



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.19924 of 2013

and

M.P. (MD) No.1 of 2013

V.Parvathi

... Petitioner

-Vs-

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai-4.
2. The District Collector,
Tirunelveli District,
Tirunelveli.
3. The Revenue Divisional Officer,
(Sub-Collector),
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.
4. The Tahsildar,
Ambasamudram Taluk,
Ambasamudram, Tirunelveli District.

5.Chitra

6.R.Pitchammal

7.Subbulakshmi

...Respondents

(R6 and R7 (proposed respondents) impleaded vide Court order dated 04.06.2019 in W.M.P. (MD) No.5592 of 2019).

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 records pertaining to the appointment order issued by the 4th respondent through its proceeding No.Na.Ka.A7/1453/2013 dated 09.10.2013 and quash the same and to direct the respondents to appoint the petitioner for the post of Village Assistant (Thalayari) Post at Ambasamudram Taluk, Tirunelveli District as per the petitioner's employment seniority Number in W17014/2006, Professional Code No.X 02.10 dated 14.08.2006 and to regularise the petitioner's service from the date of appointment of the petitioner's junior in the said



post in accordance with law.

For Petitioner : Mr.S.Balakarthick
for M/s.K.J.Associates
For R1 to R4 : Mr.S.Dhayalan,
Government Advocate.
For R5 : Mr.M.S.Jeyakarthick
For R6 and R7 : No Appearance

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ORDER

The order of appointment, appointing the 6th respondent to the post of Village Assistant (Thalayari) at Ambasamudram Taluk, Tirunelveli District is under challenge in the present Writ Petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner is a qualified candidate for appointment to the post of Village Assistant (Thalayari) as per the rules in force. The writ petitioner states that she has completed S.S.L.C., course and belongs to scheduled caste. The writ petitioner registered her name in the District Employment Office and accordingly, she is waiting for an employment opportunity. The name of the writ petitioner was sponsored for appointment to the post of Village Assistant (Thalayari) in Kallidaikuruchi Village, Ambasamudram Taluk, Tirunelveli District. The writ petitioner participated in the process of interview conducted by the competent authority. Interview was called for and the fourth respondent conducted the process of certificate verification also. Totally, 45 applications were received, out of which, 33 members participated in the process of interview.

3.The learned counsel appearing for the writ petitioner states that there was no proper selection and the 6th respondent, namely, R.Pitchammal was appointed as Village Assistant (Thalayari) improperly. At the outset, it is contended that the selection was conducted and the 6th respondent / R.Pitchammal was appointed on extraneous conditions and without following the established procedures for selection. Thus, the appointment of the 6th respondent is to be scrapped.

4.The learned Government Advocate appearing on behalf of the official respondents 1 to 4 opposed the contentions by citing that pursuant to the letter of the competent authority, the District Employment Office sponsored the list of names for selection. The process of selection was conducted and 33 candidates participated in the interview, which was held on 04.10.2013 and the 6th respondent was selected, as she was found amongst all the candidates, who participated in the selection. Thus, an order of appointment was issued to the 6th respondent and there was no irregularity or illegality.



5. Considering the facts and circumstances, this Court is of the considered opinion that the process of selection conducted by the competent authority is undoubtedly not in accordance with the established principles to be adopted for selection. Any selection for appointment to the post must be transparent and it must have the element of trust. It is pertinent to note that on a plain observation of the selection process, one can understand whether there is any possibility, corrupt activities or favouritism or nepotism. Any selection process for appointment to the public post must be conducted by following the established principles, if at all, there were no specified procedures in the rules.

6. The learned Government Advocate submitted a copy of the Tamil Nadu Services Manual, which states about the appointment to the post of Village Assistant in the State of Tamil Nadu. Section 53(2) of the Tamil Nadu Services Manual for Village Assistant (hereinafter referred to 'the Manual') states that the appointment to the post shall be made by direct recruitment through the employment exchange concerned. Section 53(3) of the Manual, states that the appointing authority for the post shall be the Taluk Tahsildar having jurisdiction over the village concerned. Section 53(4) of the Manual, stipulates that the rule of reservation for appointment as laid down in Rule 22 of the General Rules for the Tamil Nadu State and Subordinate Services, shall apply for appointment to the post by direct recruitment treating each taluk as a separate unit. The age limit is fixed in Section 53(5) of the Manual. Section 53(6) of the Manual, denotes educational qualification, which is important for the purpose of present case, which is extracted hereunder:-

"6. Educational qualification- No person shall be eligible for appointment to the post unless he has passed V Standard in a recognised school namely, a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Tamil Nadu Educational Rules with sufficient knowledge to read and write Tamil."

