



W.P.(MD)No. 26829 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 26829 of 2019

and

W.M.P(MD)Nos. 23182 & 23183 of 2019

P.Uma Maheswari

... Petitioner

Vs.

1.The State of TamilNadu,
Rep. by its Secretary,
First Grade Panchayat,
Secretariat, Chennai – 9.

2. The District Collector,
Sivagangai District,
Sivagangai.

3. The Personal Assistant to
the District Collector,
Office of the District Collector,
Sivagangai District, Sivagangai.

4. The Block Development Officer/Special Officer,
Manamelpatti Panchayat Union,
Thiruppathur Taluk,
Sivagangai District.

5. E.Parameshwari

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records relating to the impugned appointment order passed by the 4th respondent to the 5th respondent through his proceedings, vide Na.Ka.B3/1822/2017, dated 06.11.2019 and quash the same as bad in law and consequently direct the 3rd respondent to give appointment order to the petitioner who is having all requisite qualification and more experience.

For Petitioner : Mr.S.Arivalagan
For R-1 to R-4 : Mr.P.Thambidurai
Government Advocate
For R-5 : Mr.K.Hemakarthikeyan

ORDER

This Writ Petition has been filed challenging the impugned order, dated 06.11.2019, with consequential relief to appoint the petitioner for the post of Panchayat Assistant.

2. The petitioner's educational qualification is +2. The erstwhile Panchayat Secretary namely, Mr.M.Ramesh, suddenly died and the Panchayat Secretary post fell vacant. In order to fill up the post, the then President convened a Grama Sabai Meeting and obtained sanction to fill up the said vacant post. The



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President call for applications from 27.01.2016 to 30.01.2016 from the general public by affixing notices in prominent places within the Panchayat Union. The petitioner applied to the said post on 29.01.2016. The committee has scrutinized the application by considering the educational qualification, age limit, community wise and thereafter, the petitioner was selected and appointed in the said post, vide order, dated 10.02.2016. The petitioner, thereafter, worked in the said Panchayat Union. In the meanwhile, the 3rd respondent has informed to the President that the petitioner's appointment is bad in law, since the 3rd respondent/Personal Assistant to the District Collector, is the appointing authority as per G.O.Ms.No.72 Rural Development of Panchayat Raj (E5) Department, dated 09.07.2013 and therefore, directed the then President to cancel the said appointment and hence, the petitioner was orally terminated. Thereafter, the then President has filed a writ petition in W.P.(MD)No.5277 of 2016 to declare that the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 issued under G.O.Ms.No.72 Rural Development of Panchayat Raj (E5) Department, dated 09.07.2013, as ultra vires and the same is still pending before this Court.



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3. In the meanwhile, the petitioner has received a call letter, dated 12.02.2019 from the 4th respondent, wherein, the petitioner was directed to appear for interview and the petitioner had appeared before the 4th respondent on 21.02.2019 and attended the interview and produced all the relevant records. The 5th respondent has also attended the interview. But the claim of the petitioner is that, since she was appointed earlier from 2016 onwards, she is having more experience than the 5th respondent, however, the respondents have not considered the petitioner's case and the 4th respondent has issued appointment order, dated 06.11.2019 to the 5th respondent and she joined in the said post, immediately. The further contention of the petitioner is that the appointment order was signed by the 4th respondent, the BDO/Special Officer and the said order is against G.O.Ms.No. 72 Rural Development of Panchayat Raj (E5), dated 09.07.2013, because as per Clause 4 of the above said Rules, the appointing authority to the post of Panchayat Secretary is the Personal Assistant (Development) to the Collector, whereas, the impugned order was signed by the Block Development Officer. As per Clause 5 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, the age limitation is fixed as 30 years and



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for SC/ST candidates it was fixed as 35 years. The 5th respondent belongs to Backward Class community and her date of birth is 10.02.1984 and the 5th respondent has already completed 35 years of age, as on 09.02.2019 itself. As per the said Rules, the 5th respondent is not eligible for appointment. Moreover, the interview date was fixed on 21.02.2019 and the selection process for the appointment was made in the year 2019. Therefore, the 5th respondent had completed 35 years as on 01.07.2019 itself (infact the 5th respondent has completed 35 years as on 09.02.2019 itself). Hence, the said appointment order is illegal. The petitioner further contended that person should be the resident of that village panchayat, but the 5th respondent is a resident of Perumpuliyoor Village, Thiruvaiyar Taluk, Thanjavur District. Since the 5th respondent is not belongs to the said village, the appointment is illegal.

