



W.P.No.3197 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. Nos.3197 & 3441 of 2021 and
W.M.P.Nos.3627, 3628, 3941 & 3942 of 2021

1. S.Dinakar Senthilkumar
2. S.Raja Ravivarman
3. S.Kalaivanan ... Petitioners in W.P.No.3197 of 2021

1. B.Mahalakshmi
2. K.Menaka
3. K.Thilagavathi
4. K.Udhayakavitha ... Petitioners in W.P.No.3441 of 2021

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George, Chennai - 9.
2. The Director of Rural Development,
Panagal Building,
Saidapet, Chennai - 15.



W.P.No.3197 of 2021

3. The District Collector,
Cuddalore District,
Cuddalore.

4. The Block Development Officer,
Kumaratchi Block,
Cuddalore District.

... Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to extend first priority to the petitioners while recruiting fresh candidates for the post of Overseer as per the notification issued by the 3rd respondent in Na.Ka.No.PA2/5671/2020 dated 10.12.2020 by relaxing the age qualification and further direct the respondents to appoint them as Overseers in the existing vacancies.

For Petitioners : Mr.K.Venkataramani,
in both W.Ps. Senior Counsel for
Mr.M.Muthapan

For Respondents : Mr.M.Rajendran,
in both W.Ps. Additional Government Pleader

COMMON ORDER

The petitioners have been working as Technical Assistants in various Government Schemes established under Thane Special Housing Scheme for construction of houses from 2013 to 2016 onwards. Since the petitioners have been recruited through employment exchange as Technical



W.P.No.3197 of 2021

Assistants, their names have been removed from the seniority list maintained by the Employment Exchange. After the scheme was over, the similarly placed persons who became jobless, were given priority in the subsequent recruitments made by the Government.

2. One of the similarly placed persons by name K.Vidya, has filed a Writ Petition in W.P.No.4147 of 2015, seeking a Writ of Mandamus for directing the respondents to extend priority to her while recruiting fresh candidate for the post of Overseer or any other equivalent posts in the existing or in future selection process. The said Writ Petition was allowed on 22.12.2015 by granting the following relief:

“14. In view of my above finding, the Writ Petitioner is allowed on the following terms - (a) the fifth respondent viz., District Employment Exchange, Villupuram is directed to restore the seniority of the petitioner and (b) the respondents are directed to consider the name of the petitioner for appointment in existing and future vacancies by giving necessary age relaxation, if he is otherwise qualified. No costs.”



W.P.No.3197 of 2021

WEB COPY

3. Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioners submitted that the third respondent issued a notification based on the Government Order issued through District Collector Cuddalore dated 10.11.2020, calling for the applications for the post of Overseer / Junior Draughting Officer / Technical Assistant in Cuddalore District for 39 vacancies. The upper age limit was fixed as 35 and qualification was prescribed as Diploma in Civil Engineering. Subsequently, a modified notification was issued on 10.12.2020, wherein the educational qualification was modified into Bachelor of Engineering (Civil) and those Engineering Graduates are given preference in the appointment to the post of Overseers, which, according to the petitioners, is not in accordance with law.

4. The learned counsel for the petitioners relied on the decision of this Court made in W.P.No.12326 of 2014 which is filed challenging the preference given to the persons having higher qualification for the post prescribed for the persons with lower qualification. After making lengthy



discussions on the issue involving the recruitment of the person with higher qualification, this Court has passed the following orders:

“16. In view of the facts and circumstances, it is necessary to suo motu implead the Principal Secretary to Government, Personnel and Administrative Reforms Department, Chennai as second respondent in the Writ Petition only to the limited extent to review the scheme of prescription of educational qualifications in commensuration with the nature of the posts and job profile and accordingly, take a decision and pass suitable Government Orders, prescribing the minimum educational qualifications as well as maximum educational qualifications in order to provide equal opportunity to all the citizens, who are all suitable and aspiring to secure public employment for a particular post. The over qualified persons are getting opportunity to participate in many number of posts. However, the under qualified persons cannot participate in the recruitment process for appointment to the higher post. Therefore, the educational qualifications must be in commensuration with the nature of the posts notified under the recruitment notification.

