



W.P.No.25119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.25119 of 2021

and W.M.P.No.26475 & 26477 of 2021

- 1.M.Kanniyappan
- 2.S.Udaya Prakash
- 3.S.Munusamy
- 4.G.Venkatesan
- 5.M.Sankaran

...Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.



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3.The Commissioner,
Tiruttani Municipality,
Tiruttani.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned Notice issued by the 3rd respondent in Na.Ka.No.1715/2015/C1 dated 20.09.2019 and to quash the same and consequently directing the respondents to select and appoint the petitioners to the post of Sanitary worker in the 3rd respondent Municipality in the vacancies duly notified in the Advertisement issued in Na.Ka.No.87/2014/C1 dated 15.03.2015 and based on the interview conducted dated 25.02.2016 on par with their persons selected out of the same notification, with all consequential and other attendant benefits within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.M.Murali

Government Advocate for R1 & R2

Mr.P.Srinivas for R3

ORDER

All the petitioners herein claim to have been appointed as Over Head Tank Operators in the 3rd respondent Municipality as NMR in the year 1996 on



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consolidated pay. They also made a claim for regularization of their services. But in the meanwhile, the respondent Municipality proposed to fill up 18 vacancies in the post of Sanitary worker by way of calling names from the local Employment Exchange and also by issuing an advertisement. It is in response to the said advertisement, the petitioners were called for interview through letters dated 16.02.2016 and accordingly, the petitioners have participated in the interview on 25.02.2016. However, thereafter the 3rd respondent, instead of filling up all the 18 posts that are notified, filled up only 8 posts and the remaining posts were left unfilled. At that stage, the petitioners submitted their representation dated 14.12.2016 requesting the 3rd respondent to appoint the petitioners in the said notified unfilled posts and this Court by an order dated 17.06.2019 in W.P.No.2700 of 2018 directed the 3rd respondent to consider the representation submitted by the petitioners. The operative portion of the order passed by this Courts reads as under:

"9. In view of the submissions of the learned counsels appearing for the parties and also the pleadings, this Court would dispose of the present writ petition as under:

(i) The 3rd respondent is directed to pass orders on the representation of the petitioners dated



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14.12.2016 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

(ii) While passing orders, the 3rd respondent is also to take into consideration the long number of years of service rendered by the petitioners in the Municipality and consider their claim sympathetically."

2.It is pursuant to the said order passed by this Court, the 3rd respondent claimed to have considering the case of the petitioner and issued the impugned proceedings dated 20.09.2019 rejecting the claim of the petitioners on the ground that the post of Sanitary workers have been outsourced by the Government through orders dated 13.05.2018 and also on the ground that the petitioners were appointed after 01.01.1996 and therefore, they are not entitled for regularization of their services. It is aggrieved by the said proceedings dated 20.09.2019 the petitioner approached this Court by filing the present writ petition.

3.The learned Senior Counsel for the petitioners submitted that the entire selection process that was conducted by the 3rd respondent, pursuant to the advertisement, was found fault with a learned Single Judge of this Court in



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W.P.No.7009 and 7010 of 2016 by orders dated 19.09.2022 and directions were issued to appoint the petitioners therein the unfilled vacancies notified in the advertisement in question. He also further contended that the petitioners wherein who are working in the respondent Municipality since the year 1996 and also participated in the selection process including appearing for the interview and they are also entitled for the same relief as was granted by this Court on 19.09.2022.

4.The 3rd respondent, by filing counter affidavit, contended that the petitioners could not be selected for the notified posts because they did not satisfy the roster points and also further stated that the Government has subsequently issued orders in the year 2018 directing all the Municipalities to fill up the post of sanitary worker by outsourcing on contract basis.

5.This Court has carefully considered the submissions made on either side and perused the entire materials available on record.

6.From the order passed in W.P.Nos.7009 and 7010 of 2016 dated 19.09.2022 it is evident that, the learned Judge, after having called for the entire



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records pertaining to the recruitment process in question, found fault with the selection process conducted by the 3rd respondent/ Municipality to filling up the post of sanitary workers and also came to the conclusion that there is no justifiable reason to the 3rd respondent/Municipality not to fill up the balance 10 posts out of 18 posts notified in the advertisement. The relevant portion of the order of the learned Single Judge reads as under:

"10.Considered the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis. It is not in dispute that the name of the writ petitioners was initially sponsored by the District Employment Exchange during the process of selection conducted in the year 2010. The petitioners participated in the interview. However, they were not considered on account of the fact that the candidates were selected on extraneous considerations. In this regard, the writ petitioners made a specific allegations regarding the corrupt practices by former Chairman and Ward Councilor, Member Appointment Committee of Tiruttani Municipality. Though, the allegations of corrupt practices were specifically averred in the affidavit filed in support of the writ petitions. The 2nd respondent Municipality has not met out the



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allegations with reference to the facts and circumstances. Contrarily, they have simply stated as the statement is incorrect. However, the respondents 3 and 4 had not responded to the Court notice and under these circumstances, this Court has to draw an inference that the allegations remains as it is and not rebutted by any of the respondents.

