

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.01.2021

Judgment Delivered on : 15.02.2021

Coram:

HONOURABLE MR.JUSTICE R.SUBBIAH

and

HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.3294 of 2019

and

C.M.P.No.21050 of 2019

R.Shanmugam, S/o Ramasamy .. Appellant/ Petitioner

Vs.

1. The District Collector,
Vellore District, Vellore.

2. The Tahsildar,
Tirupattur Taluk, Tirupattur.

3. V.Velayutham, S/o Vedi Gounder

4. S.Vadivukkarasi, W/o Partthiban

5. The Employment Exchange Officer,
Employment Exchange,
Vellore.

.. Respondents/ Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 18.07.2019 passed by the learned Single Judge in W.P.No.19863 of 2009 on the file of this Court.

Prayer in W.P.No.19863 of 2009:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus calling the records of the 2nd respondent with regard to the appointments made to (i) the 3rd respondent as Village Assistant at Kondakunthanahalli vide Se.Mu.Anai.En.A3/12138/06 dt.13.3.2008 and (ii) the 4th respondent as Village Assistant at Athiyur vide Se.Mu.Anai.En.A3/12138/06 dt.13.3.2008 and quash the same consequently directing the respondents 1 & 2 to appoint the petitioner as Village Assistant in the 2nd respondent Taluk.

For appellant : Mr.R.Malaichamy

For respondents: Mrs.A.Srijayanthi, Spl.G.P. for RR-1, 2 & 5

Ms.Y.Kavitha for M/s.Giridhar and Sai for RR-3 and 4

JUDGMENT

R.SUBBIAH, J

This Writ Appeal is filed as against the order dated 18.07.2019 passed in W.P.No.19863 of 2009, in and by which, the Writ Petition filed by the appellant/writ petitioner to quash the order of the second respondent, appointing the third and fourth respondents herein as Village Assistants at Kondakunthanahalli and Athiyur respectively, and consequently to direct the respondents 1 and 2 herein to appoint the appellant/writ petitioner as Village Assistant in the second respondent-Taluk, was dismissed by the learned Single Judge.

2. The brief facts which are necessary to decide the issue involved in the present Writ Appeal are as follows:

(a) The second respondent-Tahsildar, Tirupattur Taluk, Tirupattur, had requested the Employment Exchange to sponsor eligible candidates to fill up 13 posts of Village Assistants in and around Tirupattur Taluk, Vellore District. Accordingly, the Employment Exchange Officer had sponsored the names including that of the appellant/writ petitioner, for consideration/appointment to the post of Village Assistant. On receipt of the names from the Employment Exchange, the second respondent-Tahsildar had instructed the appellant/writ petitioner, vide letter dated 21.03.2007, to appear before him on 30.03.2007 at 11 a.m., for interview, along with the original certificates to show his educational qualification(s) and age proof, including the Employment Exchange Registration Card. As instructed by the second respondent, the appellant/writ petitioner appeared before the second respondent-Tahsildar for interview on 30.03.2007 with all original documents, certificates, etc.

(b) According to the appellant, he is the senior most candidate among the candidates sponsored by the Employment Exchange and he was under the fond hope that he would be appointed to the said post. But to his shock and surprise, some candidates, who have registered their names in the Employment Exchange very recently then, were appointed to the said post. Hence, the appellant approached this Court by filing W.P.No.23995 of 2008, in which, this Court, while disposing of the same on 30.10.2008, directed the first respondent therein to pass orders on the appellant's representation dated 24.09.2007, on merits and in accordance with law, within four months from the date of receipt of a copy of the order.

(c) As there was an evasive reply dated 12.12.2008 from the second respondent herein, again the appellant/writ petitioner filed W.P.No.1508 of 2009 challenging the said reply of the second respondent, dated 12.12.2008. In the meantime, the first and second respondents have filled up all the said 13 vacant posts, and hence, the appellant/writ petitioner had withdrawn W.P.No.1508 of 2009 on 17.07.2009 with liberty to file a fresh

Writ Petition. Thereafter, the writ petitioner had filed the present Writ Petition in W.P.No.19863 of 2009 in which the orders dated 13.03.2000 and 13.03.2008 (stated supra) had been challenged.

(d) It is the submission of the learned counsel appearing for the appellant/writ petitioner that the respondents 3 and 4 were appointed not in their native villages, but at Kondakundanapalli Village and Athiyur Village respectively. Furthermore, both in age and employment seniority, the appellant/writ petitioner is senior. Therefore, the appointment of the third and fourth respondents by the second respondent-Tahsildar is against the relevant Rules and norms, since their appointment is not in accordance with the law.

