissioner,
Panchayat Union,
Tiruchendur,
Thoothukudi District.

3.S.Ganesan

... 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 pertaining to the impugned order dated 11.09.2015 in Aa.1/387/2015 issued by the 2nd Respondent and quash the same as illegal and subsequently appoint the Petitioner as Office Assistant in the Panchayat Union Office, Tiruchendur.

For Petitioner : Mr.V.Rajiv Rufus
For R1 : Mr.Aayiram K.Selvakumar
Additional Government Pleader
For R2 : Mr.R.Anandharaj
For R3 : Mr.M.Jothiramalingam

ORDER

This writ petition is directed against the impugned order dated 11.09.2015 passed by the second respondent in Aa.1/387/2015 and consequently sought a direction to the respondents 1 and 2 to appoint the petitioner as Office Assistant in the Panchayat Union Office, Tiruchendur.



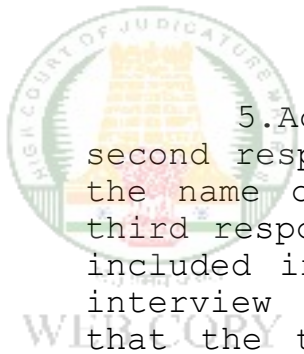
2.The case of the petitioner, in brief, is as follows:

(i)The petitioner belongs to scheduled caste community and she is a widow. She enrolled her name in employment office and keeping seniority from 06.01.2015. The petitioner came to know the vacancy in the second respondent Panchayat Union for the post of Office Assistant and thus, she applied for the said post. On receipt of call notification dated 21.05.2015, the petitioner appeared before the Board for interview on 11.06.2015, wherein, the documents and qualifications of the petitioner were verified and she was informed that she will be given appointment. Since no order has been passed thereafter in respect of appointment, the petitioner made several representations to the authorities concerned seeking appointment. But, no action has been forthcoming. Hence, she filed a writ petition in WP(MD)No.17110 of 2015 before this Court. At the time of hearing the said petition, it was informed by the Government Pleader that the second respondent has passed an order dated 11.09.2015, appointing one S.Ganesan/third respondent herein as an Office Assistant in the second respondent Panchayat Union.

(ii) In this regard, the petitioner sought some documents from the second respondent through RTI and on receipt of such documents, it was found that the President and one Member of the said Panchayat, colluded together, forged the documents and thereby, grabbed the opportunity of the petitioner and gave appointment to the third respondent. Aggrieved by the same, the petitioner is before this Court for the aforesaid relief.

3.The second respondent filed a counter affidavit, wherein it is stated that 18 candidates were applied for the post of Office Assistant in the office of the second respondent, out of which, 5 candidates have not produced their preferential certificate and hence, they were not called for interview and 3 candidates have not attended the interview. Therefore, interview was conducted for 10 candidates, in which, the third respondent was selected and appointed to the post of Office Assistant, based on overall merit and seniority and the preferential status of his inter-caste marriage. The second respondent has not given assurance to the petitioner that she will be given appointment. The allegation of the petitioner that the President and one Member of the said Panchayat, colluded together and forged the documents is false. Hence, the writ petition is liable to be dismissed.

4.The third respondent in his counter affidavit has stated that there is no collusion in appointing the third respondent. The name of the third respondent was sponsored through employment exchange under priority category and he has also produced the priority category certificate at the time of interview. Thereafter only the third respondent was appointed in the said post under priority category. Therefore, the third respondent prays for



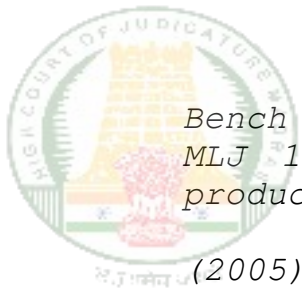
5. According to the learned counsel for the petitioner, the second respondent has shortlisted the eligible candidates, wherein, the name of the petitioner was found place, but the name of the third respondent was not found place and subsequently, his name was included in the list and thereafter he was selected. Further, the interview report of the second respondent dated 11.06.2015 shows that the third respondent has not produced relevant certificate. Thus, without following the due procedures, the third respondent was appointed and therefore, the order passed by the second respondent dated 11.09.2015, appointing the third respondent as Office Assistant is liable to be quashed.

