



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.02.2020**

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P. (MD) No.10137 of 2017

and

W.M.P. (MD) Nos.7808 & 7809 of 2017

1.P.Thangapandian

... Petitioner

/vs./

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.

3.The Tahsildar,
Sivagangai Taluk,
Sivagangai.

4.P.Alagupandian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling records of the 3rd respondent i.e., the Tahsildhar, Sivagangai relating to impugned proceedings Na.Ka.No. Aa2/3680/2016 dated 19.04.2017 and quash the same and consequently direct the respondents to appoint the petitioner as Village Assistant in Kandangipatti Village as per the provisions contained in the TamilNadu Village Assistants Special Rules within a specified time frame that may be fixed by this Court.

For Petitioner: Mr.K.Rajeshwaran

For R1 to R3 : Mr.C.M.Marichellaiah Prabhu
Additional Government Pleader

For R4 : Mr.S.Srinivasa Raghavan

ORDER

The order dated 19.04.2017 appointing the fourth respondent as Village Assistant is put under challenge in the present



writ petition.

2.The learned counsel appearing for the petitioner has predominantly raised the grounds that the petitioner herein does not belong to the village of Kandangipatti and therefore, the appointment of the fourth respondent is invalid. The second point raised is that the notification prescribes the upper age limit of 35 years, whereas, the information obtained by the petitioner under Right to Information Act reveals that the upper age limit is 32 years and therefore, the fourth respondent, who is 35 years, is not entitled for appointment. The third point raised is that the fourth respondent was neither called for the interview nor had attended the interview and therefore, the process of selection of the fourth respondent itself is illegal. Finally, the learned counsel would submit that even after the appointment of the fourth respondent, he had not attended for duty and therefore, the appointment requires to be cancelled.

3.The learned Additional Government Pleader would submit that the procedures contemplated for recruitment of Village Assistant have been scrupulously followed and accordingly, the fourth respondent has been appointed. He would also submit that G.O.Ms.No. 109, P & AR Department, dated 26.10.2015, permits the appointment of the Village Assistant among a person, who resides within the Taluk, for which, the post has been notified.

4.The learned counsel appearing for the fourth respondent would submit that the 4th respondent was called for interview, pursuant to which, he had also attended the interview and the call letter received by him has also been produced before this Court.

5.I have given careful consideration to the submission made by the respective counsel.

6.The Hon'ble Division Bench of this Court in W.A.(MD) No.558 of 2009 dated 09.11.2009 has categorically held that in the matter of appointment, the factual aspects should not be gone into by the High Court exercising its power under Article 226 of the Constitution of India and since the grounds raised by the petitioner touches upon the factual aspects, it may not be appropriate for this Court to appreciate the same. Nevertheless, from the basic records that has been produced before this Court, it is seen that insofar as the first ground raised by the petitioner herein that the 4th respondent herein hails from a place, which is outside the Kandangipatti Village, it is seen that Rule 7C of the Tamilnadu Village Assistants Service Rules has been amended through G.O.Ms.No.109, P&AR Department, dated 26.10.2015 to the effect that a person, who belongs to the Taluk, in which, several villages are situated, can be considered for appointment.



Admittedly, the fourth respondent resides with the Taluk where the vacancy arose. As such, the territorial ground raised by the petitioner cannot be sustained, in view of the G.O.Ms.No.109, dated 26.10.2015 and the consequent amendment to Rule 7C.

7.The second point raised by the petitioner is that the information obtained by him under Right to Information Act reveals that the upper age limit for filling up the vacancies is 32 years, but the upper age limit prescribed in the notification is 35 years. The information gathered by the petitioner will have to be read in consonance with the questions sought for in the application under the Right to Information Act and this Court does not intend to scrutinise such information, since the relevant criteria to consider would be the age qualification prescribed in the notification and not the information gathered by the petitioner. It is not in dispute that the upper age limit fixed in the notification is 35 years and that the fourth respondent was not over and above the age of 35 years at the relevant point of time. In view of the same, there is no infirmity in the age qualification of the fourth respondent.

8.The third point raised by the petitioner is that the fourth respondent herein was neither called for the interview nor had attended the interview. The fourth respondent herein had produced a call letter issued by the third respondent herein calling him for an interview. As such, this Court can only presume that the fourth respondent herein was indeed called for interview and the appointment has been made, based on his performance in the interview.

9.The last point raised is that even after the appointment order has been made, the fourth respondent has not reported for duty. Such ground may, at the most, attract departmental action against the person, who has already been appointed to that post and the same will not entitle the petitioner to seek for cancellation of the appointment itself. However, such ground has been raised only during the course of oral arguments and therefore, the averment that the fourth respondent has not reported for duty requires deliberation from the fourth respondent, as well as the other official respondents and in the absence of any averment in the petitioner's affidavit, the same does not require consideration.

10.For all the aforesaid reasons, I do not find any reason to interfere with the order passed by the third respondent, appointing the 4th respondent herein as Village Assistant, dated 19.04.2017.

11.Accordingly, the Writ Petition stands dismissed. No costs.



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W.P.(MD) No.10137 of 2017

Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

- 1.The District Collector,
Sivagangai District, Sivagangai.
- 2.The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.
- 3.The Tahsildar,
Sivagangai Taluk,
Sivagangai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-5729[F] dated 11/02/2020)

+1 CC to SPL.GP (SR-5838[F] dated 12/02/2020)

+1 CC to Mr.K.RAJESHWARAN, Advocate (SR-5985[F] dated 12/02/2020)

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