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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.7784, 7765 & 10627 of 2020

and

W.M.P.Nos.9440, 9146, 9147, 9177, 9178, 9179,
12911, 12913 & 12914 of 2020

P.Velmurugan

...

Petitioner
[in W.P.No.7784 of 2020]

E.Tamilarasi

...

Petitioner
[in W.P.No.7765 of 2020]

1.Manjula

2.C.Jayakumar

3.D.Esakiyal

4.P.Vijayan

5.P.Ramesh

...

Petitioners
[in W.P.No.10627 of 2020]

versus

1.The Director / Commissioner,
Backward Classes & Minorities Welfare,
Chennai.

2.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.



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3. The District Backward Classes &
Minorities Welfare Officer,
Tiruvannamalai District,
Tiruvannamalai.

...

Respondents
[in all W.Ps]

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records in connection with the impugned order passed by the 1st respondent in his proceedings -Nil-dated-Nil- and the impugned order passed by the 3rd respondent in Na.ka.No.3/24250/2020 dated 17.06.2020 and to quash the same and further direct the respondents to select and appoint the petitioners as Cook in the Thiruvannamalai District backward classes hostels respectively.

For Petitioner
[in W.P.No.7784/2020]

: Mr.K.S.Viswanathan
Senior Counsel
for Mr.P.Manikandan

For Petitioner
[in W.P.No.7765/2020]

: Mr.K.S.Viswanathan
Senior Counsel
for Mr.Ilamurugu Ganesan

For Petitioner
[in W.P.No.10627/2020]

: Mr.K.S.Viswanathan
Senior Counsel
for Mr.S.Sivakumar

For Respondents
[in all W.Ps]

: Mr.T.Chezhiyan
Additional Government Pleader



COMMON ORDER

The petitioners, who have been applied to the post of *Cook* in pursuant to the Notification dated 16.08.2019 have filed these Writ Petitions challenging the impugned orders passed by the respondents 1 and 3 respectively.

2. Heard Mr.K.S.Viswanathan, learned Senior Counsel for the petitioners and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents and perused the materials available on record.

3. Mr.K.S.Viswanathan, learned Senior Counsel for the petitioners submitted that the prescribed qualification required for the post of *Cook* is the concerned person should read and write and well versed in cooking both Vegetarian and Non-vegetarian dishes. The person should also be within the prescribed age limit.

4. The grievance of the petitioners is that, despite they were applied through District Employment Exchange, Tiruvannamalai, they have not been considered for appointment. The appointees are the persons, who



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have applied through open competition and did not reside within the District of Tiruvannamalai. The persons who have got over qualification by having degree and dual degrees have been considered for appointment.

5. The appointment order has been issued by the 3rd respondent on 17.06.2020 in pursuant to the recommendation made by the 1st respondent, who is superior to the 3rd respondent. It is submitted that the 3rd respondent cannot violate the recommendations of his superior and hence, the order passed consequent to the recommendation of the 1st respondent is illegal. The petitioners, who got aggrieved in view of the unequal competition between the persons, who have just qualified to read and write and the persons who have got a degree and dual degrees in the selection process.

6. Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents submitted that these Writ Petitions though filed challenging the appointment of the persons to the post of *Cook*, the appointees were not added as parties. In the Notification itself, there is no mention about the over qualification. The same was not put under challenge. The selection has been done only by forming a Selection Committee, who had appraised the



qualification and the ability of the candidates in a reasonable manner and the appointments have been made only in accordance with the merit and not otherwise.

7. It is needless to state that in the absence of any bar for overqualified people to apply for the post of *Cook*, there cannot be any fair competition between the persons who just to know read and write and the persons who have acquired higher educational qualification like degrees and double degrees / professional degrees. The Notification has been given with a presumption that for the post of '*Cook*' only those persons who have the basic educational qualification and know cooking alone would apply. But the days have changed that the persons who are overqualified by having higher educational qualification also apply for the post of '*Cook*' or for any other basic service.

8. When written or oral examinations are conducted to assess the reading and writing ability of the candidates, the persons who have the higher educational qualification would definitely have a better edge than the persons, who do not have know such qualification. It would have been better if Rules of recruitment restricted the over qualification for the post of *Cook*.



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In the absence of the same, all those persons who did not have any employment but who have the will to do the job of *Cook* had applied for the post. This would deprive the opportunity for persons who have the basic qualification and who did not even imagine to compete with the people who have degrees or dual degrees for the post of *Cook*.