6. According to the learned counsel for the second respondent, subsequent to the interview, the third respondent has produced the relevant document and thereafter only, he was selected and appointed to the said post and thus, selection process has been conducted in a fair and transparent manner. Therefore, the impugned order of the second respondent does not require any interference by this Court.

7. The learned counsel appearing for the third respondent submitted that at the time of interview the third respondent has produced all the relevant documents including the priority certificate and therefore, the entry made in the interview report is not correct. Thus, the appointment of the third respondent under priority category is just and proper and the same is valid in law. In order to support the aforesaid contention, the following decisions have been relied upon:

(i) In ***G.Udhayan Vs. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board, Anna Salai, Chennai*** reported in ***2013 Writ L.R.570***, wherein it is stated as follows:

11. The issue as to enclosing the certificate for selection in a particular category is directory or mandatory, came up before this Court in the decision reported in (2007) 1 MLJ 820 (Dr.A.Rajapandian v. State of Tamil Nadu). In the said decision the registration certificate of Veterinary Assistant Surgeons was not enclosed by some candidates, who applied for selection to the post of Veterinary Assistant Surgeons. The Division Bench allowed batch of cases, relying on the earlier Division Bench order reported in (1995) 2 MLJ 325 (V.Premanand v. State of Tamil Nadu), wherein it was held that 'as long as it is not in dispute that the petitioner belongs to the category of 'children born of inter-caste marriage between SC/ST and forward community', and he was able to produce the certificate before the application was scrutinised for admission, the rejection on the ground that certificate was not enclosed is only a procedural lapse and production of certificate is only a piece of evidence'. Same is the view taken by another Division

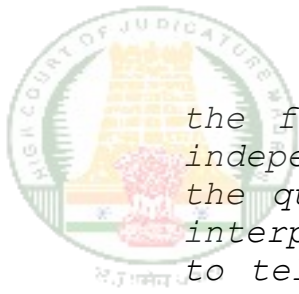


Bench of this Court in the decision reported in (2010) 2 MLJ 146 (Secretary, TNPSC v. M.Chitra) regarding non-production of community certificate.

12. The Supreme Court in the decision reported in (2005) 9 SCC 779 (Dolly Chhanda v. Chairman, Jee) considered similar issue and in paragraph 7 held thus,

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc., necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

The said decision was rendered by following an earlier decision reported in (1980) 2 SCC 752 (Charles K.Skaria v. Dr.C.Mathew). Similar contention raised in the said decision by the unsuccessful candidates seeking to quash the selection of candidates, who have not enclosed the certificates for the award of extra mark was considered in paragraphs 20 and 24, which read thus, 20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves



the factum of possession of the diploma and is not an independent factor. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

* * *

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices.

13. Applying the said judgments to the facts of this case and having regard to the fact that the appellant claimed post under reserved category of Wards and Dependants category in his application form, which is admitted by the respondent in the counter affidavit, we hold that the appellant herein is entitled to be considered for provisional selection to the post of Grade-II Police Constable under wards category, based on his marks secured by him, viz., 54 marks. Appellant may be given liberty to produce the Ward-cum-Dependant certificate, if not produced already. On production of

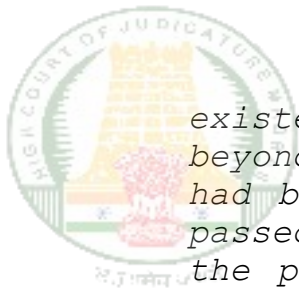


such certificate, the appellant petitioner is entitled to get appointment as Police Constable Grade-II, subject to police verification and medical examination.