7. Section 53(7) of the Manual, speaks about other qualifications, which is extracted hereunder:-

"7. Other qualifications- (a) No person shall be eligible for appointment to the post unless-

(i) he is able to ride a bicycle

(ii) he satisfies the appointing authority that the character and antecedents are such as to qualify him for the post; and

(iii) he produces a certificate regarding his physical fitness for the post in the Form prescribed under Rule 10 of the Fundamental Rules.



(b) No person shall be eligible for appointment to the post if he has more than one spouse living or if such a person has entered into or contracted a marriage with a person having a spouse living.

(c) The person appointed to the post shall belong to the village to which he is appointed or the adjoining village if no suitable candidate is available from that village."

With reference to Section 53(6) of the Manual, it is stated that the candidate must have sufficient knowledge to read and write "Tamil".

8. In this context, this Court has to examine whether the process of selection is proper or improper. Rule stipulates sufficient knowledge to read and write Tamil. If at all the competent authority has to assess the eligibility of a particular candidate, there must be a test, which is to be conducted properly, so that the assessment can be made in respect of the level of knowledge both in reading and writing Tamil language. Without conducting any such written test, no authority can come to the conclusion that a particular person selected is meritorious than that of the other candidates, who participated in the selection. After all the selection is a comparative method, which is to be followed for the purpose of selecting a particular candidate. All the candidates may have the knowledge to read and write Tamil. It is improper, when the participated candidates, nearly, 33 candidates, in the present case may have the knowledge to read and write Tamil. In those circumstances, on what basis the authority competent came to know that the 6th respondent alone is meritorious than other 32 candidates, who participated in the selection.

9. The learned Government Advocate states that 9 persons were selected. Even in that case, how 9 candidates were selected as meritorious amongst other candidates, who participated in the process of selection.

10. Admittedly, no written test had been conducted by the competent authority, no assessment was made in respect of the knowledge of the candidates to read and write Tamil. Such an assessment without proper evaluation is permitted to be conducted by the competent authorities, the same will lead to corrupt activities and in most of the circumstances, such appointments are made on favouritism and nepotism and with the influence of the persons in power. The Government as a model employer can never be allowed the public appointments to be made in this way. The Government must ensure that such appointments are made by <https://hcservices.echips.gov.in/hcservice/> opportunity to all the eligible candidates. The candidates must be given an opportunity to express their merits through the written examination.



11. Take as an example in the present case, rules stipulate sufficient knowledge of reading and writing Tamil. Established procedures would be that common paragraphs both for reading test and writing test can be prepared by an expert, having proficiency in Tamil language and the said paragraphs can be given to each candidate so as to ask them to read as well as to write passages and through the answer sheets, one can make an assessment how many mistakes he or she committed, while reading the passage. This is how a transparent procedures are to be established. If a written examination is conducted, then the marks are to be awarded for each mistake and if the marks are awarded, then, the procedure is not only transparent, but meritorious candidate will get an opportunity for appointment to the post of Village Assistant.

12. Endeavour of the Government must be to ensure that the public servants are efficient and knowledgeable, so as to provide effective services to the public at large. That being the aim of the public services, the Government should ensure that such appointments are made only by conducting proper selection. Contrarily, the practical happenings in the field level is that such appointments are made at the whims and fancies of the authorities competent, mostly on favouritism or nepotism and with the influence of some men in power or other influential persons in the locality. If these aspects are allowed to be continued, public trust on the department is damaged. Thus, the authorities competent must ensure that all selections are made under a transparent procedure and by following the established methods of selection.

13. In the present case on hand, the selection admittedly, was not conducted in accordance with the established procedures. No written examination was conducted, and only based on the oral interview, persons were selected. No marks are awarded properly. Marks awarded at the whims and fancies of the authorities, who conducted interview. Thus, the selection is undoubtedly unconstitutional and in violation of the established principles to be followed for the purpose of conducting selection.

14. However, taking note of the fact that the appointed candidate is working for the past about 6 ½ years and the process of selection for the post of Village Assistant (Thalayari) across the State of Tamil Nadu is conducted in this way, this Court is not inclined to quash the appointment of the 6th respondent, who is working for the past about 6 ½ years in the post. Further, in the interest of future appointments, the following directions are issued:-

"1. The respondents 1 to 4 are directed to issue instructions / circulars to the competent authorities to ensure that written examinations are conducted for selection to the post of Village Assistant



3. The Revenue Divisional Officer,
(Sub-Collector),
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.

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4. The Tahsildar,
Ambasamudram Taluk,
Ambasamudram, Tirunelveli District.

+1CC TO M/S. SPECIAL GOVERNMENT PLEADER , SR.NO.69246

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14.06.2019

BUC (28/06/2019) 7P/6C