

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.20574 of 2014

K.Radha

...

Petitioner

- Vs -

1. Personal Assistant to District collector, (Development)
District Collectorate,
Dharmapuri.

2.The Assistant Director,
(Panchayat)
Dharmapuri,
Dharmapuri District.

3.The Block Development Officer,
Pappireddipatti
Dharmapuri District.

4.The President
Athikarapatti Panchayat
Pappireddipatti Taluk
Dharmapuri District.

5.Mr.S.Rajiv Gandhi

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent dated 30.06.2014 under his proceedings Na.Ka.No.19499/2013/M.1 and quash the same and consequently direct the 1st respondent to appoint the petitioner as Village Secretary in the Athikarappaty

Village Panchayat, Athikarappatti post, Pappireddipatti Taluka, Dharmapuri District

For Petitioner : M/S.G.Prabhakar

For Respondents: Mr.S.Thangavel Spl.G.P.for RR1 to 3
: M/s.P.J.George for R5

ORDER

The writ petition has been filed by the petitioner, to call for the records of the 1st respondent dated 30.06.2014 under his proceedings Na.Ka.No.19499/2013/M.1 and quash the same and consequently direct the 1st respondent to appoint the petitioner as Village Secretary in the Athikarappaty Village Panchayat, Athikarappatti post, Pappireddipatti Taluka, Dharmapuri District.

2.The case of the petitioner is that she belongs to MBC community and a disabled person and an aspirant of Government Job. She has completed her SSLC, HSC and completed her Diploma in Teacher Training in the year 2000, 2002 and 2008 respectively. She has registered and renewed her name under the disabled category in the Employment Exchange from the year 2000 and also in the disability department. While so, the 2nd respondent called for the post of Village Panchayat Secretary in the month of May 2014 and it was informed that the above said post will be filled up based on the Employment exchange seniority following communal/woman reservation. Accordingly being an eligible candidate, the petitioner made application to the post along with all necessary particulars to the 2nd respondent as well as the competent authority. Thereafter she was called for an interview on 29.05.2014 and she was directed by the authorities to produce the originals of school certificate, community certificate, transfer certificate, family card and residence certificate and original employment exchange card and she has also produced the same before the concerned authorities and she performed well in the interview. She also requested the authorities to inform her about the result of the interview; the authorities also assured her that the results will be announced shortly. In spite of her waiting for more than a month for results the results to be published in notice board, since nothing was forthcoming, she made representations to the District Collector and submitted her claim to the District Collector on the redressal day. In spite of the same, there was no response. However, she came to know that the 2nd respondent has appointed one Mr.Rajiv Gandhi as Village Secretary, against the provisions of the service rules. Challenging the said illegal appointment, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that it is an admitted fact that the petitioner is possessed of higher education qualification than the 5th respondent. He further submitted that in the interview she has also performed well and scored more marks than the 5th respondent. The petitioner is the a more meritorious candidate than the 5th respondent, in the interview conducted by the 1st respondent and being a woman candidate and a physically challenged person, she is entitled for being appointed in the post of Village Panchayat Secretary under the priority category. He further submitted that the said post falls under MBC (General Turn) in priority category, however the 2nd respondent without following the procedure, made appointment of the 5th respondent under the general turn in the non priority category, which is unsustainable. Further, the counter filed by the 3rd respondent reveals that the petitioner has got more marks than the 5th respondent. Equally, the employment exchange seniority of the petitioner is above that of the 5th respondent. Hence considering all aspects, the petitioner is placed on a higher pedestal than the 5th respondent and, therefore, she ought to have been appointed and the appointment of the 5th respondent, is nothing but colourable exercise of power to the detriment of the petitioner, which requires interference at the hands of this Court.

4. Learned Special Government Pleader appearing for the respondents 1 and 2, referred the relevant paragraphs in counter affidavit, submitted that following the instructions contained in G.O..Ms.No.142, P&AR Dept., dated 14.10.09, 200 point roster was followed and the post of Village Panchayat Secretary in Athikarapatti Panchayat, falling under MBC (General turn) in priority category was filled up. Pursuant to the list provided by the employment exchange in the ratio of 1:5, persons were called for interview and the 5th respondent having performed well than the other persons and secured a total of 86.5 marks, he was selected for appointment by the Appointment committee consisting of the respondents 1 to 3 and appointed as Village Panchayat Secretary in Athikarapatti Panchayat vide the order of the 1st respondent dated 30.06.2014 and he has joined duty on 01.07.2014 itself. Therefore the petitioner stand that she is the only women and disabled person who attended interview and therefore she has to be given preference is not factually and legally maintainable. Further, the 5th respondent having scored more marks than the petitioner, the candidature of the petitioner was rejected. Accordingly he prays for dismiss the petition.

5. Learned counsel appearing for the 5th respondent, while adopted the submissions of the learned Special Government Pleader, further submitted that the selection process was conducted in a transparent manner and selection was based on

merit and ability on the basis of the 200 point roster system and, accordingly, the 5th respondent was selected, which selection is in accordance with the rules and does not call for any interference.

6. This Court heard the rival submissions made by learned counsel on either side and also perused the materials available on record.

