



W.P.No.18564 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18564 of 2019

R.Indumathi

...Petitioner

Vs.

- 1.The Personal Assistant to the Collector (Development)
Office of the District Collector,
Nagapattinam District,
Nagapattinam.
- 2.The Assistant Director (Panchayats)
Office of the Assistant Director (Panchayats)
Nagapattinam District,
Nagapattinam.
- 3.The Special Officer/Kiliyanur Panchayat,
The Block Development Officer,
Kuthalam Panchayat Union,
Nagapattinam District.

4.Sudha

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in respect of the appointment of the 4th respondent as Secretary of



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Kiliyanur Village Panchayat, Tharangambadi Taluk, Nagapattinam District
NAKA. No. 1297/ A1/ 2018 dated 1.11.2018 and to quash the same and
consequently direct the 1st respondent to appoint the petitioner as Secretary of
Kiliyanur Village Panchayat, Tharangambadi Taluk Nagapattinam District.

For Petitioner : Mr.R.Radhapandian for
M/s.A.Nambirajan

For Respondents : Mrs.E.Indhumathi
Government Advocate
for R1 & R2

Mr.R.S.Selvam
for Mr.N.Srinivasan for R3

Mrs.P.Kavitha for R4

ORDER

The reply given to the petitioner under RTI Act in proceedings dated 01.11.2018 with reference to the appointment of the 4th respondent as Panchayat Secretary in Kiliyanur Village Panchayat is under challenge in the present writ petition.

2.The writ petitioner states that she had completed Master of Arts in Tamil (M.A.) and Master of Philosophy in Tamil (M.Phil.). She got married and



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subsequently her husband died on 01.08.2016. The petitioner submitted an application for selection and appointment to the post of Secretary of Kiliyanur Village Panchayat, Kuthalam Panachayat Union, Nagapattinam District. The post is reserved for Schedule Caste and the preference should be given to the candidate residing at Kiliyanur Village Panchayat. Contrary to the rules regarding selection and appointment to the post of Secretary, the 4th respondent who is not residing in Kiliyanur Village was appointed as Secretary and thus, the petitioner is constrained to move the present writ petition.

3.The learned counsel for the petitioner relied on the provisions of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) rules, 2013. As per the Rule 5(2)(ii) “No Person shall be eligible for appointment to the post unless he/she is a resident of Village Panchayat concerned”. Based on the said Rule, the case of the petitioner ought to have been considered by the respondent for selection to the post of Secretary. Contrarily, the 4th respondent who is not residing in Kiliyanur Panchayat was selected and appointed and thus, the appointment of the 4th respondent is in violation of the Rules stated above.



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4.The learned Government Advocate and the learned Standing Counsel for the 3rd respondent Panchayat Union objected the said contention by stating that the 4th respondent was found to be more eligible in all respects and after making a thorough assessment of eligibility and qualifications, the 4th respondent was appointed. Therefore, there is no infirmity in respect of the appointment of the 4th respondent as Secretary of Kiliyanur Village Panchayat.

5.With reference to the qualification of the petitioner and the 4th respondent, the learned counsel for the 3rd respondent contended that the petitioner is over qualified as she possessed the Master's degree of M.A. and M.Phil., and the 4th respondent has studied only S.S.L.C., and she is also a destitute widow. The selection was made in accordance with the rules in force. In respect of the very same Village Panchayat Secretaries (Conditions of Service) Rules, Rule 5(2)(iii) proceeds by stating that “If no qualified and suitable candidate residing in the village panchayat concerned is available for selection for appointment to the post, eligible candidates from the adjoining Village Panchayats within the block shall be appointed”. The 4th respondent is residing within the same block viz., Kuthalam Block and therefore, she is eligible for appointment to the post of Secretary. In



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respect of the eligibility, the respondents have considered the following criteria

which are stated in Paragraph No.9 of the counter filed by the 1st respondent,

which reads as under:

The 4th respondent was selected for appointment as Village panchayat secretary of Kiliyanur village according to merit as follows:

a) the 4th respondent is Scheduled Caste Destitute Widow - Priority category whereas the petitioner is not priority candidate

(b) the age of the petitioner is only 29 whereas the age of the 4 respondent is 32 and likely to cross the age limit for future appointment.

