

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.24715 of 2019

and

WMP No.24378 of 2019

A.Sarubutheen

... Petitioner

Vs.

1. The District Collector,
Collectorate Buildings,
Coimbatore.

2. The Special Officer cum Block
Development Officer,
Servakaranpalayam Panchayat,
Pollachi North Union,
Pollachi Taluk,
Coimbatore District.

3. A.Asif Ali

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 of the second respondent made in proceedings in Na.Ka.No.513/2018/A2 dated 08/03/2019 and quash the same and consequently direct the second respondent to consider the petitioner for appointment to the post of Panchayat Secretary.

For Petitioner : Mr.N.Umapathi

For Respondents: Mr.V.Prabhu

Government Advocate for R1

Mrs.R.Janaki

Addl.Government Pleader for R2

No Appearance for R3

O R D E R

This Writ Petition has been filed challenging the proceedings of the second respondent dated 08.03.2019, wherein the third respondent has been selected to the post of Panchayat Secretary and consequently to consider the appointment of the petitioner to the said post.

2. The case of the petitioner is that the first respondent had called for application for appointment to the post of Panchayat Secretary at Servakaranpalayam Panchayat. The petitioner had submitted himself as a candidate and he also attended the interview held on 22.02.2019. In the said selection, the third respondent was selected to the post of Panchayat Secretary and aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Mr.N.Umapathi, learned counsel appearing on behalf of the petitioner submitted that the father of the third respondent belongs to the Ruling Party and he had used his political influence and has managed his son, viz. the third respondent to get selected to the post of Panchayat Secretary. The learned counsel further submitted that the third respondent has not registered his name in the Employment Exchange and he has not obtained the Fitness Certificate from the Competent Doctor at the time of joining and the third respondent is a Degree holder which also was concealed in the application. The learned counsel further submitted that initially a selection list was published online and as per the said list, one Sayeed Thamegir Rahman was shown to be a selected candidate. However, this was taken away from the website and the name of the third respondent was thereafter shown as the selected candidate. The learned counsel concluded his arguments by submitting that in case of public employment, the selection must be done only in accordance with the Notification and Rules and it should never be permitted to be done for political consideration.

4. Per contra, Mrs.R.Janaki, learned Additional Government Pleader appearing on behalf of the second respondent submitted that the third respondent is a permanent resident of Servakaranpalayam Panchayat and therefore, he was entitled to participate in the selection. The learned counsel further submitted that the over qualification of the third respondent cannot be construed as a disqualification and therefore, there was nothing wrong in considering the selection of the third respondent to the post of Panchayat Secretary. The learned counsel further submitted that the Selection Committee consisted of three Members and they finalised and short listed the eligible candidates and they ultimately found the third respondent to be more competent than all the other candidates

and therefore, he was appointed as a Panchayat Secretary. The learned counsel further submitted that the third respondent has been selected purely on a temporary basis and the appointment was made based on the norms fixed in G.O.Ms.No.75, dated 09.03.2019. The learned counsel concluded her arguments by submitting that there are absolutely no grounds to interfere with the selection of the third respondent. The second respondent has also filed a counter affidavit in the above Writ Petition.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The petitioner had participated in the selection under the category of Backward Class Muslim for the post of Panchayat Secretary at Servakaranpalayam Panchayat. According to the notification issued by the first respondent, the qualification prescribed is that the candidate must have completed 18 years and the age should not exceed 35 years and he must possess the Educational qualification of 10th pass. The other important criteria that has been fixed is that the candidate must be a resident of the concerned Panchayat.

7. One of the most important ground that has been raised by the petitioner is that the father of the third respondent belongs to the Ruling Party and he was elected as an Executive Committee Member of the Party at Pollachi Taluk and he had influenced and got his son selected to the post of Panchayat Secretary, in spite of other eligible candidates available for selection to the said post. The petitioner has specifically raised at ground 'E' that one Sayeed Thamegir Rahman, was originally selected for the post and it was also published online and thereafter, the same was taken away from the website and the third respondent was declared to be selected subsequently. This averment made in the affidavit has not been denied by the second respondent.

