



W.A(MD)No.1385 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE  
AND  
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

W.A.(MD)No.1385 of 2022

and

C.M.P.(MD)Nos.10993 and 10995 of 2022

K.Sundaram

... Appellant

vs.

1.The District Collector,  
Ramanathapuram District,  
Ramanathapuram.

2.The Sub Collector,  
Ramanathapuram Division,  
Ramanathapuram.

3.The Tahsildar,  
Thiruvadanai Taluk,  
Thiruvadanai,  
Ramanathapuram District.

4.R.Shanmugasundaram

... Respondents

**PRAYER :** Appeal filed under Clause 15 of the Letters Patent,  
against the order dated 20.09.2022, passed in W.P.(MD)No.579 of  
2021.



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For Appellant

: Mr.K.R.Laxman

For Respondent Nos.1 to 3

: Mr.V.Nirmalkumar  
Government Advocate

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### **JUDGMENT**

**(Judgment of the Court was made by  
The Hon'ble Chief Justice)**

The appellant had filed the writ petition before the learned Single Judge challenging the appointment of Respondent No.4. The Writ Petition was dismissed.

2. Learned counsel for the appellant relying upon a Circular bearing No.7/2012, dated 24.07.2012 submits that the persons having qualification between 5<sup>th</sup> Standard pass and 8<sup>th</sup> Standard fail only, could have been considered for selection to the post of Village Assistant. It is the lowest cadre post. However, Respondent No.4 is overqualified, as such, he could not have been appointed to the said post. The lowest posts are required to be meant for the candidates who could not complete their school education for one or other reasons.



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3. According to the learned counsel for the appellant, the learned Single Judge failed to consider the said Circular, as such, arrived at an erroneous conclusion. Learned counsel further submits that the appellant had applied under BC category and today also, there are vacant posts.

4. Learned Government Advocate relies upon the Rules namely, the Tamil Nadu Village Assistants Special Rules and submits that higher qualification is not a bar.

5. We have considered the submissions.

6. The Rules namely, the Tamil Nadu Village Assistants Special Rules as amended and notified under Notification dated 17.06.1998 is under proviso to Article 309 of the Constitution of India. The same has a statutory force. The Government Order relied upon by the learned counsel for the appellant cannot override the statutory Rules. Rule 6 of the Rules reads thus:-

*"6.Educational Qualification*

*No person shall be eligible for appointment to the post unless he has passed V standard in a recognised School,*



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*namely, a School maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Tamil Nadu Educational Rules with sufficient knowledge to read and write Tamil."*

7. Upon perusal of the above Rules, it would appear higher qualification is not a bar for considering a candidate for appointment to the post of Village Assistant.

8. In view of that, it cannot be said that the learned Single Judge was in error in passing the impugned order.

9. As far as the availability of vacancy is concerned, the wait list can be operated, if the persons, who were issued with appointment orders did not join for one or other reasons. However, wait list cannot be operated, if the person has joined and subsequently resigned and subsequent vacancies had arisen. Time and again, the Apex Court has held that wait list cannot be a source of recruitment.



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10. In the light of that, in case, the appellant can demonstrate to respondent Nos.1 to 3 that the advertised posts were not at all filled up because, the candidates who were issued with appointment orders, did not join and the posts under BC category remain vacant, then, the official respondents may consider the application of the appellant on its own merits. However, we clarify that if the appellant is in wait list, the wait list cannot be operated to fill up the posts, which have subsequently become vacant or vacant upon the candidate resigning after joining the advertised posts.

11. With the above observation, the Writ Appeal is disposed of. There will be no order as to costs. Consequently, C.M.P.(MD)Nos. 10993 and 10995 of 2022 are closed.

**[S.V.G., CJ.]**

**[R.S.M., J.]**

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**and**  
**R.SUBRAMANIAN, J.**

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**JUDGMENT MADE IN**  
**W.A(MD)No.1385 of 2022**  
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