



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.9006 OF 2016

AND

W.M.P.NOS.8004 OF 2016 & 16429 OF 2021

Anandan

...Petitioner

Vs

1.The Executive Officer,  
Town Panchayat Office,  
Marandahalli Post,  
Palakode Taluk,  
Dharmapuri District.

2.M.C.Kalaivani,  
The Chairman,  
Selection Grade Town Panchayat,  
Marandahalli - 636806,  
Dharmapuri District.

3.M.V.Govindan,  
3<sup>rd</sup> Ward Counselor,  
12-A, Panjapalli Road,  
Marandahalli - 636 806,  
Dharmapuri District.

4.G.Sakthivel

5.The District Collector,  
Dharmapuri District.

...Respondents

(5<sup>th</sup> respondent Suo motu impleaded by  
order dated 02.02.2022 in W.P.No.9006/2016  
by MSRJ)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order in Na.Ka.No.28/2015/A1 dated 06.01.2016 issued by the 1st respondent in favour of the 4th respondent and to quash the same and consequently direct the 1st respondent to appoint the petitioner in the Sanitary Worker post from the date of



appointment of the 4th respondent (i.e.,) 06.01.2016 along with other benefits within a time frame.

For Petitioner : Mr.T.Karunakaran

For R1 : Mr.K.Thangapandi

For R2 : Mr.I.Abrar Md Abdulla

For R3 : No Appearance

For R4 : Ms.D.Bharathy

#### ORDER

When one post of Sanitary Worker in the first respondent Town Panchayat fell vacant on and from 01.11.2014, the Executive Council resolved to fill up the post, by calling for candidates from the Employment Exchange. Accordingly, the first respondent herein, through his proceedings dated 03.07.2015, had addressed the Employment Exchange to send the names of priority candidates, for the purpose of filling the vacant post of Sanitary Worker and in the absence of such priority candidates, the names of non-priority candidates could be sponsored.

2. In this background, the District Employment Office had sent a list of 5 candidates on 22.12.2015, in which, the petitioner was shown as a "priority" candidate, since his lands were acquired under the land acquisition proceedings. The remaining 4 candidates, in which the fourth respondent's name also found place, are "non-priority" candidates.

3. The learned counsel for the petitioner submitted that the fourth respondent's actual Date of Birth is 14.07.1998 as per the school records and that he had furnished false information to the District Employment Office, by quoting his Date of Birth as 23.05.1997. Since the fourth respondent was a minor as on the date of selection, his appointment itself is irregular. It is his further submission that since the first respondent herein had sought for filling the vacancy through a priority candidate alone, the petitioner herein, who was the only priority candidate in the list sponsored in the District Employment Office, is entitled for such appointment.

4. The learned counsel for the first respondent, as well as the learned counsel for the second respondent, would submit that as per the details furnished by the District Employment Office, they had appointed the fourth respondent herein by taking note of the Date of Birth furnished by the District Employment Office.

5. The learned counsel for the fourth respondent raised technical objections that the District Employment Office has not been made as a party respondent. He also submitted that the then



Executive Officer of the Panchayat, who was a part of the selection committee and against whom personal allegations have been made in the affidavit, has not been impleaded as a party respondent and therefore, the writ petition is liable to be rejected.

6. I have given careful consideration to the submission made by the respective counsels.

7. The petitioner, in his affidavit filed in support of the writ petition, has specifically stated that the fourth respondent's actual Date of Birth, as per the school records, is 14.07.1998 and not 23.05.1997. Since the fourth respondent happened to be a minor at the time of appointment i.e. on 06.01.2016, the appointment itself is liable to be set aside. To such an averment, the fourth respondent has not denied that his Date of Birth was not 14.07.1998. Furthermore, the fourth respondent's Transfer Certificate for X<sup>th</sup> Standard dated 31.05.2013 and the Transfer Certificate for XII<sup>th</sup> Standard dated 14.05.2015 have been produced before this Court, which also reveals that the Date of Birth of the fourth respondent is 14.07.1998. On the other hand, the Employment Identity Card of the fourth respondent shows his Date of Birth as 23.05.1997. Apparently, the Date of Birth in the Employment Card of the fourth respondent seems to be incorrect.

