



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.18453 of 2013

and

W.M.P. (MD)No.3527 &3528 of 2022

K.Kaleeswaran

... Petitioner

vs

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The District Revenue Officer,
Sivagangai District,
Sivagangai.
3. The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.
4. The Tahsildar,
Ilayankudi Taluk,
Sivagangai District.
5. The Assistant Director of
District Employment Office,
Sivagangai.
6. Mr.M.Madhavan.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records relating to the order passed by the third respondent in Na.Ka.No.A1/4773/2010, dated 23.07.2013 appointing the sixth respondent as Village Assistant to the Nagamukundankudi Group Revenue Village and quash the same and consequently, directing the 1st to 5th respondents to consider the representation, dated 09.10.2013 of the petitioner and to appoint the petitioner as the Village Assistant to the Naagamukundankudi Group Revenue Village, Sivagangai Taluk, Sivagangai District, with effect from 23.07.2013 with service, monetary and other attended benefits.



For Petitioner : Mr.A.Thirumurthy
for M/S. Victory Associates

For Respondents : Mrs.D.Farjana Ghoushia for R1 to R5
Special Government Pleader

Mr.Nirangan S.Kumar for R6

O R D E R

This Writ Petition is filed to quash the impugned order, dated 23.07.2013 appointing the sixth respondent as Village Assistant and subsequently, direct the respondents 1 to 5 to consider the representation, dated 09.10.2013 and appoint the petitioner as Village Assistant with effect from 23.07.2013 with service and other attended benefits.

2. The petitioner is the permanent resident of Panaikkulam Village, Naagamukundankudi Group Revenue Village. The petitioner had passed VIII standard and belong to BC community. The petitioner has registered with District Employment Office, Sivagangai with Employment Registration number is 5598 of 2009, dated 22.06.2009. A notification dated 30.07.2011 was issued in News Paper inviting application from the eligible candidates for the post of Village Assistant. The petitioner appeared before the respondent on 02.08.2011. Both the petitioner and the sixth respondent attended the interview. The contention of the petitioner is that the date of birth of the sixth respondent is 30.05.1978. Hence as on the date of advertisement (i.e., 30.07.2011), the sixth respondent was 33 years and two months and as on the date of interview he was 33 years and three months. The age limit for appointment of BC Community is 32 years. The five years age relaxation was given in G.O.Ms.No.98 P & AR (S) Department, dated 17.07.2006, (due to ban imposed on the new recruitment in November 2011) has also expired on 16.07.2011. Therefore, the sixth respondent is over aged and the petitioner is the only candidate available and eligible to be appointed. But the fourth respondent recommended the sixth respondent to the post of Village Assistant. Challenging the appointment, one Kongeswari filed a writ petition in W.P. (MD) No. 14577 of 2011 directing the respondents to follow G.O.Ms.No.18 Labour and Employment (B.2) Department, dated 25.02.20008, wherein the Government issued guidelines to the District Employment Offices to sponsor candidates in the ratio of 1:5 with a consequential prayer to sponsor her name. Since no appointment was made to the said post, this Court has granted an interim order of "Status Quo" on 21.12.2011. In the said writ petition one Madhavan who is the sixth respondent impleaded himself as the seventh respondent. When the writ petition was taken up for hearing on 04.07.2013 it was falsely informed that the said Madhavan was already appointed to the post of Village Assistant.



Therefore, the petitioner therein made a prayer to issue a direction to the respondents to consider the claim of the petitioner for selection to the post of Village Assistant in future. Recording the said submission, the Honourable Court dismissed the writ petition. Thereafter, it came to the knowledge that the said Madhavan was subsequently appointed as Village Assistant, vide order, dated 23.07.2013. Therefore, the petitioner therein mentioned before the said Court under "For being Mentioned". The Honourable Court was pleased to pass an order, recalling the earlier order passed on 04.07.2013 and directed the respondents to file a counter affidavit. In spite of several opportunities, the respondents have not filed any counter affidavit in the said writ petition. Pending the writ petition, the petitioner has challenged the appointment of the said Madhavan in the present writ petition.

3. The contention of the petitioner is that the sixth respondent is over aged. The appointing authority is the Tahsildar but the appointment order was issued by the Revenue Divisional Officer and therefore, the appointment order issued by the Revenue Divisional Officer is against the law. The petitioner who is the only candidate available should be appointed as the Village Assistant. Hence, the petitioner submitted a representation, dated 09.10.2013 to cancel the appointment of the sixth respondent. The second respondent has not taken any action and the sixth respondent has wantonly suppressed the real fact and made perjury. Aggrieved over the same, the present writ petition is filed.

4. The fourth respondent, the Tahsildar has filed a counter affidavit stating that the Department requested the District Employment Officer to sponsor the eligible candidates. Based on the request, the District Employment Officer published an advertisement in Newspaper inviting applications from the eligible persons. In the advertisement, the District Employment Officer mentioned maximum age as on 31.05.2011 for SC/ST candidates- 40 years, MBC-37 years and OC-35 years. Thereafter, the fifth respondent sponsored the petitioner's name and the sixth respondent's name for the post of Village Assistant. On 02.09.2011, both the petitioner and the sixth respondent attended the interview and the respondents have granted the appointment to the sixth respondent who is eligible and not barred by overage. The Tahsildar thereafter, forwarded the selected list to the third respondent for his consent. The said Kongeshwari has filed a writ petition is W.P.(MD)No.14577 of 2011. At that time, the file which is relating to the sixth respondent selection was pending before the third respondent for getting his assents. On considering the same, the "Status Quo" order was passed. Since the file was pending before the third respondent, because of Status Quo order, the sixth respondent has filed an impleading petition in W.P. (MD)No.14577 of 2011. On 06.07.2013, this Court dismissed the writ petition, since the said Kongeswari did not press the prayer. In Para No.2 of the order in W.P.(MD)No.14577 of 2011 is stated as



"2. The learned Counsel appearing for the petitioner submitted that since one Madhavan, 7th respondent herein (impleaded party) has already been appointed as Village Assistant, petitioner is not pressing the prayer in the writ petition and the petitioner will be satisfied if his claim is directed to be considered in future selection."