(c) the petitioner is having master degree qualification and M.phil., whereas the 4th respondent is only S.S.L.C. having no opportunity to get job in the near future.

(d) the petitioner has registered her name in the Employment Exchange on 10.4.2018 whereas the 4th respondent has registered her name as early as on 20.6.2006.



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Hence it is respectively submitted that the selection was made according to merit and ability. It is further submitted that the selection list was duly published in the Notice of the Office of the 3rd respondent.

In the view of above facts and circumstances of this case, it is therefore prayed that this Hon'ble Court may be pleased to dismiss the above Writ petition and thus render justice.

6.The post of Secretary Village Panchayat was filled up by considering the comparative merits between the candidates who participated in the process of selection. In the present case, more deserving candidate was accommodated which cannot be found fault with.

7.Question of selecting higher qualified persons in the lower post was considered by this Court in W.P.(MD)No.13468 of 2013 dated 07.12.2020 in the case of ***M.Vijayalakshmi vs. General Manager (HR), Chennai Metro Rail Limited and Others*** reported in ***MANU/TN/6594/2020***. Selecting over qualified persons for the lower post would result in denial of equal opportunity as enunciated under Article 14 of the Constitution of India. Equal opportunity in public employment is the constitutional mandate. While conducting open



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competitive process level field playing is to be provided for the eligible candidates. Thus, the maximum qualification for submitting application is also to be prescribed by the employers while undertaking the process of selection more specifically to the lower post. By appointing higher qualified persons in the lower post, even the employers are facing many difficulties in extracting work and all those mitigating circumstances are also to be considered for the purpose of prescribing maximum qualification in respect of selection and appointment to the lower posts. The relevant paragraphs of the said judgment are extracted hereunder:

15. In unambiguous terms, the Supreme Court emphasized that it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment, as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. Prescribing the eligibility criteria/educational qualification that a



graduate candidate shall not be eligible and the candidate must have passed Diploma in Civil Engineering is justified and as observed, it is a conscious decision taken by the respondents and therefore, this Court is of the considered opinion that there is no perversity as such in the matter of prescribing the qualifications and imposing a condition that higher qualification is disqualification.

16. In the present situation, in our great Nation, prescription of minimum and maximum educational qualifications, for a particular post, with reference to the job responsibility, is certainly unavoidable. The literacy level is increasing fastly. Free education to children is a Right ensured as of now. The children from rural background are also getting opportunities even to acquire higher qualifications. Undoubtedly, the Government machinery is thriving hard to achieve maximum literacy level. Under these circumstances, the efficiency level to be maintained in Public Administration is also the criteria to be borne in mind. Constitution contemplates, while providing reservation, the efficient Public Administration is to be maintained. Thus, any compromise on the efficiency level in Public Administration is impermissible under the Constitutional perspectives.

17. Lakh and Lakh of youth are unemployed in our Great Nation. Large number of minimum educated youth of our Great



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Nation are longing to secure public employment through open competitive process. Equal opportunity in public employment being a Fundamental Right of a citizen. Government must ensure such equal opportunity amongst equals, for the purpose of securing public employment. In the event of not prescribing the maximum qualification, the opportunities of the minimum qualified youth of our Great Nation is absolutely taken away. They are deprived of their opportunities, as they are not competent to compete with the higher qualified candidates. They cannot be treated equally. Candidates with higher qualifications cannot be equated with the candidates possessing lower qualification. Thus, the equal opportunity clause contemplated is infringed, as far as the candidates possessing the lower qualification. Their Fundamental Rights are violated. They are deprived of their opportunities to secure public employments, even for lower posts. This being the prevalent situation, slowly the employers are imposing a condition that the higher qualified candidates are not eligible to compete for a lower post wherein, the minimum educational qualifications is prescribed. The Doctrine of Necessity is pressed into service, as the employers are bound to ensure equal opportunity to be provided amongst equals.

