



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

W.A. No. 1904 of 2021
&
C.M.P. No. 12261 of 2021

S. Rajiv Gandhi

...Appellant/5th respondent

Vs.

1. K. Radha
2. The Personal Assistant to
District Collector (Development),
District Collectorate,
Dharmapuri.
3. The Assistant Director (Panchayat),
Dharmapuri,
Dharmapuri District.
4. The Block Development Officer,
Pappireddipatti,
Dharmapuri District.
5. The President,
Athikarapatti Panchayat,
Pappireddypatti Taluk,
Dharmapuri District.

...Respondents/Petitioner/
Respondents 1 to 4

Prayer: Writ Appeal as against the order dated 07.12.2020
passed in W.P. No. 20574 of 2014.

Prayer in W.P. No. 20574 of 2014:-

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 a Village Secretary in the Athikarappaty



Village Panchayat, Athikarappatti post, Pappireddipatti Taluk, Dharmapuri District.

For Appellant :: Mr.S.Vijayakumar

For Respondents :: Mr.G. Prabhakar for R1
Mr.K.V. Sajeew Kumar
Govt. Counsel for R2 & R3
Mr.K. Tippu Sulthan,
Govt. Advocate for R4

J U D G M E N T

(Judgment of the Court was delivered by S. Vaidyanathan,J.)

Questioning the order dated 07.12.2020 passed in W.P. No. 20574 of 2014, by which the selection of the appellant to the post of Village Panchayat Secretary has been quashed, the present writ appeal has been preferred.

2. Consequent upon the death of one Manickam, the post of Village Panchayat Secretary in Athikarapatti Panchayat fell vacant on 10.11.2013 and in order to fill up the vacancy, list of eligible candidates were called for by the 2nd respondent herein, vide proceedings dated 21.11.2013, from the District Employment Exchange, Dharmapuri. In response to the same, as priority candidates were not available, the District Employment Officer, Dharmapuri, had sponsored the names of five candidates under MBC(General) non-priority category, which included the appellant herein and the 1st respondent. After the selection process, based on the performance in the interview together with employment exchange seniority, the appellant herein was selected and appointed to the post of Village Panchayat Secretary. Aggrieved by the same, the 1st respondent approached this Court by filing W.P. No. 20574 of 2014.

3. The case of the 1st respondent/writ petitioner was that she is a physically challenged person belonging to MBC community and that she had completed Diploma in Teacher's Training in the year 2008. She had registered her name in the Employment Exchange in the year 2000 and when the vacancy to the post of Village Panchayat Secretary, Athikarapatti Village, Dharmapuri District, was sought to be filled up, her name was also recommended based on employment seniority following communal/women reservation. According to the writ petitioner, though she is senior to the 5th respondent/appellant herein in the employment exchange seniority and performed well in the interview, the 5th respondent in the writ petition, who is the appellant herein, was selected and appointed by the impugned order.



4. It was contended on behalf of the writ petitioner that pursuant to the list provided by the employment exchange, in the ratio of 1:5, five candidates were called for. It was further submitted that the writ petitioner was fully qualified and more meritorious to be appointed to the post and that she, being a woman and physically challenged person, was entitled to be appointed to the post under the priority category. However, without following the procedure, the 5th respondent/appellant herein was appointed. Hence, the entire selection is bad and needs to be interfered with as the appointment is contrary to service rules.

5. The contention of the writ petitioner was accepted and the order of appointment issued to the 5th respondent, who is the appellant herein was set aside. Aggrieved by the said order, the 5th respondent in the writ petition has come forward with the present writ appeal.

