



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.7188 of 2011

P.Udhayakumar

... Petitioner

vs.

1.The District Collector
Collectorate, Theni District

2.The Executive Officer
Kamayakoundanpatti Panchayat Union
Theni District

3.K.Mani
The Executive Officer
Kamayakoundanpatti
Uthamapalayam Taluk-625 516
Theni District

4.P.Sekar

5.The Chief Secretary
Government of Tamilnadu
Chennai-600 009
(R5 is *suo motu* impleaded by this
order dated 07.06.2019)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the second respondent in and by his proceedings dated 09.02.2011 in Na.Ka.No.294/2006 and quash the same and consequently direct the 2nd respondent to appoint the petitioner as a Night Watchman with effect from 09.02.2011 with all attendant benefits.

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader for R1 & R5
Mr.T.S.Mohamed Mohideen for R2 & R3
Mr.G.Karnan for R4

O R D E R

The appointment of the fourth respondent to the post of Night Watchman in Kamayakoundanpatti Panchayat Union, in proceedings dated 09.02.2011, is under challenge in the present writ petition.



2. The facts in nutshell necessary for the consideration of the ~~lis~~ on hand are that, the writ petitioner is a permanent resident of Kamayakoundanpatti and he passed 8th Standard and appeared in S.S.L.C.Examination during the year 1998. He registered his name at Theni District Employment Office on 09.01.1998. The writ petitioner claims that he is a differently abled person. However, he is fit to perform the duties.

3. The grievance of the writ petitioner is that he is waiting for employment for the past thirteen years with the fond hope that his name will be sponsored by the Employment Exchange. However, the writ petitioner did not receive any such call letter for interview. He came to understand that the fourth respondent, who is a junior most person in the registration seniority in Theni Employment Exchange and registered his name on 25.01.2000, was called for an interview for appointment to the post of Night Watchman in the second respondent / Panchayat Union. Subsequently, the fourth respondent was appointed to the post of Night Watchman. Thus, the writ petitioner is constrained to move the present writ petition.

4. The writ petitioner claims that the third respondent / Executive Officer is the uncle of the fourth respondent and the facts revealed that the appointment was made on extraneous consideration. The writ petitioner contended that the appointment of the fourth respondent was made based on favouritism and nepotism and the authorities competent have involved in corrupt activities and made the selection process as an empty formality.

5. The learned counsel for the writ petitioner states that the entire process of selection was a fraud on the rules and statutes. Thus, the authorities conducted the process of selection in violation of the established procedures. Merit assessments were not made and hence, the appointment of the fourth respondent is to be scraped.

6. In view of the legal importance involved in the matter of appointing candidates to the Group-IV Services and Last Grade Services, this Court is inclined to *suo motu* implead the Chief Secretary, Government of Tamil Nadu, Chennai-600 009 as a party respondent for the purpose of implementing this order uniformly. Accordingly, the Chief Secretary, Government of Tamil Nadu, Chennai-600 009 is impleaded as fifth respondent in the present writ petition and Mr.K.Mu.Muthu, learned Additional Government Pleader, appearing for the first respondent, accepted notice for the newly impleaded fifth respondent.

7. This Court is of the considered opinion that all appointments are to be made under the constitutional schemes and strictly in accordance with the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate.



The authorities competent are bound to follow the rules scrupulously.

8. In the event of any malpractice, illegality, irregularity and corrupt activity in the process of selection, undoubtedly, the entire process of selection is to be declared as void and unconstitutional. Following the established principles in the matter of selection is of paramount importance. The merit assessment is to be made by properly awarding marks on different heads and such an assessment can never be at the whims and fancies of the competent authorities. There must be a logic behind in awarding the marks even in the process of interview. Any illogical method for the purpose of selection is to be declared as unconstitutional. This apart, interview marks should not exceed 15% of the total marks to be awarded for the purpose of selection. Thus, the logical approach and proper merit assessment on the basis of the criterias required for selection and appointment to a particular post are the vital components required under law. In the event of any such lapse or lacuna, the Courts should not hesitate in quashing the entire process of selection.

9. On examination of the present case on hand, it is seen that though the writ petitioner states that the fourth respondent was appointed on account of malpractice and corrupt activities, the statement has not been substantiated nor established so as to quash the appointment made in the year 2011, more specifically, now after a length of about eight years.

10. Though this Court is not inclined to quash the appointment of the fourth respondent on the factual ground that the fourth respondent is already continuing in service for more than eight years and there is no sufficient evidence to quash the entire process of selection, there is a concrete doubt in the mind of this Court that these kind of appointments are made without following the established procedures to be followed for the purpose of selection and appointment. Appointments to the Group-IV Services are made on favouritism and nepotism. Persons of choice are being appointed by these authorities. The Group-IV Services are also undoubtedly important for the effective public administration. Thus, the selection for Group-IV Services is also to be conducted in consonance with the rules and by following the established principles for selection. It is painful to pen down that there are large scale allegations in respect of such appointments made to the post of Group-IV Services. Such large scale allegations are in the public domain. People are of the opinion that the posts, like, Night Watchman, Office Assistant, Sweeper, Gardener, Scavenger etc., are filled up mostly on favouritism and nepotism. Corrupt activities are also cannot be ruled out. Thus, it is just and necessary to direct the authorities to follow the rules scrupulously and conduct the interview and the selection process in a full proof method so as to ensure that the best candidates are selected and appointed for effective and efficient public



administration.

11. The entire appointments made only based on the oral interview, in the opinion of this Court, is unconstitutional. Scope for favouritism, nepotism and corrupt activities are wide open. Any system should not pave way for such loopholes for the authorities. Checks and balances are the effective elements in our constitutional system. Thus, any system or procedures to be followed, which paves way for nepotism, favouritism and corrupt activities, are to be immediately looked into and all suitable actions are to be initiated to fill-up the gap and ensure that the selections are made under the constitutional schemes and the meritorious candidates are selected and appointed by providing equal opportunity enshrined under the Constitution of India.