18. Thus, the candidates, who are possessing higher qualifications, may have many opportunities to apply for various posts. However, those opportunities may not be available to the



candidates, who are possessing the minimum educational qualifications. Thus, the employment opportunity for minimum qualified candidates are totally taken away and the opportunity is snatched away by the higher qualified candidates. Thus, the Governments are bound to seriously consider these issues and take a decision with reference to the cadre, nature of job responsibility etc., while prescribing the educational qualifications and criteria for selection to various posts.

19. Public Administration is now suffering on account of selecting higher qualified candidates for lower posts. Master Degree holders, Engineering Degree holders, Degree holders are appointed to the posts of Office Assistants, Sweepers, Scavengers and Residential Assistants in High Court and many other posts in other Departments. The Administration is now struggling to extract work from those higher qualified candidates. They are not prepared to perform the duties and responsibilities attached to the lower posts. Contrarily, they are receiving a decent salary from the taxpayers money and in the process of attempting to secure higher posts or to appear for some other examinations. They are not showing any devotion to their duties. Public Administration is suffering, as these appointees are not prepared to perform the menial jobs.

20. A classic example regarding the recent appointments in



High Court, for the post of 'Residential Assistants', which are mainly created for a specific purpose of providing effective assistance to the Hon'ble Judges in their Residences. The suitability and eligibility of those appointees are undoubtedly questionable. The High Court Administration is struggling to extract work from these appointees, as most of them are over qualified and not suitable and eligible for the post of 'Residential Assistants', with reference to the terms and conditions stipulated in the Recruitment Notification. Whether few candidates have suppressed the fact regarding their over qualification is to be verified by the Competent Authorities. The fact remains that these over qualified employees are reluctant in performing their duties and responsibilities, attached to the post of 'Residential Assistants', as per the Notification. Such a failure in recruitment process can never be tolerated, as the appointees are receiving decent salary from the taxpayers money and therefore, the Authorities Competent are duty bound to ensure that the candidates appointed in public services, perform their duties and responsibilities with devotion and in accord with the Rules in force. Any misplaced sympathy would result in disastrous consequences in running the Administration. Thus, eligibility and suitability is the important criteria to be assessed, which is repeatedly emphasized by the Hon'ble Apex Court of India. Public Administration is expected to be hyper sensitive, with reference to the performance of public duty, which is a Constitutional mandate. Thus, compromise in this regard



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is undoubtedly impermissible. Issues are to be addressed in order to ensure efficient and effective Public Administration so as to serve the people of our great Nation. Any failure in this regard will result in administrative inefficiency, which would lead to violation of Constitutional mandates.

21. The Government Departments are also facing the similar issues. Yet another example is Police Department, which is recruiting candidates to the post of 'Grade-II Police Constables' with educational qualifications of M.A., M.Sc., M.Com., B.E., B.Tec., M.E., and even M.B.B.S. It is an unfortunate situation. This Court is able to realize that the Authorities Competent are not sensitive enough in the matter of recruiting suitable and eligible candidates, for a particular post with reference to the nature of job and its responsibilities. An Engineering candidate appointed as Grade-II Police Constable may not have any devotion to duty, attached to the post of Grade-II Police Constable. There may be exceptions, but largely, higher qualified candidates cannot perform the duties and responsibilities attached to the lower post. Master Degree in Engineering candidates were appointed as Constables. The situation would be still worse. The plight of the higher officials are to be considered. They may not be in a position to have effective control over these Constables. Discipline is paramount importance for uniformed services. Indiscipline would result in disastrous



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consequences. In the absence of an effective control over the uniformed forces, State may not be in a position to maintain Law and Order. Increased rate of crimes are reported. Efficient Police force is certainly warranted. But, the situation prevailing is that the discipline in the Police force are slowly deteriorating and corrupt activities are dominating. Thus, urgent actions are immediately warranted. Effective control over the police forces are imminent. But, over qualified candidates are appointed as Constables. These vital aspects cannot be neglected and as of now, the higher officials are struggling to maintain discipline in the forces. The Government is bound to apply its mind seriously so as to ensure the suitability and eligibility criteria are strictly adopted at the time of recruitment and also to uphold the Constitutional Principles of Equality amongst equals. As stated earlier, higher qualified and lower qualified cannot be construed as equals.

