

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.No.35690 of 2019
and
W.M.P.Nos.36608 & 36610 of 2019

P. Sathiyamoorthy

... Petitioner

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Commissioner/Block Development Officer,
Poondi Panchayat Union,
Thiruvallur Taluk & District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the entire records pertaining to the internet notification dated NIL issued by the second respondent herein regarding direct recruitment to the posts of Office Assistants and Night watchman under the second respondent herein and quash the same insofar as the post of Night watchman is concerned and thereby direct the respondents herein to regularize the services of the petitioner in the post of Night Watchman 08.07.2015 with all consequential monetary and service benefits.

For Petitioner : Mr. A.R. Suresh

For Respondents : Mr. P.S. Siva Shanmuga Sundaram,
Special Government Pleader

O R D E R

This writ petition has been filed challenging the notification issued by the second respondent calling for applications to fill up the post of Office Assistant and Night watchman at Poondi Panchayat Union.

2. The case of the petitioner is that he was appointed in the Poondi Panchayat Union as a Night Watchman on 07.07.2015. According to the petitioner, the Panchayat Union had issued an advertisement and called for candidates to fill up the post of

Night Watchman and the petitioner participated and he was selected and he has been working in the said post from the year 2015. The grievance of the petitioner is that he had already made a representation for regularization of his appointment and without considering the same, a fresh notification has been issued by the first respondent and the same has been put to challenge in the present writ petition.

3. The second respondent has filed a counter affidavit in this case. The relevant portion in the counter affidavit is extracted hereunder:-

"7.It is humbly submitted based on the advertisement for the recruitment the petitioner also applied for the same. The interview was also conducted and the petitioner along with other applicants attended the same on 07.07.2015. The results of the interview and the details of the selected applicants along with the panchayat union resolution were submitted to the District Collector for approval and vide this office ref no.NAKA/2338/2015/A1 dated 09.07.2015 and it was not aproved by the District Collector as there was an error in following the rules of reservation in recruitment and the whole procedure was cancelled and instructed to start the procedure afresh vide District Collector ref.no.19894/2015/A3 dated 19.10.2015 the same is known to the petitioner also. The petitioner herein has conveniently failed to disclose these facts before this Hon'ble Court. Evenafter the letter received from the District Collector to start Selection process afresh, it was not conducted because of the end of tenure of the appointment committees.

8.It is humbly submitted that in view of the cancellation of selection process the works of the respondent is being carried on by way of outsourcing by engaging M/s. Friends Charitable Trust, Thiruvallur continues till date. The petitioner herein is also working as night watchman along with 6 others in various categories. As far as the identity card in the possession of the petitioner concerned it is being disputed by the Personal Assistant to the District Collector, Vellore whose signature has been found in the petitioners identity card.

11.It is humbly submitted that the present notification has been issued in accordance with the procedure laid down by the Government, and the petitioner herein has also submitted a letter 18.11.19 to consider his case for appointment."

4. The learned counsel for the petitioner submitted that the petitioner has been working from the year 2015 onwards and he was appointed by the Panchayat Union and therefore his service must be regularized and till then, the same should not be filled up by a fresh selection process.

5. Mr. P.S. Shiva Shanmuga Sundaram, learned Special Government Pleader, appearing on behalf of the respondents apart from reiterating the stand taken in the counter affidavit filed by the second respondent, submitted that no appointment order was issued to the petitioner and his selection was subject to the ratification of the District Collector. The learned counsel submitted that the District Collector did not approve the appointment and therefore, the selection itself was cancelled on 19.10.2015. The learned counsel further submitted that the petitioner has been engaged as a Night Watchman by way of outsourcing from an organisation called as M/s. Friends Charitable Trust. The learned counsel further submitted that the second respondent is taking steps to fill up the post by calling for application and the representation made by the petitioner seeking for regularization is also pending and therefore, there are absolutely no grounds to interfere with the notification issued by the second respondent.

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

7. It is clear from the stand taken by the second respondent in the counter affidavit that the selection of the petitioner which was subject to the ratification/approval of the District Collector, was rejected by the District Collector in the year 2015 itself on the ground that the selection had taken place without following the rules of reservation. The petitioner has thereafter being engaged as a Night Watchman, through outsourcing and the same is evident from the records submitted by the Special Government Pleader which shows that the petitioner belongs to an organisation called Friends Charitable Trust and this organisation is outsourcing services of the petitioner to the Poondi Panchayat Union Office and the petitioner is being paid a consolidated amount of a sum of Rs.8,500/-.

8. It is therefore clear that the petitioner is not holding a regular post and he is only working as a Night Watchman in the Panchayat Union through an organisation which outsources its services. Therefore, the petitioner does not have any right to question the notification issued by the second respondent to fill up the post of Night Watchman in the Poondi Panchayat Union Office.

9. The petitioner has already made a representation seeking for regularization/appointment as a Night Watchman before the second respondent. It is left open to the second respondent to consider the same on its own merits. This does not stop the second respondent from proceeding further with the selection process pursuant to the issuance of the notification.

10. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Thiruvallur District,
Thiruvallur.
- 2.The Commisioner/Block Development Officer,
Poondi Panchayat Union,
Thiruvallur Taluk & District.

+1cc to Mr.A.R.Suresh, Advocate, SR.No.15606.
+1cc to Government Pleader, SR.No.15703.

W.P.No.35690 of 2019
and

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CP(CO)
CSR: 17/03/2020

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