8. When the petitioner herein had earlier made a representation to the first respondent on 01.03.2021, there was a reply given on 18.06.2021, in which, the first respondent had categorically stated that, as per the school records, the fourth respondent's Date of Birth was only 14.07.1998 and therefore, they had sought for taking action against the then Executive Officer for the irregular appointment. The fourth respondent's counter affidavit also reveals that steps were initiated for departmental action against him, by issuance of a show cause notice on 12.04.2021 and thereafter, there was no further progress.

9. In view of the undisputable documents produced before this Court relating to the school records of the fourth respondent, which establishes the fourth respondent's Date of Birth as 14.07.1998, this Court is of the view that the fourth respondent's appointment may be irregular and therefore, it would be appropriate to direct the first respondent to initiate departmental action against him. Further, in view of the school records being brought to the notice of this Court, which indicates the possibility of false declaration of Date of Birth, it would be appropriate to place the fourth respondent under suspension, pending an enquiry.



10. This Court is conscious of the fact that in view of the suspension of the Sanitary Worker attached to the first respondent Town Panchayat, the general public in the Panchayat may be put to some inconvenience. In this regard, this Court has taken note of the fact that among the 5 candidates sponsored by the District Employment Office, Dharmapuri, on 22.12.2015, the petitioner herein was the only "priority" candidate and also belongs to Scheduled Caste Community. Thus, if the petitioner herein is directed to be appointed temporarily, pending enquiry of the fourth respondent, the ends of justice could be secured.

11. The learned counsel for the fourth respondent had submitted that the non-impleadment of the then Executive Officer, namely, Ms. Shanthi, in her personal capacity and the District Employment Office as party respondents would be fatal. I am not in agreement with such a submission made.

12. Insofar as the non-impleadment of the then Executive Officer is concerned, it is brought to the notice of this Court that the first respondent herein had initiated action against her and pending the enquiry, she had expired. This Court had also directed the petitioner to implead the then Executive Officer as party respondent and thereby had condoned such non-impleadment. Now that Ms. Shanthi, the then Executive Officer, had expired, the question of her impleadment does not arise.

13. Insofar as the non-impleadment of Employment Exchange is concerned, the records pertaining to the Employment Exchange, particularly the proceedings dated 22.12.2015 sponsoring the 5 candidates, have been produced before this Court, in which, none of the respondents have questioned the veracity of this document, which is a prime document. Hence, non-impleadment of the Employment Exchange as a party respondent would not be fatal to the case.

14. As stated earlier, the then Executive Officer, who had appointed the fourth respondent herein, had already expired. The second and third respondents herein were part of the 3 Member Committee, who had appointed the fourth respondent. Since this Court, on the basis of the records before it, had come to a prima-facie conclusion that the birth certificate of the fourth respondent is incorrect, they would equally be responsible for the irregular appointment. As such, the manner, in which this irregular appointment was made, requires to be enquired into, particularly, against the fourth respondent herein. For the limited purpose of conducting such an enquiry, the District Collector, Dharmapuri is suo-moto impleaded as a party respondent, who shall appoint an Enquiry Officer, not below the rank of District Revenue Officer in his district. The District Collector is also at liberty to prefer a police complaint against the second and third respondents herein, in the light of the observations made in this order.



15. In the light of the above observations, there shall be a direction to the first respondent herein to forthwith commence departmental action against the fourth respondent, in accordance with law and after affording due opportunity to the fourth respondent, shall conclude such an action, within a period of three (3) months from the date of receipt of a copy of this order.

16. The first respondent shall also forthwith place the fourth respondent under suspension and consequently grant temporary appointment to the petitioner herein as a Sanitary Worker. Such a temporary appointment shall be subject to the decision to be taken in the enquiry against the fourth respondent. The first respondent shall endeavour to pass such orders suspending the fourth respondent and temporarily appointing the petitioner, within a period of one (1) week from the date of receipt of a copy of this order. It is hereby clarified that in case the fourth respondent's appointment is found to be irregular and his appointment is terminated, the first respondent shall regularize the services of the petitioner.

17. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

hvk

To

1. The Executive Officer,  
Town Panchayat Office,  
Marandahalli Post,  
Palakode Taluk,  
Dharmapuri District.
2. The Chairman,  
Selection Grade Town Panchayat,  
Marandahalli - 636806,  
Dharmapuri District.
3. The District Collector,  
Dharmapuri District.

+1cc to M/s.D.Bharathy, Advocate Sr.No.6242  
+3ccs to M/s.T.Karunakaran, Advocate Sr.No.6353

W.P.No.9006 of 2016

PMK (CO)  
RVM(02/03/2022)