14. In the light of the above findings, we set aside the order of the learned single Judge dated 7.1.2013 and allow this writ appeal. The respondent is directed to issue provisional selection order to the appellant on his production of Ward-cum-Dependant certificate from the competent authority, within four weeks from the date of receipt of copy of this order, and subject to police verification and medical examination of appellant, further course of action is directed to be taken by the authorities of the Police Department. No costs.

(ii) In **State of W.B. Vs. M.R.Mondal and another** reported in **(2001) 8 Supreme Court Cases, 443**, wherein, the Hon'ble Supreme Court at paragraph - 16, has held as follows:

"16. The learned Judges of the Division Bench of the High Court ought to have seen that there can be no legal impediment for the Department to make preparations ahead of the period of expiry of the one year contract given in favour of the plaintiff to facilitate the entrustment of the task of collecting the toll in question for the period subsequent thereto, to a newly selected contractor at competitive rates. The Division Bench further overlooked the vital legal proposition that the Memorandum dated 11.3.1998 of the Joint Secretary cannot, per se, have the legal consequence of bringing into existence an extended period of contract and that too for 30 years though said to be renewable periodically every three years. On a proper consideration of the Memorandum dated 11.3.1998, which was also stated to have been never communicated to the plaintiff, and the subsequent Memorandum dated 24.8.1999 of the very Joint Secretary, who issued the earlier Memo, that Memorandum dated 11.3.1998 contained only certain proposals and not any final orders of extension of renewal of the contract as assumed in the judgment under challenge. Paragraph 15 of the Memorandum dated 11.3.1998, which has been relied upon as the basis for claiming an extended period of contract, itself has been misconstrued out of context though by itself, it cannot have the effect of bringing into existence such an extended term of contract to warrant or justify the grant of the directions of the nature in the present case. Even assuming for consideration without accepting that paragraph 15 of the Memorandum dated 11.3.1998 had any effect, it can by no stretch of imagination be construed to bring into



existence ipso facto an extended period of contract beyond the one year period for which alone the contract had been given to the plaintiff in this case. An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of law or claim to have come into operation and effect. No reliance can be placed on the same to even assert a claim based on its contents. If its utility depended upon a decision to be taken on the performance of the plaintiff by the Competent Authority, neither the authority could be compelled to take a decision nor any concrete rights could be said to have been acquired by the plaintiff, to warrant the grant of the type of directions given in this case. It is really surprising that the discretionary power to grant injunction, be it of prohibitory or mandatory nature, has been availed of to bring into existence and force upon the State a new contract, which could never have been the intention of the State itself."

8. The aforesaid decisions relied upon by the learned counsel for the third respondent are not applicable to the facts of the present case for the reason that the third respondent herein did not produce the priority category certificate before short-listing the eligible candidates for the post of Office Assistant in the office of the second respondent Panchayat Union. Further, the third respondent has no locus to produce the said certificate after completion of the entire selection process.

9. In view of the rival contentions made on either side, this Court, has directed the second respondent Panchayat to produce the original records in respect of the appointment made to the post of Office Assistant in the second respondent Panchayat. Accordingly, the second respondent has produced the original records.

10. A perusal of the interview report dated 11.06.2015 would clearly show that no priority certificate has been produced by the third respondent at the time of interview. Further, it is seen from the Office Memo dated 11.06.2015 that the second respondent has shortlisted three candidates, wherein the name of the third respondent was not found place, whereas, the name of the petitioner was found place. The reason for non-selection of the third respondent has also been stated in the Office Memo that "original certificate of inter-caste marriage has not been produced".

11. According to the third respondent, he has produced the priority certificate at the time of interview, but, a perusal of the records clearly shows that the original priority certificate has not been produced by the third respondent at the time of interview and to that effect, an entry has also been made in the interview report.