4. The respondents have not filed any counter, however, relied on the documents and Government Orders.

5. Heard Mr.S.Arivalagan, learned counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate for the



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respondents 1 to 4 and Mr.K.Hemakarhikeyan, learned counsel appearing for R-5.

6. The first contention of the petitioner is that the appointment order was issued by the Block Development Officer. The respondents have submitted that the G.O.Ms.No.72 Rural Development of Panchayat Raj (E5), dated 09.07.2013 was stayed by this Court. Therefore, the recruitment was conducted as per G.O.No.175 and the power of the President was granted to the Block Development Officer. Therefore, the appointment order was issued by the Block Development Officer, who has acted as a Special Officer as well. On perusal of G.O.Ms.No.72 Rural Development of Panchayat Raj (E5), dated 09.07.2013, it has been stated that the appointing authority is Personal Assistant to the District Collector. Since G.O.Ms.No.72 is stayed by this Court, the recruitment process was carried out by the Block Development Officer was assigned the power to act as “Special Officer” for the time being. Therefore, this Court is of the considered opinion that the plea of the petitioner cannot be entertained.



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7. The 2nd contention that was raised by the petitioner is that the 5th respondent belongs to Backward community. The age limit that was prescribed under G.O.Ms.No.72, dated 09.07.2013, is 30 years. For SC/ST it is prescribed as 35. Since the G.O.Ms.No.72 was stayed and the said G.O. cannot be followed. Therefore the earlier G.O.Ms.No.175 Urban Rural Development of Panchayat Raj, dated 05.12.2006 should be followed and in the said G.O., the age prescription is stated hereunder:

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□5. தகுதி மற்றும் வயது □ நேரடி நியமனத்தின்
மூலம் இந்தப் பணியிடங்களுக்கு நியமனம் செய்ய எந்த
வருடத்தில் நியமனம் செய்யப்படுகிறதோ அந்த வருடத்தில்
ஜூலை முதல் நாளில் 28 வயதாக இருக்க வேண்டும்.
பிற்படுத்தப்பட்டோர்-மிகவும் பிற்படுத்தப்பட்டோர் -
ஆதிதிராவிடர் மற்றும் பழங்குடியினருக்கு அதிக பட்ச வயது
வரம்பு 33 ஆகும்.□

The said G.O. has prescribed the upper age limit as 30 for Backward Class community. The 5th respondent belongs to Backward Class community and the date of birth of the 5th respondent is 10.02.1984. She has completed 35 years as on the date of consideration i.e. 01.07.2019. Therefore, this Court is of the



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considered opinion that the appointment of the 5th respondent is beyond the prescribed age limit as per G.O.175 and therefore, the appointment is not in accordance to the age prescription and the impugned order ought to be interfered.

8. The 3rd contention that was raised by the petitioner is the 5th respondent is not a resident of Perumpuliyoor Village, Thiruvaiyar Taluk, Thanjavur District. However, the said contention cannot be entertained, since the Hon'ble Supreme Court and the High Courts have held in several cases that residence by itself be it be within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts, Municipal limits or Villages with a view to offer employment to the residents of that Village on a preferential basis. Such classification based on resident is not acceptable in public employment. Therefore, the plea of the petitioner based on resident cannot be entertained.

9. The learned counsel appearing for the 5th respondent submitted that based on the appointment she was working all these years and has put in



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service more than three years. The learned counsel appearing for the petitioner submitted that based on her appointment in the year 2016, she had put in service for more than 4 years. Further the learned counsel appearing for the petitioner submitted, already the 5th respondent was appointed and transferred to some other place and the resulted vacancy, it is still in vacant.

10. Therefore, the official respondents are directed to allow the petitioner to continue in the said post in Manalmelpatti village and grant continuity of service from the year 2016 onwards. However, the petitioner is not entitled any monetary benefits for the non-employment period, based on the principles of '*No work No pay*'. Since the respondents have terminated the petitioner based on "oral termination order", the petitioner is directed to submit joining report to the respondents along with this order and the respondents shall grant permission to the petitioner to join immediately. The respondents are directed not to disturb the 5th respondent in the employment and allow her to continue in the employment.

11. This order shall not be cited as precedent, since this order is



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passed based on the peculiar facts and circumstances of the case.

12. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
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To:

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3. The Personal Assistant to
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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 26829 of 2019**

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