(e) It is the submission of the learned counsel appearing for the appellant/writ petitioner that as per Rule 7(iii)(c) of the Special Rules for the Tamil Nadu Village Servants Service, a person appointed to the post shall belong to the village to which he is appointed, or adjoining village if no suitable candidate is available from that village. But the second respondent-Tahsildar had filled up 10 posts out of 13 posts by appointing the candidates who do not belong to their respective native village, including the respondents 3 and 4, which is not in accordance with the relevant Rules. Hence, their appointment had to be set aside and consequently, the appellant/writ petitioner has to be appointed as Village Assistant. But, without considering all these aspects, by the impugned order, dated 18.07.2019, the learned Single Judge had dismissed the Writ Petition in W.P.No.19863 of 2009.

3. Countering the above averments of the Writ Petitioner, the second respondent-Tahsildar had filed counter affidavit before the Writ Court stating that the third respondent is a native of Jayapuram Village and his Employment Exchange Registration No. is 16128, dated 03.02.1987 and his date of birth is 25.06.1966. He is senior than the appellant/writ petitioner and aged about 42 years at the time of appointment. He was appointed as Village Assistant for Bynapalli Village. The native village of the third respondent is Jayapuram Village, and the village where he was appointed is Bynapalli Village, which lies on the same road in Ammanangkoil Firka itself and both the native village and the appointment village are nearer villages and hence, he was selected and appointed by the then Tahsildar.

4. So far as the appointment of the fourth respondent is concerned, it is submitted by the second respondent-Tahsildar that the fourth respondent is a native of Pulikuttai H/o Adiyur Village and she was appointed in the same Revenue Village, viz., Adiyur Village, which lies in Koratti Firka. Though she is junior to the appellant/writ petitioner, the native and appointment villages are one and the same and her appointment is also found to be reasonable. Hence, the appointment of the respondents 3 and 4 is only in conformity with the relevant

Rules.

5. So far as the appellant/writ petitioner is concerned, it is stated that the writ petitioner is a native of Kudiyankuppam Village, which lies in Jolarpet Firka and also a part of the village located in Jolarpet Town Panchayat. Both the villages, namely Bynapalli and Adyur Villages in which the third and fourth respondents were appointed, are located at a distance of 9 Kms. away from the village of the writ petitioner. Hence, the appellant/writ petitioner was not selected for appointment at that point of time by the then Tahsildar, Tiruppattur. Hence, according to the second respondent-Tahsildar, there is absolutely no illegality in the appointment of the respondents 3 and 4, and thus the second respondent prayed for dismissal of the Writ Petition.

6. The third, fourth and fifth respondents have also filed counter affidavits before the Writ Court, denying the averments of the appellant/writ petitioner.

7. The learned Single Judge dismissed the Writ petition, holding that there is no violation in the appointment of the respondents 3 and 4. Their appointment is only in accordance with G.O.Ms.No.521, Revenue Department, dated 17.06.1998. Challenging the same, the appellant/writ petitioner had filed the present Writ Appeal.

8. When the Writ Appeal is taken up for consideration, the learned counsel for the appellant/writ petitioner relied upon a judgment of this Court in the case of S.Manjula Vs. The District Collector and others in W.A.(MD).No.966 of 2010, dated 02.03.2011, in which one of us (R.Subbiah, J) was a member to the Division Bench, which referred to a decision of this Court reported in 2007 (6) MLJ 402 (P.Vasantha and others Vs. The District Collector and others), wherein it was held that giving such preference based on residence, is in violation of Article 16(2) of the Constitution of India. In the said decision reported in 2007 (6) MLJ 402, it was held in paragraph 18 that preferring a candidate from a particular hamlet to the exclusion of candidates from other hamlets in the same Village/Panchayat Union or in respect of Panchayat Union Centres and preferring the candidates from only one village to the exclusion of other villages living in the same Panchayat Union, is arbitrary. In many times, it may also result in violating the communal roster being followed. Thus, by relying upon the said judgment of this Court, which applies to the facts of the present case, the learned counsel for the appellant/writ petitioner prayed that the appeal may be allowed, especially when the fourth respondent is junior to the appellant in the Employment Exchange Registration. In support of his submissions, the learned counsel for the appellant/writ petitioner also relied on the following judgments:

(i) CDJ 2011 MHC 942 (Madras High Court) W.P.No.28730 of 2010, dated 19.01.2011 (M.Rajeswari Vs. The State of Tamil Nadu

rep. by the Principal Secretary to Government, Chennai and others), and

(ii) W.P.No.20378 of 2009, dated 07.03.2011 (Lalitha Vs. The District Collector and others) (Madras High Court).

9. On the above submissions of the learned counsel for the petitioner, we have heard the respective counsels appearing for the respondents.