However, the second respondent selected and appointed the third respondent to the post of Office Assistant, which is contrary to the entries made in the Office Memo and the same cannot be accepted.

12.Further, a perusal of the Office Memo in the original original records reveals that the following 10 candidates have attended the interview, conducted on 11.06.2015.

- | | |
|-----------------------------|--------------------|
| 1. பா.மகேஸ்வர ஆனந்த் | திருச்செந்துர் |
| 2. சு.சிதம்பர செல்வி | காயல்பட்டணம் |
| 3. எஸ்.அனீதா | சேதுக்குவாய்த்தான் |
| 4. கி.மகேஸ்வரி | துத்துக்குடி |
| 5. ரா.சிவகாமி | காயல்பட்டணம் |
| 6. கே.மாடத்தி | வாலகப்பிரமணியம் |
| 7. வி.எஸ்.கே.அந்தோணியம்மாள் | வீரபாண்டியபுரம் |
| 8. எஸ்.கணேசன் | துத்துக்குடி |
| 9. எஸ்.சத்தியா | வீரமாணிக்கம் |
| 10. சு.விஜயலட்சுமி | அடைக்கலாபுரம் |

13.Among the aforesaid candidates, the following three candidates have been shortlisted by the Commissioner, Panchayat Union, Tiruchendur/the second respondent herein:

1. கி.மகேஸ்வரி
2. கே.மாடத்தி
3. எஸ்.சத்தியா

14.It is also noted in the Office Memo that among the said three candidates shortlisted, one candidate has to be selected for the post of Office Assistant by the Appointment Committee. Further, it is stated that the remaining 7 candidates have been rejected for the reasons stated therein. In so far as the third respondent herein is concerned, he has not produced the original priority category certificate at the time of interview. It is also pertinent to note that no reason had been mentioned in the Office Memo in respect of appointment of the third respondent, instead, it was simply stated that the third respondent was selected and appointed as an Office Assistant by the Appointment Committee.

15.Further, from the perusal of the original records, this Court is not able to find out any reason for rejection of the aforesaid three candidates, who have been already selected by the second respondent. During the interview process, the name of the third respondent was not found place and his name was rejected on the ground that he did not produce the original inter-caste marriage certificate and subsequently, without giving an opportunity to the 3 shortlisted candidates, the Appointment Committee has straight away appointed the third respondent, viz., Ganesan, whose name was not found in the shortlisted candidates and also there is no specific reason assigned for not selecting a candidate among the 3



candidates, who have been already shortlisted by the Appointment Committee.

16.It is seen from the entry made on 11.06.2015 that among the three candidates, one candidate has to be selected for the post of Office Assistant by the Appointment Committee. Therefore, the selection and appointment of the third respondent as Office Assistant is not just and proper and no fair procedure has been adopted by the second respondent in selecting and appointing the third respondent as Office Assistant in the respondent Panchayat. As stated earlier, there is no reason stated in the original records or in the counter affidavit filed by the second respondent for not selecting a candidate among the 3 shortlisted candidates. Therefore, this Court has no hesitation to quash the impugned order of the second respondent and to remit the matter to the second respondent for fresh consideration.

17.In fine, this writ petition is allowed and the impugned order of the second respondent is quashed and the matter is remitted to the second respondent for fresh consideration as per relevant Rules and in accordance with law, based on the applications submitted by the eligible candidates as well as the interview conducted on 11.06.2015. The selection process shall be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, WMP(MD)Nos.254 to 256 of 2016 are closed.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Commissioner, Panchayat Union,
Tiruchendur, Thoothukudi District.

+1 CC to M/s.M.JOTHI RAMALINGAM, Advocate SR-84712.

+1 CC to M/s.V.RAJIV RUFUS, Advocate SR-84755.

+1 CC to SPLGP SR-84878.

order made in
W.P(MD) No.328 of 2016
30.08.2019

CS(27.09.2019) 9P 6C