6. According to the appellant, the learned Single Judge had proceeded on a wrong premise that the writ petitioner had registered her name in the employment exchange much prior to the date of registration of the appellant and also taking note of the fact that the writ petitioner is a physically challenged person and that the selection process had not been done properly, the learned Single Judge interfered with the appointment order of the appellant. The appellant also brought to the notice of this Court that Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013, which was published in G.O. Ms. No.72 Rural Development and Panchayat Raj (E5) Department dated 09.07.2013 prescribes method of appointment and the qualification that is required for appointment to the post in question. The Rules specifically state that the employment exchange seniority has to be considered for the purpose of appointment to the post of Village Panchayat Secretary, that the District concerned shall be the unit for applying and appointment shall be made on the basis of communal/women reservation for the post of Village Panchayat Secretary. The minimum qualification prescribed is SSLC or any other equivalent examination prescribed by the Government. Based on the rules, it had been decided to appoint persons to the post of Village Panchayat Secretary and names have been called for from the employment exchange in the ratio of 1:5. The writ petitioner as well as the appellant along with others had participated in the selection process and the appellant, who secured more marks was appointed. According to the appellant, when there is no allegation in the affidavit, the learned Single Judge ought not to have interfered with the order of appointment issued to the appellant.



7. The Government had filed counter affidavit in the writ petition wherein it had been stated that originally, for filling up the post of Village Panchayat Secretary, candidates were called for, from the District Employment Exchange, Dharmapuri District. As priority candidates were not available, non-priority candidates within the area were sponsored and the interview was postponed due to election. In the interview, which was re-scheduled and held subsequently, the appellant performed well ahead of others and secured 86.5 marks out of 100 marks and the writ petitioner scored 80.1 marks out of 100 marks. Since the appellant performed well ahead of others, he was selected and appointed as Village Panchayat Secretary. It is submitted on behalf of the Government that the order of the learned Single Judge in setting aside the appointment order of the writ appellant, on an erroneous presumption that the post is meant for physically challenged candidate may not be correct and it needs to be interfered with and the order of appointment issued to the writ appellant has got to be restored by setting aside the order under challenge.

8. In reply, learned counsel for the 1st respondent in the writ appeal submitted that there are mala fides in the appointment of the appellant and the same has been done contrary to the Rules. According to the learned counsel, out of 5 candidates, one candidate did not attend the interview at all. Further, it is submitted that appointment should have been made on the basis of communal/women reservation and finally stated that when the 1st respondent/writ petitioner is the seniormost person in the Employment Exchange, seniority list should have been considered.

9. Heard both sides.

10. It is not in dispute that in terms of the Rules, for appointment to the post in question, list of candidates were called for from the Employment Exchange and the appellant was found to be successful in the selection process, having secured 86.5 marks when compared to the 1st respondent, who had secured only 80.1 marks. The learned Single Judge, on an erroneous presumption that the writ petitioner had registered her name in the employment exchange much prior to the appellant, that the post is meant for physically challenged person and that the Rules have been completely ignored, interfered with the appointment order of the writ appellant. From the records, it is seen that the appellant had registered his name in the employment exchange as early as on 17.04.2000 and only the renewal had been done in 2013. Eventhough the writ petitioner vehemently contended and tried to sustain the order of the learned Single Judge, even assuming for the sake of argument that the seniority maintained in the employment exchange has got



to be followed, there were two other persons, who were senior, having registered their names as early as in the year 1996 and 1997. That apart, the post of Village Panchayat Secretary is not meant only for women. Women candidates can be given preference in the selection process. Out of 5 candidates, the writ petitioner was the only woman candidate and she was unsuccessful in getting appointment. If the contention of the writ petitioner is to be accepted, the Government should have called only for five women candidates. Hence, the contention is not acceptable. Further, the observation made by the learned Single Judge that the writ petitioner has been sidelined and she should have been given appointment as she comes within the priority category might not be correct.

11. In the result, the impugned order is set aside and the appointment order issued to the appellant, who is the 5th respondent in the writ petition, is restored. The writ appeal stands allowed. No costs. Connected C.M.P. is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nv

To

1. The 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,
Pappireddypatti Taluk,
Dharmapuri District.

+2ccs to Mr.S.Vijayakumar, Advocate, S.R.No.45315
+1cc to the Government Pleader, S.R.No.45814,45853

W.A. No. 1904 of 2021

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