8. The above averment made by the petitioner has a lot of significance in the present case, since the petitioner has attacked the selection of the third respondent mainly on the ground that he got the post through political influence. It is now a well settled position of law that an averment made in the affidavit, if it is not specifically denied, will amount to admission of the said averment. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in Hindustan Petroleum Corporation Ltd v. Darius Shapur Chenai & Others, reported in 2006 (2) LW 74, in this regard.

9. This court has gone through the records submitted by the second respondent and the petitioner has been rejected only on

the ground that he is over aged. This ground of rejection is also not sustainable, since the petitioner had not completed 35 years and therefore, he was well within the zone of consideration.

10. The manner in which the entire selection has taken place in the present case is far from satisfactory. The allegation made by the petitioner with regard to political influence exerted for the selection of the third respondent, also cannot be ruled out considering the status of the father of the third respondent. This is more so, since the candidature of the petitioner has been rejected without any basis when the petitioner had satisfied all the requirements under the Notification. A public employment cannot be undertaken in this manner and therefore, the selection of the third respondent to the post of Panchayat Secretary requires interference.

11. In view of the above discussion, this Court has no hesitation to interfere with the selection of the third respondent to the post of Panchayat Secretary and accordingly the same is set aside. The second respondent is directed to recall the candidates, who were short listed for selection including the petitioner and their candidature shall be scrutinised by the Selection Committee strictly in accordance with the Notification and thereafter, the appointment shall be made to the post of Panchayat Secretary at Servakaranpalayam Panchayat.

12. In the result, the Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jv

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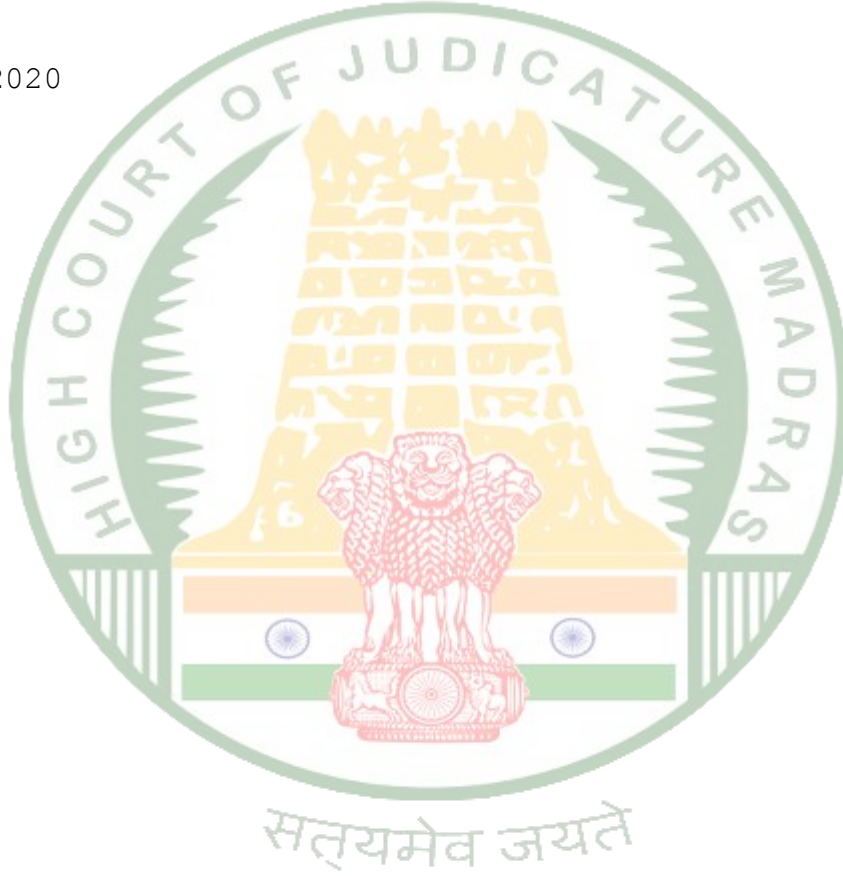
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+1cc to Mr.N.Umapathi, Advocate, S.R.No.405

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CP(CO)
CS/11/02/2020



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