11.Regarding the further selection conducted for selection and filling up of 18 posts of Scavenger in Tiruttani Municipality, the 2nd respondent called for the list of candidates from the District Employment Exchange and further issued publication through local newspapers. They had received number of applications and thereafter, conducted a process of interview. This Court has gone through the resolution passed by the 2nd respondent regarding the selection. Though, the particulars of the candidates are made available , the assessment and relative merits between the candidates were not made properly. Except by following the 200 point roster as per Rule 22 of the general rules. No merits assessment has been made nor the process of selection was conducted through



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an established procedure. Any selection must be conducted in a transparent manner and by following the principles established. However, in the present case, the Committee has selected candidates by way of their own assessment without following any acceptable procedure. The files produced before this Court reveal that the selection was not conducted in the manner known to law. The candidates were simply interviewed by the Committee and they have selected men of their choice and therefore, this Court would be able to form an opinion that the selection was not conducted in accordance with the established principles laid down by the Courts. Regarding the allegations of corruption, this Court is not able to form an opinion, since the allegations made by the petitioners have not been responded either by the 2nd respondent or by the respondents 3 and 4. However, the fact remains that the process of selection was not conducted in accordance with the principles established and more over, the 2nd respondent filled up 8 posts out of the 18 posts which were notified. Thus, the case of the writ petitioners are to be considered.



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12.The writ petitioners are fully qualified otherwise for appointment to the post of Scavenger in Tiruttani Municipality. Their names were initially sponsored by the District Employment Exchange and thus, they were seniors in employment seniority and further, the 2nd respondent had not conducted the process of selection in a transparent manner and relative merits between the candidates were not assessed and this being the factum established, the writ petitioners are entitled to succeed. Accordingly, the order impugned passed by the 2nd respondent in proceedings Na.Ka.No.2032/2015/C1 dated 23.02.2016 is quashed and the 2nd respondent is directed to appoint the writ petitioners as Scavengers in Tiruttani Municipality, within a period of four weeks from the date of receipt of a copy of this order.

13.This writ petition stands allowed. The learned counsel for the 2nd respondent brought to the notice of this Court that now no selection to the sanctioned post in made and the work in Tiruttani Municipality are outsourced. However, the



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outsourcing Policy came into force subsequently after the selection and as far as the case of the petitioners are concerned, two posts were already kept vacant and more over, 8 candidates alone were appointed out of the 18 notified vacancies. Thus, there may not be any difficulty for the 2nd respondent to accommodate the writ petitioners. No Costs. Consequently, connected miscellaneous petitions are closed."

7.The above orders passed by the learned Judge was in respect of the very same recruitment process for filling up 18 vacancies notified by the 3rd respondent. It is clear that the reason given by the 3rd respondent in the counter affidavit about the petitioners' not fitting into the roster points was also found fault by the learned Judge. Admittedly, the petitioners herein have participated in the interview process in the year 2016 and the orders of the Government to fill up the post of sanitary worker by way of outsourcing was admittedly issued in the year 2018. Therefore, the said orders cannot be connected to the recruitment process which commenced in the year 2016 notifying 18 vacancies. There is no justification for the respondents to decline filling up the remaining 10 vacancies having filled up only in 8 vacancies. It is not the case of the



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respondent/Municipality that the petitioners are not eligible for being appointed to the post of sanitary worker but the only reason assigned is that, the petitioners are not fitting in the roaster points. But the 3rd respondent/Municipality failed to demonstrate as to which roaster point the remaining 10 vacancies were earmarked and as to how the petitioners would not fit in the said roaster point. Absolutely, no such material is placed before this Court. As pointed out by the learned counsel for the petitioner, a learned Judge of this Court also found fault with the entire recruitment process followed by the 3rd respondent and declared the same as illegal. For the very same reasons and also for the reason that the petitioners were already ready called for interview for filling up the post of sanitary workers, the respondents cannot be allowed to escape by giving unsustainable grounds and refrain from fill up all the remaining vacancies. As already noted above 8 vacancies were filled up by appointing outsiders and even if 2 vacancies were filled up by the respondents with the petitioners in W.P.Nos.7009 and 7010 of 2016, still there will be 8 more vacancies be left unfilled. As the said vacancies were meant for insiders, the petitioners participated in the recruitment process in the year 2016, the orders issued in the year 2018 ordering to fill up with the outsourcing Sanitary worker, will not come in the way of respondents in considering the case of the petitioners for being



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appointed to the said posts.

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8.In the said circumstances, the impugned order is set aside. Accordingly, the writ petition stands allowed directing the 3rd respondent to continue selection process pursuant to the advertisement bearing Na.Ka.No.87/2014/C1 dated 05.03.2015 and consequential interview letters dated 16.02.2016 for filling up the remaining vacancies notified in the said advertisement and pass appropriate orders as expeditiously as possible at any rate within a period of two weeks from the date of receipt of a copy of this order.

9.In the result, the writ petition stands allowed. consequently, connected miscellaneous petitions are closed. No costs.

24.07.2024

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vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

12/15

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To

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
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MUMMINENI SUDHEER KUMAR, J.

vsn

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