



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A(MD)No.279 of 2013

WEB COPY

The Commissioner,
Vickramasingapuram Municipality,
Vickramasingapuram,
Tirunelveli District.

... Appellant / Respondent

Vs.

M.V.Kannan

... Respondent / Petitioner

PRAYER: The Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed by this Court in W.P.(MD) No.6723 of 2010, dated 04.01.2013.

Prayer in WP(MD). 6723/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court may be pleased to issue an order or direction in particular to issue a WRIT OF MANDAMUS to the respondent to select and appoint the petitioner as Office Assistant cum Cleaner in the Drinking Water Scheme.

For Appellant : Mr.H.Arumugam

For Respondent : No Appearance

JUDGMENT

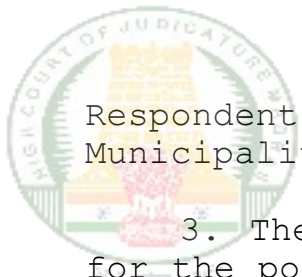
S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

The Writ Appeal has been filed against the order passed by the Learned Single Judge of this Court in W.P.(MD)No.6723 of 2010, dated 04.01.2013, wherein, this Court has directed the writ petitioner to be appointed as an Office Assistant-cum-Cleaner.

2. The Respondent / Petitioner is a resident of Ambalavanapuram Village in Tirunelveli District. The Appellant /



Respondent is a Municipality governed by the Tamil Nadu District Municipalities Act, 1920.

3. The Appellant / Respondent Municipality had two vacancies for the post of Office Assistant cum Cleaner in the Drinking Water Scheme. The vacancies were notified to the local Employment Exchange, which duly forwarded the names of the qualified candidates, based on the employment seniority. The name of the petitioner and one Ramesh were also sponsored for the said post. The said Ramesh has been selected and appointed as Office Assistant.

4. According to the Respondent / Petitioner, yet another vacancy has got to be filled up and that he being a physically challenged person, is entitled to be appointed on preference, in terms of provision of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

5. According to the Appellant / Respondent, the post of Office Assistant and Cleaner in the Drinking Water Scheme are independent posts and the said Ramesh has been appointed as an Office Assistant and the Writ Petitioner was not selected. That apart, the Writ Petitioner has applied to the post of Cleaner. Due to the disability of the writ petitioner, the writ petitioner was not found eligible for the post of cleaner, since the nature of work is to clean the water tank and over head tank, which cannot be done by the writ petitioner, due to his disability. According to the appellant / respondent, the said Ramesh has not been made as party to the proceedings.

6. We have heard the learned counsel appearing for the Appellant and perused the materials on record.

7. The Learned Single Judge has proceeded on the basis that the Office Assistant-cum-Cleaner, in the Drinking Water Scheme, as one post and that one vacancy exist and in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 Act, the case of the writ petitioner to be considered and directed to be appointed.

8. Earlier, during the course of the argument, it is submitted by the learned counsel appearing for the appellant herein, who is the respondent in the writ petition that the writ petitioner has secured a job elsewhere and the statement was made across the bar by the counsel appearing for the writ petitioner and that a memo would be filed in the next hearing.

9. But today, when the matter is called there is no



representation for the writ petitioner / respondent.

10. Taking note of the fact that for the post of cleaner, the writ petitioner is not eligible, as it requires physical fitness to discharge the duties, attached to the said post, we are of the view that the order of the Learned Single Judge, appointing the petitioner in the said post, cannot be sustained. That apart, one Ramesh, who has already been selected and appointed as Office Assistant, has not been made as party to the proceedings. Hence, we are of the view that the order of the Learned Single Judge passed in W.P.(MD)No.6723 of 2010, dated 04.01.2013, is liable to be set aside.

11. In the result, the Writ Appeal is allowed and the order passed by this Court in W.P.(MD)No.6723 of 2010, dated 04.01.2013, is set aside. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-35086[F] dated 18/11/2021)

W.A(MD)No.279 of 2013
17.11.2021

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