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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6917 of 2021 and
WMP Nos.7474 & 7475 of 2021

R.Davendiran

... Petitioner

-vs-

1.The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepakkam,
Chennai-05.

2. The District Collector,
District Collector Office,
Kallakurichi District,
Kallakurichi.

3. The District Adi Dravidar and Tribal
Welfare Officer,
District Collector Office,
Kallakurichi.

4. The District Employment Officer,
Villupuram District,
Villupuram.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the fourth respondent to correct the employment registration details of the petitioner as 10th failed instead of 10th passed and restore the seniority as on 24.08.2015, instead of 02.02.2021 and forward the same to the 2nd respondent and consequently direct the respondents 1 to 3 to appoint the petitioner as Cook in Adi Dravidar and Tribal Welfare Hostel, Kallakurichi District, by considering the representation of the petitioner dated 18.02.2021.

For Petitioner : Mr.P.Ganesan

For Respondents: Mr.J.Pothiraj

Special Government Pleader



O R D E R

This Writ petition is filed, seeking a direction to the fourth respondent to correct the employment registration details of the petitioner as 10th failed, instead of 10th passed and restore the seniority as on 24.08.2015, instead of 02.02.2021 and forward the same to the 2nd respondent and consequently direct the respondents 1 to 3 to appoint the petitioner as Cook in Adi Dravidar and Tribal Welfare Hostel, Kallakurichi District, by considering the representation of the petitioner dated 18.02.2021.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice for respondents. By consent, final orders are passed in the Writ Petition at the admissions stage.

3. It is the case of the petitioner that when he registered his Educational Qualification with the employment exchange, they have wrongly registered his qualification as 10th standard pass instead of 10th standard fail, due to which, the petitioner was not considered for the post of cook, though he was called for interview to the post of cook in the District Adi Dravidar and Tribal Welfare Hostels on 29.12.2020. He would further submit that when the petitioner approached the Employment Exchange authorities to rectify the said mistake, they have registered his name as fresher and therefore he made a representation to the respondents on 18.02.2021 enclosing all the certificates for requesting to give appointment as cook at any one of Adi Dravidar and Tribal Welfare Hostel in Kallakurichi District, considering his original marks sheet. Since, the same did not evoke any response, the petitioner has come forward with this Writ Petition seeking for the aforesaid relief.

4. Learned Special Government Pleader appearing for the respondents, on instructions, submits that there is no qualification prescribed for appointment of cook and the petitioner should have cleared 10th standard, but however the representation of the petitioner dated 18.02.2021, will be considered within the time fixed by this Court.

5. Heard both sides. Perused the records.

6. The petitioner seeks appointment on the basis of the registration in the Employment Exchange. The Hon'ble Supreme Court in the case of Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao and others, reported in (1996) 6 SCC 216 clearly held that the registration in the employment exchange will not give any right for employment. For the sake of convenience the relevant portion of Judgment is extracted hereunder:



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"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the manes sponsored, though their names are either registered or are waiting to be registered in the employment exchange with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the state. Better view appears to be that it should be mandatory for the requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition the appropriate Department or undertaking or establishment should call for the manes by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins: and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

7. However, the learned counsel for the petitioner has restricted the relief to the extent of consideration of the representation of the petitioner, Considering the facts and circumstances of the case and taking into account the fact that the petitioner's representation is already pending with the first respondent, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the respondents, more particularly, 1st respondent herein to consider the



representation preferred by the petitioner dated 18.02.2021, if not already disposed of, and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order;

ii) In case the petitioner is unable to appear for personal hearing either physically or virtually, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the 1st respondent shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 18.02.2021 and this order, to the 1st respondent forthwith;

v) The 1st respondent is directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar



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To

1. The Commissioner,
Adi Dravidar and Tribal Welfare Department,
Chepakkam,
Chennai-05.
2. The District Collector,
District Collector Office,
Kallakurichi District,
Kallakurichi.
3. The District Adi Dravidar and Tribal
Welfare Officer,
District Collector Office,
Kallakurichi.
4. The District Employment Officer,
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Villupuram.

+1 CC to M/s.C.S. Associates sr 17116

+1 CC to The Government Pleader sr 17601.

W.P.No.6917 of 2021 and
WMP Nos.7474 and 7475 of 2021

GPL (CO)
SP(05/08/2021)