12. The present practice prevailing mostly across the State of Tamil Nadu is that the interview marks alone are being taken into account for the purpose of appointing candidates, more specifically, for the posts of Village Assistant, Noon Meal Organizer, Night Watchman, Sweeper, Office Assistant, Scavenger etc. Such a procedure deserves a drastic change in order to correct the ill-motives of the Executives and to prevent them from indulging in corrupt activities and the officials, who all are yielding and succumbing to the illegal requests and influences of the higher officials as well as the local politicians. All appointments to the Group-IV Services and other Last Grade Services are to be made only by conducting written examinations. The interview marks to be awarded by the competent Committee should not exceed 15% of the total marks fixed for selection. 85% of the marks to be divided for written examinations and other eligible criterias prescribed under the relevant recruitment rules in force. Accordingly, a merit list is to be prepared and consequently, selection and appointment is to be made in accordance with the merit and by following the rule of reservation.

13. This Court is witnessing innumerable number of litigations challenging the appointments to these Last Grade Services. All these writ petitions are filed mostly on the grounds of favouritism, nepotism, corrupt activities and non-adherence of the established procedures for selection; no written examinations are conducted; appointments are made purely on interview basis; merit assessments are either not recorded or improperly recorded; the files are not scrutinized by the District Collector concerned and award of marks are not checked. Thus, these appointments are undoubtedly corrupt appointments made in order to paralyze the efficiency level in the public administration.

14. This Court is able to visualize the situation, if a public servant is appointed based on favouritism, nepotism and corrupt activities, how the people of this great Nation can expect integrity and honesty from such a public servant; if a public servant is appointed by way of influence or with the help of



politicians, how the people can expect that such a person will maintain self-respect in the Society and serve for the people of this great Nation. Thus, the selection and appointment goes to the very root of the matter. It is not as if providing few appointments at the whims and fancies of the Executives or with the influence of some politicians or other higher officials. It is the question of maintaining the institutional integrity and honesty and more specifically to make our nation magnificent through effective and efficient public administration. Ineffective public administration can never produce greater India. Ineffective administration can never provide better services to the public at large. Inefficient administration is undoubtedly a black mark for the development of our great Nation. Any developing nation would concentrate on the efficient public administration at the first instance. Non-corrupt public administration is the greater solution for the development of our great Nation. Thus, the public servants are made to feel and maintain their self-respect at the first instance and perform their duties and responsibilities with full devotion and with the national spirit as well as to do services to the people of this great Nation. Assessment is to be made in this perspective. Merit assessment is to be made in all angles. The Executives should find out, whether the selected persons for appointments to a particular post is capable of upholding the nationalism as well as the institutional integrity. If such assessments are not made, undoubtedly, the development process will be slowed down. Thus, improving the system of selection and appointment to the public posts is not only of paramount importance, but a constitutional importance. Constitutional philosophy and ethos can be achieved only if efficient public administration is blossomed.

15. Transparency is also an elementary principle to be followed for the purpose of free and fair selection to the public posts. Transparency will minimise the possibility of favouritism, nepotism and corrupt activities. Thus, the transparency coupled with the full proof system and established procedures alone can make the system of appointment in a better manner and therefore, the State should ensure that all such efforts are taken to regulate the appointments to the post of Group-IV Services and Last Grade Services and further issue suitable orders and guidelines to all the competent authorities, who all are empowered to appoint the candidates for Group-IV Services and Last Grade Services.

16. The District Collectors in this regard are playing a pivotal role. They are the authority competent in their respective Districts and therefore, they are duty bound to ensure that such appointments to Group-IV Services and Last Grade Services are made with some sense of constitutionality and to do justice to the unemployed poor and downtrodden citizen of this great Nation, who all are longing to secure public employment through open competitive process as well as waiting with a fond hope that they can secure public appointments on merits in this country.



17. In view of the observations made above, this Court is inclined to pass the following orders:

- i. The relief as such sought for in the present writ petition stands rejected.
- ii. The Chief Secretary to Government / fifth respondent is directed to issue instructions / guidelines / orders to conduct the process of selection to the Last Grade posts, namely, Sweeper, Gardener, Scavenger, Village Assistant, Noon Meal Organizer, Assistant Cook, Office Assistant etc., by conducting written examinations and providing marks to the other eligibility criterias in consonance with the rules in force. It is made clear that the interview marks to be awarded by the Selection Committee must be restricted to 15% of the total marks fixed for selection to the Last Grade posts, as per the established legal principles.
- iii. The Chief Secretary to Government / fifth respondent is directed to issue consolidated instructions regarding the selection and appointments to the post of last grade servants to all the Government Departments across the State of Tamil Nadu and implement the established selection process uniformly in order to streamline the appointments under the constitutional schemes.

18. Accordingly, the writ petition stands disposed of. No costs.

19. Registry is directed to list the matter for reporting compliance on 24.07.2019.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

ns / krk

To:

1.The District Collector,
Collectorate,
Theni District.



2. The Chief Secretary,
Government of Tamilnadu,
Chennai-600 009.

WEB COPY

copy to

The Section Officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.T.S.MOHAMED MOHIDHEEN, Advocate Sr. No.67518
+1CC TO MR.V.SASI KUMAR, Advocate Sr. No.67975
+1CC TO MR.G.KARNAN, Advocate Sr. No.68006
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 67633

W.P. (MD) No.7188 of 2011
07.06.2019

MA (CO)
TR (24.06.2019) 7P 8C