



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)Nos.21125 of 2015 and 1552 of 2016

and

W.M.P. (MD)Nos.1310,1311,1488 & 1713 of 2016

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W.P. (MD)No.21125 of 2015

P.Ramu

... Petitioner

vs

1. The District Collector,
Collectorate,
Madurai, Madurai District.

2. The Personal Assistant to the District Collector,
(Development Section),
Collectorate,
Madurai, Madurai District.

3. The Commissioner,
Panchayat Union,
Usilampatti Panchayat,
Usilampatti, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in Na.Ka.No.42778/2014/Oo.Va.7, dated 20.03.2015 and the consequential impugned order in Na.Ka.No.43778/2014/Oo.Va.7, dated 20.11.2015 on the file of the second respondent and quash the same as illegal and consequently, to direct the second respondent to approve the appointment of the petitioner as Jeep Driver with effect from 16.09.2015.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.T.Arul for R4
for Mr.M.R.Sreenivasan
Mr.P.Thambidurai for R1 to R3
Government Advocate (Civil side)

W.P. (MD)No.1552 of 2016

R.Alagumalai

... Petitioner

vs

1. The District Collector,
Madurai, Madurai District.



2. The Union Chairman,
Panchayat Union,
Usilampatti Panchayat,
Usilampatti, Madurai District.

3. P.Ramu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication of the second respondent in Na. Ka. No. 932 / 2015/A2, dated 18.01.2016 in resolution No.14 in Na. Ka. No. 2280 / 2015 / A1, dated 18.01.2016 and quash the same as illegal and consequently, direct the respondents 1 and 2 to appoint the petitioner in the post of Jeep Driver in the second respondent's office.

For Petitioner : Mr.T.Arul for R4
for Mr.M.R.Sreenivasan

For Respondents : Mr.P.Thambidurai for R1 to R2
Government Advocate (Civil side)
Mr.T.Lajapathi Roy for R3

COMMON ORDER

The writ petition in W.P.(MD)No.21125 of 2015 is filed challenging the impugned order, dated 20.03.2015 and the consequential impugned order, dated 20.11.2015, on the file of the second respondent and to approve the appointment of the petitioner as Jeep Driver with effect from 16.09.2015.

2. The brief facts of the case are that the petitioner's qualification is +2 (XII Standard) and with driving license. Then the petitioner registered in District Employment Exchange in the year 2003. The contention of the petitioner is that he was sponsored by the District Employment Exchange and he was appointed as Jeep Driver through appointment order, dated 01.12.2014. The District Collector, cancelled the appointment, vide order, dated 20.01.2015 by stating that certain irregularities in following the procedures. But the third respondent after verification from the District Employment Exchange and through paper publication has stated that no candidates are available in SC(A). Thereafter, the third respondent sought permission to the first respondent, dated 04.08.2015, seeking for clarification for an appointment to the vacant post. The second respondent directed the third respondent, vide letter, dated 04.09.2015, to make an appointment in the vacant post of Jeep Driver, failing which, it was informed that the same would be surrendered. Since there is no eligible candidate under SC (A), the third respondent appointed the petitioner, vide appointment order, dated 16.09.2015. According to the petitioner, earlier he had worked as Non Muster Roll in the same Union and the service



register was opened. The second respondent has also cancelled the appointment stating that prior permission was not obtained from the District Collector. The contention of the petitioner is that 200 points roster cannot be applied in the single unit of Usilampatti Panchayat. Hence the fixation that the second appointment after 2008 should go to SC(A) is erroneous. Therefore, the petitioner has challenged the impugned orders and consequential prayer to appoint him as Jeep Driver.

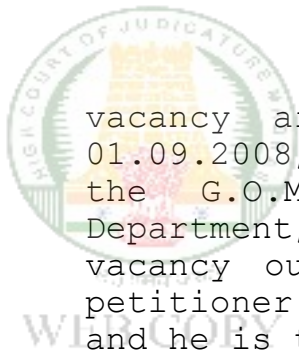
3. The rival candidate, namely, Alagumalai has filed a writ petition in W.P.(MD)No.1552 of 2016, challenging the impugned order, dated 18.01.2016 and consequently, direct the respondents to appoint the petitioner in the post of Jeep Driver. The contention of the said Alagumalai is that the said Ramu's appointment is violating the Rules. The violation was pointed out by the District Collector and his appointment was cancelled. Thereafter, the Union has initiated to fill up the post and issued paper publication wherein the last date for submitting application was fixed as 06.05.2015. But the contention of the said Alagumalai is that even prior to the said last date i.e. 06.04.2015, the said Ramu was appointed on 16.04.2015, which means the Union has appointed even prior to the paper publication. Hence the entire selection process is an eye wash. The contention of the said Alagumalai is he belongs to SC(A) and as per roster he is entitled to the said post, after the vacancy of the post due to the death of the incumbent, namely, Krishnan.

