



W.P.(MD).No.4361 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4361 of 2016

and

W.M.P.(MD).Nos.3887, 3888, 3889, 4910 and 5047 of 2016

M.Muthukumar

... Petitioner

Vs.

1.The Director of Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai – 15.

2.The District Collector,
Thirunelveli District,
Thirunelveli.

3.The Commissioner,
Nanguneri Panchayat Union,
Nanguneri,
Thirunelveli District.

4.The Chairman,
Nanguneri Panchayat Union,
Nanguneri,
Thirunelveli District.

5.D.Balaiyah Baskar

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the third respondent in his proceedings in ந.க.எண்.அ1/521/2015 dated 20.01.2016 and quash the same and consequently direct the respondents 1 to 4 to appoint the petitioner as Office Assistant in Nanguneri Panchayat Union, Thirunelveli District.

For Petitioner : Mr.N.Sathish Babu

For R-1 to R-4 : Mr.P.Thambidurai,
Government Advocate.

For R-5 : Mr.K.Viralinathan

ORDER

This Writ Petition is filed to quash the order dated dated 20.01.2016 and consequently direct the respondents 1 to 4 to appoint the petitioner as Office Assistant in Nanguneri Panchayat Union, Thirunelveli District.

2. The third respondent issued a notification dated 11.07.2015 calling for application from suitable candidates for the post of Office Assistant. Thereafter, the petitioner received call letter and attended the interview on 18.08.2015. Out of 31 candidates, there were 4 persons including the petitioner



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who are handicaps and they were directed to appear before the Medical Board for the purpose of examining disability percentage. On 19.08.2015, the petitioner attended the medical test and he was certified with 40% disability. Thereafter, the Selection Committee consisting of Chairman, Vice Chairman and the third respondent selected the petitioner for the said post and recommended the petitioner's name vide proceedings dated 28.08.2015 and the petitioner's appointment was approved by the Nanguneri Panchayat Union Council in its meeting dated 16.09.2015 vide Resolution No.587. The petitioner was under legitimate expectation that he would be permitted to join duty as Office Assistant at Nanguneri Panchayat Union, but to the shock, he received a call letter from the second respondent dated 04.12.2015 and directed to attend the interview on 14.12.2015. Thereafter the petitioner came to understand that the official respondents have appointed the fifth respondent instead of appointing the petitioner and the petitioner's candidature was rejected and the petitioner is not aware of the same. The contention of the petitioner is that the Selection Committee is the competent authority who have selected the petitioner to the said post. Under Section 96 of the Tamil Nadu Panchayat Act, 1994, the Selection Committee is the authority to appoint persons in the Panchayat Union. Accordingly, the petitioner was selected and appointed by



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the committee after approval of the Panchayat Union Council. The second respondent without any authority or jurisdiction has *suo moto* taken action and rejected the decision of the Selection Committee and unilaterally directed to appoint the fifth respondent for the said post. Thereafter, as per the instructions of the second respondent, the third respondent issued the impugned proceedings dated 20.01.2016, thereby appointed the fifth respondent as Office Assistant. Aggrieved over the same, the present Writ Petition is filed.

3. At the time of admission, this Court has granted interim order of stay. When the case came up for hearing on 24.01.2023, it was brought to the knowledge of this Court that interim order was not extended, but the Learned Counsel prayed for extension of interim order. Since for this case the interim order is necessary, this Court extended the interim order vide order dated 24.01.2023.

4. The respondents have filed a counter along with the vacate stay petition. In the meanwhile, the fifth respondent who was appointed in the said post was continuing in the service until today. In this background, the Writ Petition was heard.



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5. Heard Mr.N.Sathish Babu, the Learned Counsel appearing for the petitioner, Mr.P.Thambidurai, the Learned Government Advocate appearing for the respondents 1 to 4 and Mr.K.Viralinathan, the Learned Counsel appearing for the 5th respondent and perused the records.

6. This Court after hearing the rival submissions has given its anxious consideration to the issue. The Selection Committee is the appropriate authority for selecting the person and appointing him as Office Assistant. In the present case, the Selection Committee has selected the petitioner who has 40% disability. The District Collector has intervened with the Selection Committee decision. But, the Committee has power under Section 96 of the Tamil Nadu Panchayat Act, 1994 and District Collector has no power under the Act. The District Collector has directed to again call for interview with fresh candidates and the District Collector has come to the conclusion that the fifth respondent who has 70% disability is the appropriate person for the said post. Based on the direction of the District Collector, the Commissioner has appointed the fifth respondent.



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7. The contention of the official respondents is that the Committee has not specifically stated any reason for rejecting the other candidates. Especially, the Committee has not stated the reasons for rejecting the fifth respondent but has recommended the petitioner. Therefore, the District Collector has refused to accept the decision of the Committee and has come to independent conclusion, based on the disability percentage, the fifth respondent is more appropriate under the handicap category. Therefore, the District Collector has directed the Commissioner to appoint the fifth respondent. This Court is of the considered opinion that the District Collector has no power to give any opinion over and above the Selection Committee decision.

8. Since, the entire selection process is not proper, the official respondents are directed to accommodate the petitioner in any one of the vacancies in the Nanguneri Panchayat Union itself. The respondents are directed to issue appointment order within a period of one (1) week from the date of receipt of a copy of this order. The petitioner is entitled to all monetary benefits from the date of appointment. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.



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9. The learned counsel appearing for the fifth respondent submitted that for the past 7 years he is rendering service in the said post. Therefore, based on equity, this Court is allowing the fifth respondent to continue in the service. Pending litigation, the fifth respondent was not granted any other benefits apart from the salary. The respondents shall consider the same and grant all the benefits to the fifth respondent in accordance to law.

10. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.02.2023

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



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S.SRIMATHY, J.

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