7. The factum of the selection process is not in dispute and so also the participation of the petitioner and the 5th respondent. While the petitioner had registered her name in the employment exchange in the year 1999, whereas the 5th respondent has registered his name with the employment exchange only on 17.12.2013. In this background, it is curious to note as to how the employment exchange could have forwarded the name of the 5th respondent for being considered for appointment to a post, which fell vacant on 10.11.2013. The 5th respondent having registered his name in the employment exchange only on 17.12.2013, he does not fall within the zone of consideration for the post which fell vacant even prior to his registration for which names were called for from the employment exchange. For the sake of argument, even if it is to be accepted that the names were called for from the employment exchange subsequent to the registration of the name of the petitioner, this Court is at a loss to understand as to the reason for which the seniority has been overlooked between the petitioner and the 5th respondent. Further, this Court is also at a loss to understand as to the persons, whose name stood registered between 1999 and 2013, whose names were sponsored, as for the one post, only the names of five persons in the ratio of 1:5 was called for. From the above, it is evident that while the petitioner was fully eligible for consideration of her candidature for the said post, the 5th respondent does not fall within the zone of consideration for consideration for the said post. In the above scenario, this Court is of the considered view that all is not well in the selection process, however, this Court is not amplifying anything further on the selection process.

8. Further, one other glaring fact, which requires consideration is the fact that the petitioner is a physically challenged person, which has not been taken into consideration by the selection committee while recommending names for appointment. Service rules provide for reservation for physically challenged person and the petitioner being a physically challenged person, which aspect is not in dispute, she ought to have been given priority over the other persons on the basis of reservation as well.

9. It further transpires from the counter affidavit of the respondents that due to non availability of priority candidates, the employment exchange sponsored non priority candidates. In this regard, it is to be pointed out that the petitioner, being a woman and also a physically challenged person, definitely falls within the category of priority candidate and the post being earmarked as a priority post, the petitioner having fulfilled all the necessary parameters to have her name considered for being recommended, the respondents ought to have selected and appointed the petitioner over the 5th respondent under the priority category. However, for reasons best known, the petitioner had been sidelined and the 5th respondent, who does not fall within the priority category, and further does not merit consideration on the ground that he was not within the zone of consideration when the post fell vacant, the selection of the 5th respondent smacks of mala fides and arbitrariness and the said selection is wholly unsustainable.

10. For all the reasons aforesaid, this Court is of the considered view that all is not well with the selection process resulting in the selection of the 5th respondent, which, therefore, deserves to be quashed. Accordingly, the impugned appointment of the 5th respondent, passed by the 2nd respondent, vide the order dated 30.06.2014 is hereby quashed and this Court directs the 1st respondent to appoint the petitioner in the said post forthwith, if otherwise her candidature is in order and she stands above all the other candidates, whose names were considered in the abovesaid selection process.

11. This writ petition is allowed with the aforesaid observations and directions. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1. Personal Assistant to District collector, (Development)

District Collectorate,

Dharmapuri.

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2.The Assistant Director,
(Panchayat)
Dharmapuri,
dharmapuri District.

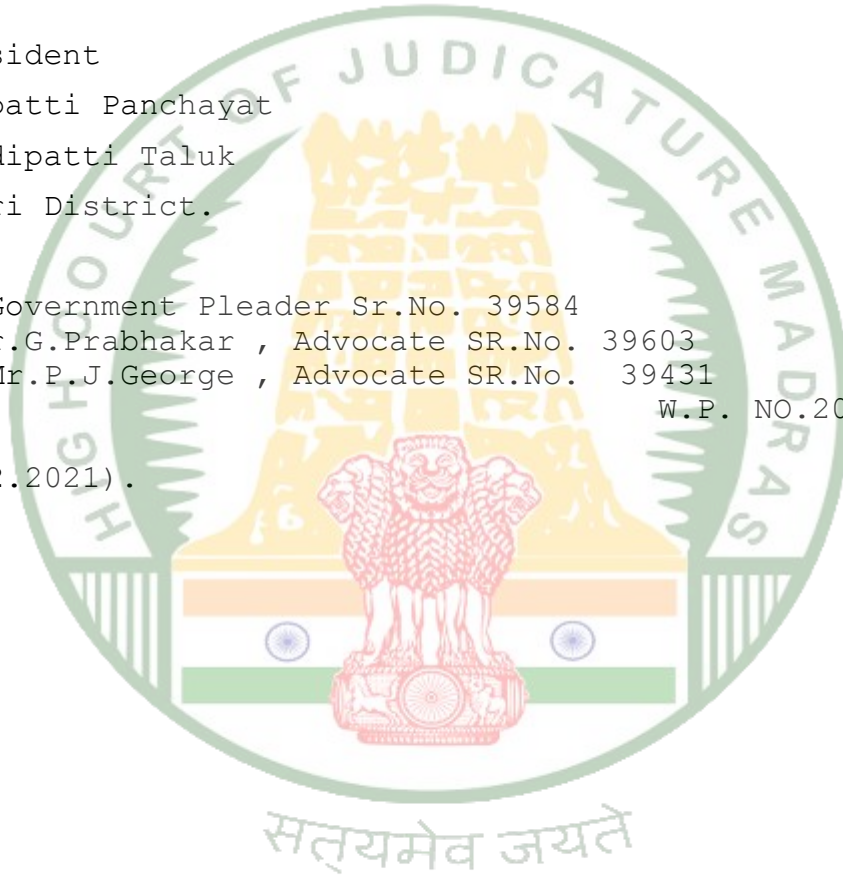
3.The Block Development Officer,
Pappireddipatti
Dharmapuri District.

4.The President
Athikarapatti Panchayat
Pappireddipatti Taluk
Dharmapuri District.

+1 cc to Government Pleader Sr.No. 39584
+1cc to Mr.G.Prabhakar , Advocate SR.No. 39603
+2ccs to Mr.P.J.George , Advocate SR.No. 39431

W.P. NO.20574 of 2014

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A.SK(22.02.2021).



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