



W.P.(MD) Nos.7834 and 7887 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD) Nos.7834 and 7887 of 2018 and
WMP(MD) Nos.7423 and 11296 of 2018 and 7478, 7479 of 2018**

WP(MD) No.7834/2018

S.Ilayaraja

... Petitioner

-VS-

- 1.The Government of Tamilnadu
Rep. by its Principal Secretary
Rural Development and Panchayat Raj Department
Fort St. George,
Chennai
- 2.The District Collector,
Virudhunagar District,
Virudhunagar.
- 4.The Personal Assistant to District Collector
(Development)
O/o.the District Collector,



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Virudhunagar District
Virudhunagar.

5.The Block Development Officer/Special Officer
(Village Panchayat)
O/o.The Block Development Office
Rajapalayam
Virudhunagar District.

6.Ganapathy Sundara Natchiyapuram Panchayat
Rep. by its Executive Authority
Special Officer,
Rajapalayam Taluk
Virudhunagar District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the notification issued by the 5th respondent in Na.Ka.No. 1214/2018/B6 dated 27.03.2018 quash the same and consequently directing the respondents to fix the roster point for the post of village panchayat secretary of the 5th respondent panchayat in the village/block level and issue fresh notification for the post of village panchayat secretary in the 5th respondent panchayat.

For Petitioner	: Mr. R.Subramanian
For Respondents	: Ms.K.Chistry Theboral Additional Government Pleader



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S.Ganeswari

... Petitioner

-VS-

- 1.The State of Tamilnadu
Rep. by its Secretary to Government
Rural Development and Panchayat Raj Department
Secretariat,
Chennai
- 2.The Director of Rural Development and Panchayatraj
O/o. the Director of Rural Development and Panchayatraj Department,
Panagal Building, Saidapet, Chennai.
- 3.The District Collector,
Virudhunagar District,
Virudhunagar.
- 4.The Personal Assistant to District Collector
(Development)
O/o.the District Collector,
Virudhunagar District
Virudhunagar.
- 5.The Block Development Officer/Special Officer
(Village Panchayat)
O/o.The Block Development Office
Vembakottai
Virudhunagar
Virudhunagar District.

... Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the 5th respondent in his proceedings in ந.க.எண் 597/2018/பி4 dated 27.03.2018 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran
For Respondents : Ms.K.Chistry Theboral
Additional Government Pleader

COMMON ORDER

Since the issue arises in both the petitions is one and the same, they were heard together and dispose of by this common order.

2. The petitioners have filed these writ petitions challenging the impugned order of the respondents dated 27.03.2018.

3. The case of the petitioners in nutshell is as follows:

Both the petitioners belong to the Ganapathinatchiyapuram village panchayat and Alangulam respectively. The respondents have issued



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notification calling upon applications to fill up the post of village panchayat secretaries in the respective block/panchayat. The post of panchayat secretaries shall carry time scale of pay. The minimum educational qualification fixed for the post is SSLC pass. As per the notification, the candidates should belong to the concerned panchayat. The executive authority is conferred with the powers of selecting candidates. Thus, the candidates belong to the particular panchayat are eligible to apply. In both the cases, the posts were earmarked for most backward community and in respect of Ettakkapatti panchayat, it was earmarked for women and there is no turn for Ganapathinatchiyapuram.

2.1. Earlier, since several provisions are repugnant to the Constitution of India, writ petition (WP No.16884/2013) was filed challenging the rules. When the rule prescribes the power for appointment of panchayat secretaries vests with executive authority, contrary to the same, rule has been framed thereby conferring the powers to the PA to Collector. In the said writ petition, this Court clarified that power is vested only with the executive authority. Accordingly, a notification was issued by the



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respondents and the appointment should be made by following the rule of reservation. The petitioners since eligible participated in the said selection process.

2.2. With regard to the impugned notification is concerned, communal roster was fixed in respect of each post and for each village. Therefore, the candidates belonging to different community were excluded and become ineligible to compete to the particular village. It is further averred in the affidavit that candidates will be selected based on interview and marks obtained. It is the case of the petitioners that for a particular village, a particular community people or a particular roster system was enabled. When that be so, the other people's right to participate for other villages and selection would be affected and therefore, challenging the said notification, these writ petitions were filed.

3. A counter affidavit has been filed by the respondents wherein, it is averred that in order to regulate the appointments, G.O.Ms.No.175 dated 05.12.2006 came into effect, thereby the services of the panchayat assistants



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were brought under regular time scale of pay. Subsequently, their nomenclature has been changed from panchayat assistants to panchayat secretary, vide G.O.Ms.No.52 dated 29.08.2011. As per the Tamil Nadu Panchayats Act, 1994, the executive authority has the administrative control over the village panchayat Secretary.

