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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20815 of 2019
and
W.M.P.No.17990 of 2020
(Through Video Conferencing)

Murisha Fathima

... Petitioner

Vs

1. The District Collector,
Office of the District Collector,
Erode District, Erode - 638 011.

2. Personal Assistant (Development)
to the Collector,
Office of the District Collector,
Erode District, Erode - 638 011.

3. Special Officer/Block Development Officer,
Village Panchayat Union Office,
Gobichettipalayam,
Erode District - 638 452.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents in connection with the impugned order passed by the Third Respondent in Na.Ka.No.563/2019/B2 dated 26.03.2019 and quash the same and further direct the Respondents to appoint the Petitioner to the post of Panchayat Secretary, Kadukkampalayam Village.

For Petitioner : Mr.L.Chandra Kumar
for Mr.Ali Hassan Khan
For Respondents :
For R1 & R2 : Mr.L.S.M.Hasan Fizal
Government Advocate
For R3 : Mr.E.Balamurugan

ORDER

The petitioner has challenged the impugned communication dated 26.03.2019 bearing Na.Ka.No.563/2019/B2.



2. By the impugned communication, the petitioner's application to the post of Panchayat Secretary has been rejected on the ground that the petitioner was neither the resident of Kadukkampalayam village nor the resident of adjoining village within the block.

3. The respondents have rejected the application of the petitioner to the post of Panchayat Secretary on the ground that after the notification was issued, the petitioner has shifted her residence from Bhavani Taluk to Kadukkampalayam Village, Gobichettipalayam Taluk. It is therefore submitted that the rejection of the petitioner was justified.

4. Appearing on behalf of the third respondent, the learned counsel for the third respondent submits that since the petitioner's candidature was rejected, the post was offered to one S.P.Sethupathi Raja, S/o.Varadharaj. He further submits that the petitioner had also filed W.P.No.33680 of 2019 to stall the appointment of S.P.Sethupathi Raja on the ground that the petitioner was not entitled to stall the process of appointment initiated by the fourth respondent.

5. In the counter affidavit, the respondents have however stated that based on the petitions received from the persons, a resident in Kadukkampalayam Village that there were no persons from muslim community for the past fifty years and that the petitioner and one K.A.Ammanullah had created fabricated documents. However, this is not the reason given in the impugned order.

6. Heard the learned counsel for the petitioner and the respondents and perused the impugned order and notification dated 26.03.2018 bearing ROC.No.1080/2018/Aa2 calling upon the applicant to participate in the selection process.

7. The respondents cannot improve upon the reasons given in the impugned order in their counter affidavit.

8. The qualifications prescribed in notification bearing ROC.No.1080/2018/Aa2 dated 26.03.2018 reads as under:-

"1.The applicant should be a resident of the village concerned for which the vacancy is notified.

2.No person shall be eligible for appointment to the post if he/she has completed or will completed 30 years of the age on 01.07.2018. In respect of candidates belonging to Backward class/Scheduled caste/Scheduled tribes the upper age limit shall be 35 years.



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3.No person shall be eligible for appointment to the Post, if he/she has not passed SSLC issued under the authority of the Government of Tamil Nadu or any other equivalent examinations prescribed by the Government to the equivalent these.

4.If no qualified and suitable candidate residing in the village Panchayat concerned is available for selection for appointment to the post, eligible candidate from the adjoining village Panchayats within the block shall be appointed."

9. The qualification prescribed in the above notification nowhere states that a person who has shifted the residence subsequent to the cut off or the date of notification would be disentitled to be appointed or considered to be selected to the post of Panchayat Secretary. In this case, the petitioner along with her family has shifted in the village on 09.04.2018 and thereafter filed the application on 11.04.2018 being the last date for filing the application.

10. The petitioner also appeared before the respondents for an interview. Thereafter, the petitioner has been issued with the impugned order stating that the petitioner was not qualified to be appointed as a Secretary of Village Panchayat in Kadukkampalayam Village in Gobichettipalayam Taluk. The notification dated 26.03.2018 bearing Ref.No.1080/2018/Aa2 calls for the application to the post of Panchayat Secretary. It does not put an embargo on a person from applying to the post on the date of application when the residence is changed. After all, the purpose of fixing the residence as a criteria is to ensure that such a person is available in the panchayat for discharging the service. Unless there are evidence to show that the shifting of residence was not real and bogus papers were generated without actual shifting, the benefit of appointment cannot be denied, the case of the respondents that the petitioner shifted her residence, after a notification dated 26.03.2018 is of no consequence.

11. Since the petitioner was otherwise qualified on the date of application. Therefore, the rejection of the application of the petitioner cannot be sustained. This Court is therefore of the view that the petitioner was otherwise entitled to be appointed to the post of Panchayat Secretary for Kadukkampalayam Village. This Writ Petition therefore deserves to be allowed. The respondents are therefore directed to ensure that the petitioner is accommodated within a period of four weeks and while protecting service of the persons who was appointed subsequently.



12. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arb

To

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Erode District - 638 452.

+lcc to Mr.Ali Hassan Khan, Advocate, S.R.No.40095
+lcc to the Government Pleader, S.R.No.40064

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and
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PCH(CO)
CT(13/09/2021)