Then only this Court directed that if any selection is made for the post of village assistant in future, her claim may be considered. The writ petition was dismissed, only based on the representation of the petitioner and the present writ petitioner is incorrect in saying that this respondent had suppressed or made false representation before the Hon'ble Court. Thereafter the petitioner in W.P. (MD) No. 14577 of 2011 mentioned before the Court to withdraw its order, dated 04.07.2013 and the writ petition was restored and the respondents were directed to file counter affidavit. The contention of the respondents is that the selection process was kept in abeyance due to the status quo order. After the dismissal of W.P.(MD)No.14577 of 2011, the respondents have issued appointment order. Hence the respondents have not made any false representation before the Hon'ble Court. The sixth respondent is eligible candidate, therefore, he has been appointed and the respondents prayed to dismiss the writ petition.

5. Heard Mr.A.Thirumurthy, learned Counsel appearing for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents 1 to 5 and Mr.Niranjan S.Kumar, learned Counsel appearing for the sixth respondent.

6. The contention of the petitioner is that the respondent is over aged and therefore, the respondent is not eligible for the appointment. Admittedly, the respondent was 33 years and two months at the time of interview. It is seen from the counter affidavit and the notification issued for the recruitment, it has been mentioned that the age for MBC is 37. Therefore, this Court is of the considered view that the sixth respondent is not over aged.

7. The next contention put forth by the learned Counsel appearing for the petitioner is that five years age relaxation was granted under G.O.Ms.No.98 P & AR (S) Department, dated 17.07.2006 is due to the ban imposed for new recruitment on November 2011 and the ban was also expired on 16.07.2011. Therefore, five years relaxation granted to the sixth respondent is against statute. The official respondents have stated that they have requested the District Employment Officer to sponsor eligible candidates for the post and based on the same, the Newspaper publication was issued on 30.07.2011. In the newspaper publication it has been mentioned the age limit for SC/ST candidates- 40 years, MBC-37 years and OC-35



years. It has been decided to recruit with the aforesaid age limit and based on which the applications were processed. Since the newspaper specifically states that the age for MBC-37 years, then there is no infirmities and the 6th respondent is not overage. On perusal of the newspaper publication, it is seen that the process of recruitment was stated in the month of April - May and the newspaper has fixed a date, wherein it states as on 31.05.2011 the age should be for MBC as 37 years. Therefore, this Court is of the considered opinion that since the Newspaper publication was on 30.07.2011, the process for recruitment have started prior to that i.e. 31.05.2011 and the ban of five years was lifted on 16.07.2011, hence, five years relaxation period is not applicable for the present recruitment. In short, the recruitment started on 31.05.2011 and the relaxation is applicable until 16.07.2011, which means it is well with the G.O. Ms. No. 98 and therefore this Court is of the considered opinion that there is no violation of G.O. Ms. No. 98.

8. The next contention put forth by the petitioner is that the petitioner has already cancelled his Employment Exchange registration and has re-registered himself in the year 2006 in Registration No.8249 dated 05.10.2006. The allegation is denied by the sixth respondent. When the case was taken up earlier, this Court directed the official respondent to circulate the relevant papers regarding registration of the sixth respondent. The official respondents have circulated the papers stating that the sixth respondent was registered in the year 2000 itself in the Registration No.1366, dated 31.05.2000. Therefore, this Court is convinced that the registration is in the year 2000 and not in the year 2006. The sixth respondent was also directed to produce the Employment Exchange card that was issued to the sixth respondent. The sixth respondent submitted that after the appointment of the petitioner to the post as Village Assistant and he has surrendered the Employment Card to the Employment Registration Office and he has produced the photo copy of Card. In that, it has been clearly stated that the sixth respondent's name is Madhavan, date of birth is 30.06.1978 and the Registration No.1366, dated 31.05.2000 and the next renewal date is on 2003. The sixth respondent has periodically renewed the Employment Exchange Registration and there is an endorsement to that effect. Therefore, this Court is convinced that the sixth respondent has not misrepresented or committed any fraud.

9. The next contention is that the RDO has issued the appointment order, but the respondents have stated that since there were several litigations in this recruitment, the Tahsildar had sought formal consent from the RDO. The appointment order was issued only by the Tahsildar. This Court is of the considered opinion that the Tahsildar has issued the appointment order. Therefore, there is no merits in this case.



10. Hence, the Writ Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The District Collector,
Sivagangai District, Sivagangai.
2. The District Revenue Officer,
Sivagangai District, Sivagangai.
3. The Revenue Divisional Officer,
Sivagangai District, Sivagangai.
4. The Tahsildar,
Ilayankudi Taluk, Sivagangai District.
5. The Assistant Director of
District Employment Office,
Sivagangai.

+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-11273[F] dated 10/03/2022)

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-11699[F] dated 11/03/2022)

+1 CC to M/s.SPL GP (SR-11182[F] dated 10/03/2022)

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