3.1. It is further averred in the counter affidavit that like noon meal organizers, the post of panchayat secretary is also bound by the distance rules. As far as noon meal organisers are concerned, when their appointments are based on the distant rule, which is enunciated in G.O.Ms.No.163, the same is not challenged before this Court. Like the posts of noon meal organisers, the panchayat secretaries are playing a vital role. It is also averred that if no suitable candidate is available within the village panchayat, then eligible candidates from nearby villages, however, within the block, shall be appointed and this is not violative of Article 14 and 16(1) of the Constitution, which also provides for restrictions. In order to regulate the appointment, G.O.Ms.No.521 dated 17.06.1998 was issued which prescribes for special rules for village assistants, wherein, it is stated



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that the person appointed to the post shall belong to the village to which he is appointed or the adjoining village if no suitable candidate is available from that village.

4. The learned counsel for the petitioners would submit that the rules confined the residents to participate in the selection process for the vacancies in the village/block. If no suitable candidate is available in the village, then the residents of the other villages are entitled to compete. He would submit that Section 27(a) of the Tamil Nadu Government Servants (Conditions of Service) Act will be implemented when 69% posts are reserved for BC, MBC/DNT, SC/ST. However, in the present case, violating the rule of reservation, notification is called for and hence, interference is warranted, he contended.

5. To substantiate his contention, the learned counsel relied on a decision of this Court reported in (2013) 2 CWC 900 (S.Manjula v. The District Collector and others).



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6. Heard the learned Additional Government Pleader based on the counter affidavit.

7. The petitioners belong to their respective blocks and their qualifications are not disputed. Admittedly, the petitioners belong to different community, ie, the petitioner in WP(MD) No.7834/2018 belong to SC community and the petitioner in WP(MD) No.7887/2018 belong to MBC community. They are challenging the notification calling for panchayat secretaries and the selection process on the ground that the roster system was not followed by fixing the eligibility criteria and community has been provided against each vacancy.

8. For the petitioners' village, for 25 vacancies, communal rotation has to be adopted in the 200 points roster. For both the villages, the communal roster is fixed for MBC/DNC/denotified tribes category. It is the contention of the petitioners that violating the rules of reservation, the authorities have taken the district as a basic unit, instead of taking block



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level, which defeat the reservation itself. It is the contention of the respondents that if district is taken as a unit, then all the posts in the block will go to a particular community. The petitioners have contended that in the case of Noon Meal Organisers, the Government has made selection on the basis of each centre wherein, the communal rotation is adopted by taking the district as a single unit as per G.O.Ms.No.142 dated 06.07.2010.

9. In the present cases, it is the case of the petitioners depriving the candidates allotted to the particular community based on the reservation policy, the selection was made and resident of other community people in the particular village is unable to participate/compete. In respect of the said condition that they are unable to participate in the selection process in the next village is concerned, since they fixed the eligibility criteria for the resident of the village and when there is no eligible candidates available in the said village, then only the candidates from the other village are able to compete in the process of selection. However, the present impugned notification was issued for appointment to the post of panchayat secretary for the particular community, which is fixed based on the communal rotation



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for the 25 vacancies has to be adopted from No.1 to 25 in the 200 points roster.

10. Reservation is a basic policy and all the communities ought to have been given opportunity to come forward for upliftment of their life. Thus, as far as the entitlement of the petitioners to participate in the selection process in the other village in which their community was allotted is concerned, the said issue is pending before this Court and after a decision is arrived with regard to the eligibility criteria, they are entitled to participate in the selection process. It is pertinent to note that the writ petition (cited supra) has been filed challenging G.O.Ms.No.72, which is with regard to distance fixed in the said G.O.. However, in the present case, the petitioners' challenge is to the reservation.

11. It is pertinent to note here that the respondents have followed the rule of reservation as per 200 points roster and all the eligibility criteria fixed in the said impugned notification have made selection and hence, no interference is warranted. Hence, the prayer in the writ petition cannot be



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granted. Accordingly, the writ petitions fail and the same are dismissed.

However, liberty is granted to the petitioners to participate in the selection process, after disposal of the pending writ petition, which was filed challenging G.O.Ms.No.72. No costs. Consequently connected Miscellaneous Petitions are closed.

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NCC : Yes/No

Index : Yes/No

Internet : Yes

RR

1.The Principal Secretary
Rural Development and Panchayat Raj Department
Fort St. George,
Chennai

2.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Personal Assistant to District Collector
(Development)
O/o.the District Collector,
Virudhunagar District
Virudhunagar.



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5.The Director of Rural Development and Panchayatraj

O/o. the Director of Rural Development and Panchayatraj Department,
Panagal Building, Saidapet, Chennai.

6.The Block Development Officer/Special Officer
(Village Panchayat)

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7.The Block Development Officer/Special Officer
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O/o.The Block Development Office
Rajapalayam
Virudhunagar District.

8.Executive Authority

Ganapathy Sundara Natchiyapuram Panchayat
Special Officer,
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