9. It might be true that the selection could have been done on pure merit basis by giving brownie points for those who possess higher educational qualification. But the real problem will arise only after the appointment. Though the persons have got higher educational qualification might have the urge to get an appointment at the time of applying for the post, after getting the post, they are not prepared or convinced within themselves to undertake the jobs for what they have been appointed. This causes a frequent friction in the place of their employment.

10. In this regard, it is relevant to refer the judgment of the Madurai Bench of this Court made in *W.P.(MD)No.12326 of 2014 dated 02.07.2019 (M.Sakkaraichamy Vs. Tamil Nadu Public Service Commission and others)* wherein



the Hon'ble Mr.Justice S.M.Subramaniam has observed that acute unemployment issues prompted the overqualified persons to apply for such posts, but the practical inconvenience in extracting work from them arise after they get the job.

11. So the problem is two fold, one is over qualifying persons stealing away the opportunities of the persons, who are just qualified for the post and the second one is the high qualified reluctance on the point of the appointees once they get the job. The administrative agency is entangled with frequent such issues. If an employee does not perform his work to the satisfaction of the terms of his employment, the administrative agency has got every right to take disciplinary action and even impose punishment by removing the persons from service.

12. Though the educational qualification prescribed in the Notification is in consonance with the nature of the job, the applicants belong to those category of persons who aspire for high profile job, commensurating with their educational qualification. But it is a challenging



situation because the persons overqualified cannot also be blamed, when a person who does not even have any educational qualification able to secure a job as sweeper, housekeeper or Cook by getting higher salary in a better place in terms of the economic equation.

13. A person, who has higher qualification, many times get job in private colleges or private companies and whose salary is not half of the salary payable to a sweeper in the Government Departments. However, there should be either employment opportunity suiting to the strength of persons but enroll in higher educational institutions or professional colleges or the seats available in those institutions atleast should be less suiting to the available job opportunities.

14. Since there is a mismatch between these two aspects, the persons who have acquired degrees / professional degrees do not find a better job and they are driven back to take a post of required lower educational qualification and need to compete with the persons who have applied for the posts like sweeper, housekeeper or Cook. But the fact remains that overqualified persons reluctance to perform duty after they got



the posts. No administration can be effectively done, if the employees give frequent headaches and the employer need to initiate disciplinary action against each one of them. So it is ideal to restrict the educational qualification required him for a job while notification is given.

15. In this regard, it is also worthwhile to refer the judgment of this Court made in *W.P.No.23126 of 2013 dated 18.06.2019 (R.Laskhmi Prabha Vs. The General Manager, Chennai Metro Rail Ltd.)*, wherein this Court has observed that the appointees cannot be blamed because in their applications they do not suppress their educational qualification. So while screening the applications even if there is no bar in terms of over qualification, it would be ideal to filter them at the initial level itself.

16. The persons who have higher academic qualification could have also got a passion for cooking and make it a hobby. In the event of facing unemployment that will come handy to them to secure an appointment as a *Cook*. But for those persons it would really make a difference to take up cooking as their sole job and hence it is difficulty to expect the performance fitting to the job and it demands in a given environment. So this kind of situation are being uncouneted in many places



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where overqualified persons occupy the jobs meant for persons having lesser qualification or basic qualification. Hence while calling for the applications for the job of *Cook*, if the notification simply mentions that the persons who know read and write can apply can only bring those persons who are having basic qualification. There should have been an explicit mention about the maximum qualification in order to avoid the appointments given to the overqualified persons against the jobs meant for persons possess basic qualification.

17. As rightly pointed out by Mr.K.S.Viswanathan, learned Senior Counsel for the petitioners that the very Notification itself is not challenged by stating that it is unreasonable. Further, the persons appointed have not been impleaded as parties, though the relief sought would affect the very employment itself. There is no allegation that fraud has been committed in selection process. Hence, the recommendations made by the Chairman of the Committee cannot be viewed as something influencing the 3rd respondent, who is the appointing authority.

18. In view of the above stated reasons, the petitioners are not entitled to get any relief as prayed by them. However, the directions given



by the learned single Judge [His Lordship Mr.Justice S.M.Subramaniam] in

W.P.(MD)No.12326 of 2014 dated 02.07.2019 can given a serious look for implementation by the Government authorities and for future vacancies.

With the above observations, these Writ Petitions are **disposed**. No costs. Consequently connected Miscellaneous Petitions are closed.

20.02.2024

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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