



W.P.(MD).No.5015 of 2016

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.5015 of 2016

N.Viju

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Executive Officer,
Edaicode Town Panchayat,
Edaicode Post,
Kanyakumari District.

3.A.Selvam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the first respondent from approving the appointment of the third respondent made by the second respondent through his proceedings in Na.Ka.No.177/2014/A1 dated 08.01.2016 and consequently direct the first and second respondents to conduct fresh interview by following the Special Rules for Tamil Nadu Basic Service for appointment to the post of Sanitary Worker in the second respondent Town Panchayat.



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For Petitioner : No Appearance
For R-1 : Mr.P.Thambidurai,
Government Advocate.
For R-2 : No Appearance
For R-3 : Mr.M.P.Senthil

ORDER

This Writ Petition is filed for Mandamus forbearing the first respondent from approving the appointment of the third respondent to the post of Sanitary Worker and also sought consequential direction to conduct fresh interview by following the Special Rules for Tamil Nadu Basic Service for appointment to the post of Sanitary Worker in the second respondent Town Panchayat.

2. The contention of the petitioner is that the second respondent should follow Section 4 of Special Rules of Tamil Nadu Basic Service. The selection of the candidates to any of the categories by direct recruitment shall be made only from the list of candidates sent by the Employment Exchange concerned. However, the official respondents have conducted selection process by calling from open market as well, which is against the service rules.



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3. Moreover, the petitioner participated in the interview dated 02.12.2015 along with 30 other participants. The second respondent through his Office Assistant informed the petitioner that he was appointed as Sanitary Worker. But without giving any appointment order to the petitioner, the respondents have appointed the third respondent, which is against the selection process. The petitioner also contended that the interview was not conducted in a fair manner. Further the petitioner contended that the petitioner is qualified candidate and being a native resident of the second respondent Panchayat Union, the petitioner is more eligible to the post than the other persons.

4. The second respondent has filed a counter stating that the official respondents have called for candidates from the Employment Exchange as well as from the Open Market. 33 candidates had applied for the said post. The statement of the petitioner that the Office Assistant of the second respondent has intimated that she was selected, is a false and defamatory statement. The official respondents have called for a list from the Employment Exchange, where 5 candidates were enlisted in the list. Thereafter, paper publication was issued vide Notification dated 19.10.2015 and 28 candidates have applied for the said post. Accordingly, there were 33 applications including the 5



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candidates sponsored by the Employment Exchange. Thereafter, interview was conducted on 02.12.2015 by the Selection Committee in the presence of observer. The Selection Committee has selected the third respondent and thereafter, the third respondent was appointed. There was an absolute transparency in the selection process and there is not infirmity in the selection process. Therefore, the claim of the petitioner is illegal. Hence, the respondents prayed to dismiss this Writ Petition.

5. The contention of the petitioner is that the official respondents should have called for the list from the Employment Exchange only and based on the list, the candidates should be appointed. This plea of the petitioner is totally against the dictum laid down by the *Hon'ble Supreme Court in Excise Superintendent Malkapatanam Vs K.B.N. Visweshwar Rao & others reported in 1996 (6) SCC 216*. Therefore, any recruitment without calling candidates from the open market other than the Employment Exchange, is absolutely erroneous. Any public employment shall be conducted by granting opportunity to all eligible candidates to participate in the selection process. Hence the employer shall call for list from the Employment Exchange, issue paper publication, affix notice in the prominent place and thereafter the Committee should conduct



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interview and select the persons on merits and ability. Hence the plea of the petitioner to appoint candidates only from employment exchange is rejected.

6. The second respondent through their counter has submitted that the selection process was carried out by the selection committee and selection process was in fair manner. This Court is not finding any infirmity in the selection process.

7. With the above observation, this Writ Petition is dismissed. There shall be no order as to costs.

22.02.2023

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

To
The District Collector,
Kanyakumari District,
at Nagercoil.



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S.SRIMATHY, J.

Nsr

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