4. Heard the Learned Counsel Mr. Mr.T.Lajapathi Roy appearing for the petitioner in W.P.(MD)No.21125 of 2015 and appearing for third respondent in W.P.(MD)No.1552 of 2016, Learned Counsel Mr.T.Arul for Mr.M.R.Sreenivasan appearing for the fourth respondent in W.P.(MD)No.21125 of 2015 and appearing for the petitioner in W.P.(MD)No.1552 of 2016 and Mr.P.Thambidurai, Learned Government Advocate (Civil side) for Respondents 1 to 3 in W.P.(MD)No.21125 of 2015 and for Respondents 1 and 2 in W.P.(MD)No.1552 of 2016 and perused the records.

5. It is seen from the records that the Panchayat Union has not properly followed the said procedures. The District Collector has cancelled the earlier appointment order, in spite of the same, still the Panchayat Union has not followed any procedures.

6. The learned Counsel appearing for the petitioners and the respondents have clarified the appropriate Government Orders which is applicable for the recruitment process as on 2008 and 2015. The said Krishnan was appointed on 01.09.2008. The G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department, dated 29.10.2007 read with G.O.Ms.No.101, dated 30.05.2008 is applicable. The cut off date prescribed in G.O.Ms.No.241 is 15.09.2007 and in G.O.Ms.No.101, the cut off date prescribed as 15.09.2007.

<https://hcservices.ecourts.gov.in/> ~~Divulged for~~, this Court is of the considered opinion that the



vacancy arose prior to 01.09.2008. If it is considered as 01.09.2008, then the available vacancy ought to be filled up as per the G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department, dated 29.10.2007, under General Turn. Then the next vacancy ought to be filled up by SC or SC(A). Therefore, the petitioner Ramu is not eligible but the Alagumalai belongs to SC(A) and he is the eligible candidate.

8. The learned Counsel appearing for Ramu submitted that he is in service for the past seven years. For the mistake committed by the Official respondents, the said Ramu cannot be penalized. Based on this job, he has his family to look after and pleaded for equity. At this juncture, the Official Respondents are called for and sought the particulars whether there is any vacancy available as on 13.12.2021. The Learned Counsel for the petitioner submitted that one Mr. Balasubramanian was transferred to some other place and the same is available and the said vacancy arose on 01.01.2022. The respondents confirmed that the fact of transfer is true. But opposed stating the same cannot be filled up by granting the place to Ramu.

9. This Court is of the considered opinion that it is only a transfer vacancy and fresh recruitment cannot be carried out and therefore this Court is inclined to grant relief to the said Ramu.

10. Therefore, this Court is directing the respondents, especially, the District Collector, to pass the following orders:

- a. The said Alagumalai shall be appointed in the vacancy of Krishnan and the Alagumalai is entitled to salary and other benefits from the date of appointment only
- b. The said Ramu shall be appointed to the vacancy arose due to the transfer of Balasubramanian.
- c. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

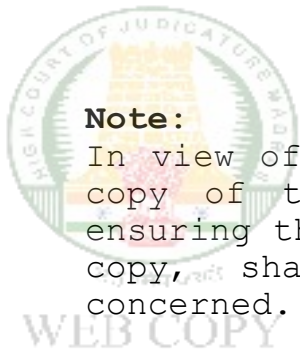
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Sub Assistant Registrar(CS)

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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,
Collectorate,
Madurai, Madurai District.
2. The Personal Assistant to the District Collector,
(Development Section),
Collectorate,
Madurai, Madurai District.
3. The Commissioner,
Panchayat Union,
Usilampatti Panchayat,
Usilampatti, Madurai District.
4. The Union Chairman,
Panchayat Union,
Usilampatti Panchayat,
Usilampatti,
Madurai District.

+1 CC to M/s.SPL GP (SR-6804[F] dated 17/02/2022)

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-6650[F] dated 17/02/2022)

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-6641[F] dated 16/02/2022)

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RD(12.04.2022) 5P 9C