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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7009 & 7010 of 2016
and W.M.P.Nos.6218, 6219 & 6220 of 2016

R.Rajkumar — Petitioner in W.P.No.7009 of 2016

K.Sudhakar — Petitioner in W.P.No.7010 of 2016

Vs.

1 The District Employment Officer,
Thiruvallur District, Thiruvallur.

2 The Commissioner,
Tiruttani Municipality, Thiruvallur District.

3 T.Soundararajanm,
Chairman,
Tiruttani Municipality,
MPS Salai, Tiruttani, Pin: 631 209.

4 M.Suresh,
6th Ward Councillor,
Member, Appointments Committee,
Arumughasamy Koil Street,
Tiruttani – 631 209.

... Respondents in both W.Ps

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Common Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.2032/2015/C1 dated 23.2.2016 and quash the same and direct the respondents to consider the petitioner for appointment to the post of Scavenger in Tiruttani Municipality as per his seniority in the employment exchange and in accordance with the orders passed by this court in W.P.No.22130/2010 and W.P.No.22131/2010 respectively, dated 20.1.2014 and grant him all consequential benefits.

For Petitioners in both W.Ps	:	Mr.R.Mohanraj
For Respondents in both W.Ps	:	Mr.G.Nanmaran Special Government Pleader for R1 Mr.P.Srinivas for R2 No Appearance for R3 and R4

ORDER

The order of the rejection rejecting the claim of the writ petitioners for selection and appointment to the post of Scavenger in Tiruttani Municipality is under challenge in the present writ petition.

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2.The petitioners passed 10th Standard and registered their names in the District Employment Exchange, Thiruvallur. The petitioners belong to Scheduled Caste community. The name of the petitioners were sponsored by the District Employment Exchange, Thiruvallur for selection and appointment to the post of Scavenger in Tiruttani Municipality. The petitioners were called for interview and participated. However, they were not selected. In the said selection 10 persons were selected and all of them were appointed. In the year 2010, there were 14 vacancies in Tiruttani Municipality. The requisite qualification for appointment to the said post is that a candidate should be able to read and write. Thus, the petitioners are fully qualified for appointment. About 56 candidates including the petitioners were sponsored by the District Employment Officer, Thiruvallur District for appointment to the post of Scavenger. While so, the petitioners were expecting an order of appointment and the respondents have not called for the petitioners for interview held on 29.09.2010. The petitioners submitted their representations to allow them to participate in the process of interview, since no orders were passed, they filed W.P.Nos.22130 & 22131 of 2010 with a prayer for a writ of Mandamus directing the respondents to consider the petitioners for

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appointment to the post of Scavenger in Tiruttani Municipality as per their seniority in the employment exchange. This Court passed the final orders on 20.01.2014 as follows:

> *5.Considering the fact that the names of the petitioners have already been sponsored by the Employment Exchange and two posts were directed to be kept vacant, the writ petitions are disposed of by directing the second respondent to consider the candidatures of the petitioners for appointment to the post of Scavenger in the Tiruttani Municipality as per their seniority in the Employment Exchange and pass order in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.*

3.Pursuant to the orders of this Court, the respondents took the process of selection, accordingly, the names of eligible persons were called for from the Employment Exchange and simultaneously, they have issued a recruitment notification in the newspapers inviting applications form the eligible candidates. The respondents conducted a process of selection and appointed about 8 candidates and appointed them. The notified vacancies were 18 and they have appointed only 8 persons during the relevant point of time in the year 2016.

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4.The case of the petitioners was not considered, since their claim was not sponsored through the employment exchange. That apart, the petitioners had not submitted any application pursuant to the notification issued through the newspapers. The writ petitioner however made a representation to the authorities to permit him to participate in the process of selection which was not considered. Thus, he made a further representation which was also rejected. Thus, the petitioner is constrained to move the present writ petition.

5.The learned counsel for the petitioner mainly contended that the process of selection was conducted improperly and without following the procedures as contemplated. The respondents have selected candidates on extraneous consideration and he made a specific allegation against the respondents 3 and 4 that they have demanded huge sum for appointments. The respondents 3 and 4 were holding the post of Chairman, Tiruttani Municipality and 6th Ward Councilor, Member appointing Committee in Tiruttani Municipality. Though, notice was served to the respondents 3 and 4, they have not chosen to appear before this Court.

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6.The learned counsel for the petitioner made a submission that the selection was tainted with corrupt practices and huge demands were made and he made specific allegations in this regard and no actions were taken by competent authority.

7.It is contended that the procedures as contemplated were also not followed. The petitioners were fully qualified for appointment to the post of Scavenger in Tiruttani Municipality. Their names were sponsored through the District Employment Exchange. Since they filed the writ petition and obtained an order they were not permitted to participate in the process of selection, when the selection was conducted subsequently. Therefore, the case of the writ petitioners are to be considered for the appointment to the post of Scavenger. The learned counsel for the petitioner states that an interim order was passed to keep the post vacant in Tiruttani Municipality.