22. The concept of Social Justice enumerated in the 'Preamble' of the Constitution require opportunity in public employment is to be provided to reach the Constitutional goal of Social Justice. Question arises how Social Justice can be achieved in the matter of public employments. Equality clause enunciated and discrimination go together, if followed in consonance with the Constitutional principles, State can achieve the Constitutional goal of Social Justice. Recruiting large number of higher qualified candidates for a



lower post would offend the Principles of Social Justice and further would lead to inefficiency in Public Administration. The Principles of Social Justice cannot be understood in isolation and it must be read inconsonance with Constitutional Philosophy as a whole.

23. Question may arise equality amongst whom? Equality amongst higher qualified and lower qualified; certainly not. Candidates possessing higher qualification can never be equated with the candidates possessing lesser qualification. In the event of making them equals, Article 14 of the Constitution is offended. There is no level playing field between the two different categories of candidates. Higher qualified candidates would be dominant in performance during the selection process. Thus, the opportunity of public employment to the lesser qualified candidates are taken away, which is directly in violation of Articles 14 and 16 of the Constitution of India. Situation require a drastic change in the matter of prescription of minimum and maximum educational qualifications as well as strict adherence of suitability and eligibility of the candidates for a particular post or cadre. Nature of job and job responsibility are the vital factors. Thus, the Public Administration, as a whole, is bound to revisit the entire situation, in order to uphold the Constitutional perspectives.

24. The issues discussed in the aforementioned paragraphs are



of public importance and relating to the Constitutional Rights of the Citizen of our great Nation, which is to be protected by the Constitutional Courts. Thus, this Court is inclined to suo motu implead the Chief Secretary to Government of Tamil Nadu, Secretariat, Cehnnai - 9 and the Registrar General, High Court of Madras, Chennai, for a limited purpose of considering the issues discussed in this order, in the light of the Constitutional Principles and take appropriate decision, in the matter of recruitment to the public posts.

25. As far as the present Writ Petition is concerned, the Writ Petitioner could not able to establish that she was not possessing the higher qualification of B.E. Degree, as the petitioner has failed to produce any proof to establish the same. The instructions issued to the candidates in the Recruitment Notification is unambiguous that over qualification is a disqualification. The decision already taken by the respondent. Chennai Metro Rail Limited, in this regard is certainly commendable and appreciable. Thus, the writ petitioner is not entitled for the relief as such sought for in the present Writ Petition and accordingly, the Writ Petition stands dismissed. The parties are directed to bear their own costs. Consequently, the connected miscellaneous petitions are also dismissed.



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8. In this regard, the Government of Tamil Nadu is also bound to initiate appropriate steps to ensure that level playing field is to be provided to all the eligible candidates to secure public employment more specifically for Group IV posts. In the event of appointing Post Graduate candidates in Group IV services, it is possible that efficiency in public administration may fall down. Various other practical difficulties in extracting jobs attached to the Group IV services are also to be considered. In this regard, the Government of Tamil Nadu has to consider the issues and review the educational qualifications to be prescribed for Group IV services and accordingly, consider fixing of maximum qualification, so as to provide equal opportunity to the lesser qualified candidates to secure employment for Group IV services.

9. As far as the present writ petition is concerned, this Court do not find any infirmity in respect of the selection and appointment of the 4th respondent as Secretary, Kiliyanur Panchayat, since the authorities competent, finding that the 4th respondent is more suitable candidate than that of the petitioner, the order of appointment was issued. Thus, the writ petition is devoid of merits and stands dismissed. No Costs.



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10. The Registry of this Court is directed to communicate the copy of this order to the Principal Secretary to Government, Human Resources Management Department, Fort St. George, Secretariat, Chennai – 600 009 for appropriate actions.

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Index : Yes
Internet : Yes
Speaking order : Yes
ssr

To

1. The Personal Assistant to the Collector (Development)
Office of the District Collector,
Nagapattinam District,
Nagapattinam.
2. The Assistant Director (Panchayats)
Office of the Assistant Director (Panchayats)
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S.M.SUBRAMANIAM, J.

SSR

4. The Principal Secretary to Government,
Human Resources Management Department,
Fort St. George,
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