17. As far as the present Writ Petition is concerned, the writ petitioner is possessing B.E.,degree. It is not a qualification for the post of appointment as per the



W.P.No.3197 of 2021

recruitment notification issued by the first respondent. Thus, the writ petitioner is not eligible to participate in the process of selection. Even as per the Tamil Nadu Ministerial Service Rules "no person shall be eligible for appointment as Assistant by direct recruitment unless he possess a B.A., or B.Sc., degree (other than in a professional subject or B.Com., degree)" Thus, the writ petitioner is not qualified for appointment to the post notified by the Tamil Nadu Public Service Commission."

5. The learned counsel for the petitioners submitted that the above case is squarely applicable to the case in hand and so far no notification has been issued and hence the notification dated 10.12.2020 should be set aside.

6. Mr.M.Rajendran, learned Additional Government Pleader appearing for the respondents submitted that the petitioners and similar others were appointed for one year only and they will not be absorbed in the Government services. As per the modified notification dated 10.12.2020, the Diploma holders have not given any preference to the post



W.P.No.3197 of 2021

of Overseer and the persons who are possessing B.E.Degree will be given preference in the said post.

7. The fact that the petitioners were working in Thane Special Housing Scheme for construction of cluster houses was not denied. However, it is the submission of the learned senior counsel for the petitioners that the petitioners and like others were employed only for one year and the Government had made it crystal clear that they will not be absorbed and their services will not be regularised. The Thane scheme posts will be automatically lapsed within the period of one year and hence, the petitioners cannot claim any preferential right by making the above submissions.

8. Similarly placed person who has filed W.P.No.4147 of 2015 sought the very same relief and has got an order in her favour, wherein a direction has been given to the District Employment Exchange to restore the seniority to those persons who worked under the Thane scheme and the Government respondents were also directed to consider the case of the



W.P.No.3197 of 2021

petitioner and like others for appointment of Overseer in the existing vacancies or future vacancies by giving necessary age relaxation etc., In fact the Government respondents did not challenge the above said order and hence it has to be inferred that the Government has got no objection to comply the order made in W.P.No.4147 of 2015. It has also been stated that the Degree holder will be given priority in the posts instead of Diploma holders even though the Diploma in Civil Engineering is also accepted as the eligible educational qualification for the post of overseer.

9. Previously the persons who are working as Technical Assistants were allowed to compete with the persons possessing higher qualification. In this regard it is appropriate to refer the recent Judgment of this Court in W.P.No.12326 of 2014 cited supra wherein it has been held that the over qualified persons are getting opportunity to participate in many number of posts. However, the under qualified persons cannot participate in the recruitment process for appointment to the higher post. Therefore, the educational qualifications should commensurate with the nature of the posts notified under the recruitment notification. It is also observed that the



W.P.No.3197 of 2021

appointments of over qualified persons in the lower posts are to be stopped at once, in order to provide equal opportunity to the unemployed youths, who are all possessing suitable qualification for the particular posts notified. Because that would infringe the right of the persons who have the basic qualification in the said post. Every post has got a specific educational qualification by taking into consideration the functions and responsibilities attached to the same. In such case, allowing the persons having higher qualification with priority will certainly prejudice the interest of the petitioners and like others. The respondents are obligated to act in terms of the earlier orders of this Court made in W.P.No.12326 of 2014 and W.P.No.4147 of 2015.

10. In view of the above stated reasons, I feel it is appropriate to set aside the modified notification dated 10.12.2020 and direct the employment exchange to restore the seniority of the petitioners.

11. In the result, the Writ Petitions are allowed and the modified notification issued by the 3rd respondent in Na.Ka.No.PA2/5671/2020,



W.P.No.3197 of 2021

dated 10.12.2020 is set aside. The Respondents are directed to write to the concerned District Employment Exchange to restore the seniority of the petitioners and consider the name of the petitioners for appointment in the existing vacancies or future vacancies by giving necessary age relaxation, if they are otherwise eligible. No costs. Consequently, connected miscellaneous petitions are closed.

19.01.2024

Index: Yes / No
Speaking order / Non-speaking order
vum

To:

1. The Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George, Chennai - 9.
2. The Director of Rural Development,
Panagal Building,
Saidapet, Chennai - 15.
3. The District Collector,
Cuddalore District,
Cuddalore.
4. The Block Development Officer,
Kumaratchi Block,
Cuddalore District.



WEB COPY



W.P.No.3197 of 2021

R.N.MANJULA ,J.

vum

W.P. Nos.3197 & 3441 of 2021 and
W.M.P.Nos.3627, 3628, 3941 & 3942 of 2021



WEB COPY



W.P.No.3197 of 2021

19.01.2024