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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.20592 of 2010

and

M.P.No.1 of 2010

S.Lakshmi

..Petitioner

Vs

1. The District Collector,
Vellore, Vellore District.

2.The Executive Officer,
Alangayam Selection Grade
Town Panchayat, Alangayam
Vaniyambadi Taluk,
Vellore District.

3.Tmt.S.Ravanammal.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order of the second Respondent dated 27.01.2010 in Proceedings No.351/2008 and letter dated 02.03.2010 of the 1st respondent, quash the same and consequently direct the second respondent to appoint the petitioner in Alangayam Selection Grade Town Panchayat as Sweeper.

For Petitioner : Mr.V.Ajoy Khose
For Respondents : Mr.N.Inbanathan, AGP for R1
: Mr.V.Jayaprakash Narayanan,
AGP for R2
: No Appearance for R3.

ORDER

The petitioner has challenged the appointment of the 3rd respondent as Sweeper in the Alangayam, Town Panchayat, falling under the jurisdiction of the 1st respondent, the District Collector, Vellore District.



2. It is the case of the petitioner that she had registered herself with the employment exchange in the year 1988. Due to the general ban in G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department dated 29.11.2001, no recruitment were made, except for essential services of Teachers and Doctors and Police Constabulary. The said G.O.Ms.No.212 of Personnel and Administrative Reforms (P) Department dated 29.11.2001 was revoked by the GO.Ms.No.14 dated 07.02.2006.

3. The petitioner was sponsored by employment exchange and short listed along with 4 others for being considered to the post of Sweeper pursuant to a notice dated 07.12.2009 of District Employment Officer, Vellore. It appears that there was only one vacancy and among the people who attended the interview, the 3rd respondent was short listed, though the she had enrolled herself with the employment exchange almost 6 years after the petitioner. The reasons given for not considering the petitioner for being employed by Town Panchayat, appears to be that the 3rd respondent was aged about 37 years while the petitioner was aged 41 years and 8 months. The other reason has attributed in the impugned communication is G.O.Ms.NO.98, dated 17.07.2006, which reads as follows:

"ORDER

The Government in their orders first read above have issued orders banning the filling up of vacant posts in the State and Subordinate Services by direct recruitment except in respect of certain categories of posts considered essential, such as Teachers, Doctors and Police Constabulary. In their orders second read above, the above ban on direct recruitment was lifted with immediate effect.

2.His Excellency the Governor of Tamil Nadu, in his address in the Tamil Nadu Legislative Assemble on 24.05.2006 among others, announced that the upper age limit for entering into Government Service will be relaxed by five years to enable the unemployed youth affected by the ban order of recruitment to apply for Government jobs.

3.The Government after careful consideration accordingly direct that the upper age limit for entering into Government Service shall be relaxed by five years, to enable the unemployed youth affected by the ban order on recruitment to apply for Government jobs.

4.Necessary arrangements to the General Rules for the Tamil Nadu State and Subordinate Services will be issued separately."



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4. The 1st and 2nd respondents have justified the appointment of the 3rd respondent even though in Circular Na.Ka.No.88549/98/J-3, dated 17.02.1999, of the Commissioner Municipal Administration, no any age criteria was stipulated for selecting a person for the post of sweeper.

5. Challenging the appointment of the 3rd respondent, a reference was made to Circular Na.Ka.No.88549/98/J-3, dated 17.02.1999, to state that no age was prescribed for appointing a person as a Sweeper.

6. Only defence taken in the Counter is that the appointment was not governed by the Recruitment Rules. It is submitted that the petitioner has no right to claim appointment to the post, merely because she was short listed to be interviewed. The learned Additional Government Pleaders therefore submit that there is no irregularity or illegality committed while appointing the 3rd respondent.

7. I have considered the arguments of the learned counsel for the petitioner and the learned Additional Government Pleaders appearing for the 1st and 2nd respondent and perused the material available on record.

8. It is noted that there is no age criteria in the notification when the appointment was made. In fact, in the Circular Na.Ka.No.88549/98/J-3, dated 17.02.1999, it was clarified that there was no age limit prescribed for sweepers. It is further noted that G.O.Ms.No.98 dated 17.07.2006 has merely relaxed the age criteria, upto a period of five years on the date of the interview in view of ban under G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001 and subsequent revocation vide G.O.Ms.No.14, Personnel and Administrative Reforms (P) Department, dated 07.02.2006.

9. The petitioner was aged 41 years and 8 months while the 3rd respondent was aged 37 years. Both have waited for a call for employment exchange. Between the two, the petitioner was senior. G.O.Ms.No.98, dated 17.07.2006 is of no relevance in view of Circular Na.Ka.No.88549/98/J-3, dated 17.02.1999. The post of sweeper does not require any technical experience. Therefore, there is no justification in sating that the petitioner lacked experience. The petitioner should be appointed. Since the 3rd respondent has already been appointed, it would unfair to declare her appointment illegal at this distant point of time.

10. I therefore direct the 2nd respondent to appoint the petitioner as a sweeper against the available vacancy within a period of four weeks from the date of receipt of a copy of this



order. The petitioner shall be allowed to continue in service till the date of her superannuation subject to the petitioner qualifying other criteria.

11. This writ petition is disposed with the above observations. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Vellore, Vellore District.

2.The Executive Officer,
Alangayam Selection Grade Town Panchayat,
Alangayam,Vaniyambadi Taluk, Vellore District.

+1cc to Mr.V.Ajoy Khose, Advocate Sr.23658

+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.24361

+1cc to the Government Pleader Sr.24092

WP.No.20592 of 2010
and MP.NO.1/2010

nr[co]
srg 14/07/2020