



W.P.(MD)No.21759 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.21759 of 2022

and

W.M.P(MD) Nos.15921, 15924 and 20975 of 2022

T.Swaminathan

... Petitioner

Vs.

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The District Adi Dravidar and Tribal
Welfare Officer,
Tuticorin,
Tuticorin District.

3.The Special Thashildar,
Adi Dravidar and Tribal
Welfare Department,
Tiruchendur,
Tuticorin District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings of the second respondent in



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Na.Ka.AaNa1/22096/2021 dated 29.08.2022 and quash the same as illegal and consequently direct the third respondent to permit the petitioner in the service with all benefits.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.S.P.Mahenran
Special Government Pleader

ORDER

This Writ Petition has been filed calling for records relating to the impugned proceedings of the second respondent in Na.Ka.AaNa1/22096/2021, dated 29.08.2022 and quash the same as illegal and consequently, direct the third respondent to permit the petitioner in the service with all benefits.

2.The learned counsel for the petitioner would submit that the petitioner had applied for the post of cook and he was also called for personal interview. In the said selection, the petitioner produced 10th mark certificate and had secured appointment. While the matter stood thus, the second respondent passed impugned order cancelling the appointment of the



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petitioner on the ground that the petitioner possesses higher qualification.

Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner further submitted that the educational qualification for the post of Cook is prescribed in G.O.Ms.No. 53, Adi Dravidar and Tribal Welfare Department, dated 14.08.2013, wherein, the educational qualification for the post of Cook is to read and write in Tamil and no minimum qualification or maximum educational qualification is prescribed. Acquiring the maximum qualification is not a par for acquiring the post and the very same issue came up for consideration before the learned Single Judge of this Court in W.P.(MD) No.16948 of 2022 etc., batch, dated 24.11.2022 and this Court held that the maximum qualification person cannot be denied the appointment and further, the similar issue was came up for consideration before the Hon'ble Apex Court in **Mohd.Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others** reported in **2000(2) SCC - 696** and it has been held as follows :

"18. If the appointment of a candidate to the



post of peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer or a Clerk. It is not that qualifications required for Regional Language Section Writer and Clerk are to be acquired by a peon during the course of his service. During the course of hearing we were referred to a few applications submitted by peons who are already working wherein they had prayed for their being considered for appointment to post of clerks since they had acquired requisite qualifications for that post. On this an argument is sought to be based that those peons with higher qualifications are not interested in their work as peons. We can give no credence to such an argument when Recruitment Rules themselves prescribe that post of a clerk can be a promotional post for a peon having requisite qualification. There is nothing wrong if a peon sends in his request for being considered to be promoted as a clerk.

19. We do not know what are the duties attached to the post of a peon. But perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules



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and the only qualification for both the categories of these posts is "good physique and also to carry out the duties attached to the post."

20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.

(Emphasis added)

4. The learned Special Government Pleader appearing for the respondents submitted that the second respondent issued notification inviting applications for the post of Cook. Pursuant to the said notification, the petitioner has also applied for the said post and attended interview and selected and also appointed as Cook vide proceedings, dated 31.12.2020. Subsequently, the second respondent directed the petitioner to attend an enquiry along with the originals of the educational and other certificates.



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After verification, his appointment was cancelled. Challenging the cancellation of appointment, the present writ petition is filed. The cancellation of appointment is made on the ground that the petitioner has acquired higher qualification than the qualification prescribed and on the said sole ground his appointment was cancelled. The prescription of qualification to the post of Cooks in respect of Schools and Hostels coming under Adi Dravidar and Tribal Welfare Department is only with an intention to give public employment for the persons, who were unable to complete their Schooling, pursuant to their social and economical status. Hence, the writ petition is devoid of merits and he prayed for dismissal of this writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Cook with higher qualification, however, there is no suppression of material facts before the authority at the time of recruitment and the basic qualification prescribed in the above said



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Government Order is only read and write in Tamil. However, subsequently, a circular was issued by the Commissioner, Adi Dravidar and Tribal Welfare Department, on 26.05.2020, that the person who are 10th standard fail alone should be appointed. However, the fact remains that the circular cannot override the Government Order passed under Article 162 of Constitution of India and further, the issue arises in the present writ petitions is no longer *res integra*.

7. The learned Single Judge of this Court in **W.P.(MD) Nos.16948 of 2022 etc., batch, dated 24.11.2022** has passed the following order :-

"3. The only ground on which the impugned orders rest, is that the petitioners are overqualified. The learned Additional Advocate General would submit that as per the Special Rules, the Education qualification prescribed for the post of Cook is that candidate must be able to read and write Tamil language. A circular was issued by the Commissioner, Adi Dravidar Welfare, Chepauk, Chennai on 26.05.2020 mandating that the candidates upto 10th Standard fail alone can be selected. The learned



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Additional Advocate General would state that there is a larger public policy behind such stipulations. If higher qualified persons are allowed to compete for such lower level posts, then truly deserving candidates will be edged out.

4. Though the contention advanced by the learned Additional Advocate General appeals to me, I have to necessarily go by the letter of law. The relevant rules have prescribed only minimum educational qualification. There is no bar against those who are better qualified to take part in the recruitment process. The only ground on which the appointments of the petitioners had been set aside, is that they are overqualified. Such a ground has no basis in the relevant statutory provision.

5. That apart, as rightly pointed out by the learned counsel appearing for the petitioners, the petitioners cannot be faulted in any manner. The recruitment Rule does not have any restrictive stipulation as now contended by the respondents. The petitioners were appointed and they have been working in the said post for several months. To show them the door now is highly unfair and inequitous. I



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therefore hold that the ground on which the impugned orders have been passed is unsustainable. In that view of the matter, the orders impugned in these writ petitions are set aside. These writ petitions are allowed. There shall be no order as to costs in all the writ petitions. Consequently, all the connected miscellaneous petitions are closed."

Applying the ratio laid down by the Hon'ble Apex Court, the present impugned order is liable to be set aside.

8. Accordingly, this writ petition is allowed and the impugned order of the second respondent in Na.Ka.AaNa1/22096/2021, dated 29.08.2022, is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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