8.The learned counsel appearing on behalf of the 2nd respondent objected the said contention and stating that as per Rule 9(2) of the Tamil Nadu Municipal

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General Service Rule, 1970, the Municipality shall call for the list of eligible candidates from the local Employment Exchange and if sufficient number of candidates from the Employment Exchange is not available, the Commissioner shall advertise the vacancies in the local dailies of the District and invite applications from the eligible candidates and compile them. Therefore, in the present case, the 2nd respondent called for the list of names from the Employment Exchange which was found to be insufficient and consequently, issued publication in the newspapers, inviting applications from the eligible candidates. In this regard, the Government also issued G.O.Ms.No.44 Labour and Employment Department, dated 11.03.2015. The said Government Order was issued pursuant to the judgment of this Court in W.A.No.1027 of 2013, dated 09.06.2014 accordingly, two modes of inviting applications are permitted and thus, the 2nd respondent followed the procedures as contemplated by the Government in G.O.Ms.No.44, dated 11.03.2015.

9.The learned counsel for the 2n respondent contended that the writ petitioners were allowed to participate in the interview process. Since their names were not sponsored by the District Employment Exchange nor they submitted an

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application pursuant to the notification issued by the Municipality. Thus, they are not entitled for any relief.

10.Considered the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis. It is not in dispute that the name of the writ petitioners was initially sponsored by the District Employment Exchange during the process of selection conducted in the year 2010. The petitioners participated in the interview. However, they were not considered on account of the fact that the candidates were selected on extraneous considerations. In this regard, the writ petitioners made a specific allegations regarding the corrupt practices by former Chairman and Ward Councilor, Member Appointment Committee of Tiruttani Municipality. Though, the allegations of corrupt practices were specifically avered in the affidavit filed in support of the writ petitions. The 2nd respondent Municipality has not met out the allegations with reference to the facts and circumstances. Contrarily, they have simply stated as the statement is incorrect. However, the respondents 3 and 4 had not responded to the Court notice and under these circumstances, this Court has to draw an inference that the allegations remains as it is and not rebutted by any of the respondents.

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11.Regarding the further selection conducted for selection and filling up of 18 posts of Scavenger in Tiruttani Municipality, the 2nd respondent called for the list of candidates from the District Employment Exchange and further issued publication through local newspapers. They had received number of applications and thereafter, conducted a process of interview. This Court has gone through the resolution passed by the 2nd respondent regarding the selection. Though, the particulars of the candidates are made available , the assessment and relative merits between the candidates were not made properly. Except by following the 200 point roster as per Rule 22 of the general rules. No merits assessment has been made nor the process of selection was conducted through an established procedure. Any selection must be conducted in a transparent manner and by following the principles established. However, in the present case, the Committee has selected candidates by way of their own assessment without following any acceptable procedure. The files produced before this Court reveal that the selection was not conducted in the manner known to law. The candidates were simply interviewed by the Committee and they have selected men of their choice and therefore, this Court would be able to form an opinion that the selection was

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not conducted in accordance with the established principles laid down by the Courts. Regarding the allegations of corruption, this Court is not able to form an opinion, since the allegations made by the petitioners have not been responded either by the 2nd respondent or by the respondents 3 and 4. However, the fact remains that the process of selection was not conducted in accordance with the principles established and more over, the 2nd respondent filled up 8 posts out of the 18 posts which were notified. Thus, the case of the writ petitioners are to be considered.

12.The writ petitioners are fully qualified otherwise for appointment to the post of Scavenger in Tiruttani Municipality. Their names were initially sponsored by the District Employment Exchange and thus, they were seniors in employment seniority and further, the 2nd respondent had not conducted the process of selection in a transparent manner and relative merits between the candidates were not assessed and this being the factum established, the writ petitioners are entitled to succeed. Accordingly, the order impugned passed by the 2nd respondent in proceedings Na.Ka.No.2032/2015/C1 dated 23.02.2016 is quashed and the 2nd respondent is directed to appoint the writ petitioners as Scavengers in Tiruttani

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Municipality, within a period of four weeks from the date of receipt of a copy of this order.

13.This writ petition stands allowed. The learned counsel for the 2nd respondent brought to the notice of this Court that now no selection to the sanctioned post in made and the work in Tiruttani Municipality are outsourced. However, the outsourcing Policy came into force subsequently after the selection and as far as the case of the petitioners are concerned, two posts were already kept vacant and more over, 8 candidates alone were appointed out of the 18 notified vacancies. Thus, there may not be any difficulty for the 2nd respondent to accommodate the writ petitioners. No Costs. Consequently, connected miscellaneous petitions are closed.

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S.M.SUBRAMANIAM, J.

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To

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