10. Heard both sides and perused the materials available on record.

11. Keeping in mind the submissions made on either side, it is seen that the judgment relied on by the learned counsel for the appellant in W.A.(MD).No.966 of 2010 pertains to Anganwadi worker, where there is no rule for appointment thereunder. But so far as the post of Village Assistant is concerned, as in the case on hand, the same is governed by the Special Rules for the Tamil Nadu Village Servants Service, more particularly under Rule 7(iii)(c) therein, which contemplates that a person appointed to the post shall belong to the village to which he is appointed or adjoining village if no suitable candidate is available from that village. Thus, from the above Rule 7(iii)(c), it is clear that a person belonging to the same village had to be appointed or from the adjoining village, if no suitable candidate is available from that village.

12. So far as the appellant/writ petitioner is concerned, he is a native of Kudiyankuppam Village, which lies in Jolarpet Firka and also a part of the village located in Jolarpet Town Panchayat. Both the villages, namely Bynapalli and Adyur Villages in which the third and fourth respondents were appointed, are located at a distance of 9 Kms. Thus, the respondents 3 and 4 have been appointed as Village Assistants in accordance with the said Rule 7(iii)(c). The other judgments relied on by the learned counsel appearing for the appellant/writ petitioner, are distinguishable on facts, and cannot be made applicable to the facts of the present case.

13. Therefore, absolutely, we do not find any infirmity or illegality in the impugned order passed by the learned Single Judge. This Court, considering the factual aspects as well as on legal aspects, more particularly with regard to Rule 7(iii)(c), as discussed above, is of the view that the appointment of the respondents 3 and 4 as Village Assistants is well in accordance with the said Rule 7(iii)(c). Hence, we find no merits in the appeal and there is no compelling circumstance warranting this Court to make interference with the impugned order passed by the learned Single Judge.

14. Therefore, for the reasons stated supra, the Writ Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

s/d-
Assistant Registrar(Cs)

True Copy

Sub-Assistant Registrar

cs
To

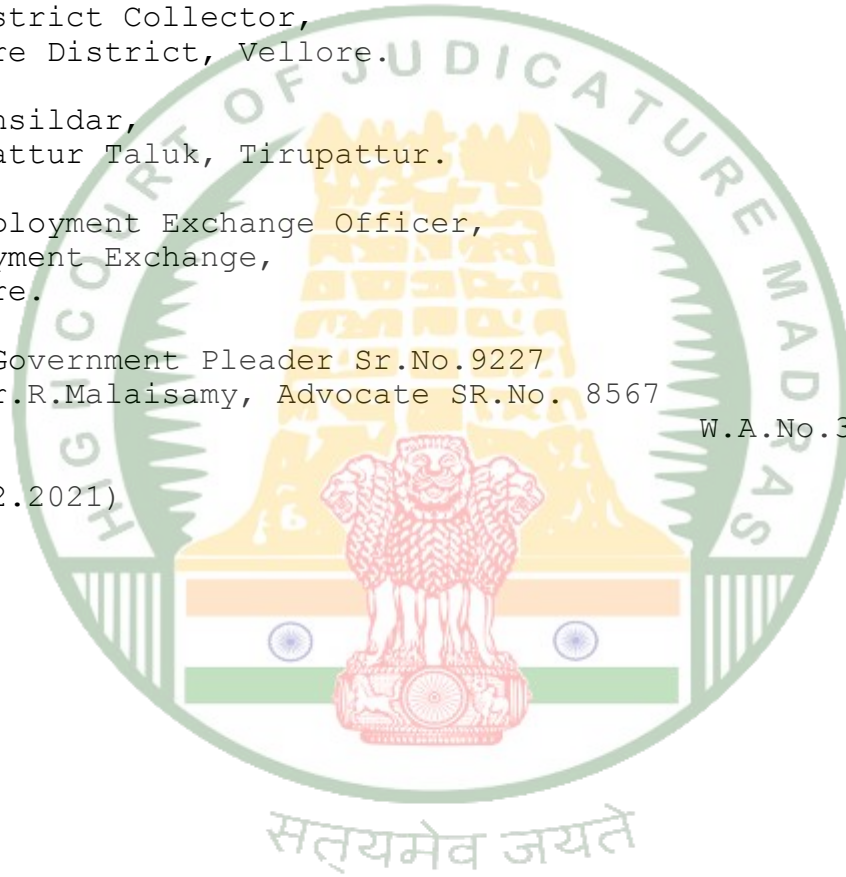
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+1 cc to Government Pleader Sr.No.9227

+1cc to Mr.R.Malaisamy, Advocate SR.No. 8567

W.A.No.3294 of 2019

A.SK(24.02.2021)



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