



W.A.(MD) No.699 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.699 of 2019

and

C.M.P.(MD) No.6242 of 2019

1.The District Collector,
Theni District,
Theni.

2.The Assistant Director of Town Panchayats,
Madurai Zone,
Madurai-20,
Madurai District.

3.The Executive Officer,
Vadugapatti Town Panchayat,
Vadugapatti, Theni District.

... Appellants/
Respondents 1 to 3

Vs.



W.A.(MD) No.699 of 2019

1.M.Murugan

... 1st Respondent/
Writ Petitioner

2.M.Lakshmi

... 2nd Respondent/
4th Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 31.10.2018 made in W.P.(MD) No.6299 of 2011 on the file of this Court.

For Appellants : Mr.A.Baskaran
Additional Government Pleader

For Respondent-1 : Mr.P.Vetrivel
for M/s.T.Lajapathi Roy Associates

For Respondent-2 : Mr.K.Appadurai

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

Respondents 1 to 3 in W.P.(MD) No.6299 of 2011 are the appellants herein.

The issue involved is whether the writ petitioner/first respondent should have been preferred over the second respondent herein for being appointed as Sweeper in the Vadugapatti Town Panchayat. In Vadugapatti Town Panchayat, there existed two posts of Sweeper, of which one is reserved for candidates from Scheduled Caste community and the other is for Open



W.A.(MD) No.699 of 2019

Category. While so, for filling up the vacancy for the post of Sweeper in the Open Category, the Panchayat concerned required the Employment Exchange to sponsor five candidates. Accordingly, the Employment Exchange sponsored five candidates. An interview held and in that, the second respondent herein was appointed as the Sweeper. Since the first respondent's name figured above the name of the second respondent in the list of sponsored candidates of the Employment Exchange, the first respondent felt aggrieved and instituted W.P.(MD) No.6299 of 2011.

2. *Vide* her order dated 31.10.2018, the learned Single Judge literally rejected the contention of the first respondent. Acting on the same, the learned Single Judge had directed that the first respondent be appointed in the vacancy created owing to the superannuation of one Ammavasai within a period of two weeks from the date of receipt of a copy of the order. This portion of the order of the learned Single Judge is now under challenge in this appeal.

3. The learned Additional Government Pleader appearing for the appellants submitted that there are three difficulties in complying with the direction of



W.A.(MD) No.699 of 2019

WEB COPY

the learned Single Judge: (a) That merely because Ammavasai has superannuated and a vacancy had been created, the said vacancy cannot be filled up, except as per the procedure contemplated. And the vacancy could be filled up only from among the candidates sponsored by the concerned Employment Exchange. Therefore, unless the first respondent's name is again sponsored by the Employment Exchange concerned, his name cannot be considered for filling up the said vacancy; (b) That now the Government has issued G.O.(Ms).No.139, Municipal Administration and Water Supply (TP.1) Department, dated 03.10.2022, by which the job 'Sweeper' is directed to be outsourced; and (c) Today he is overaged.

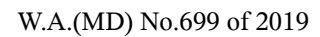
4. Per contra, the learned counsel for the first respondent submitted that notice prior to institution of a proposed contempt petition was issued on the authorities concerned and in their response, the authorities have orally informed that the first respondent's name would be considered.

5. Rival contentions are carefully weighed.



W.A.(MD) No.699 of 2019

6. So far as the core contention of the first respondent for approaching this Court is concerned, this Court is little hesitation in holding that it is founded on some strong misconception. Merely because Employment Exchange sponsors list of candidates, that does not grant any vested right on any one of the candidates so sponsored for being considered for the post only based on their seniority in registering their names before the Employment Exchange. It is for the Interviewing Authority to decide on the suitability of the candidate for the purpose. Of that, a candidate whose name is sponsored by the Employment Exchange has a right to be considered for the post, but does not have a right for being posted. However, that part of the order of the learned Single Judge, which is now under challenge, does not relate to this. The learned Judge has directed the appointment of the first respondent in the vacancy created owing to the retirement of certain Ammavasai. It is very obvious, the learned Single Judge has recorded it is only based on some statements made on behalf of the learned counsel for the Panchayat concerned. But what is significant here is that no vacancy can be filled up except as per the procedure prescribed for filling up the vacancy. Howsoever noble it may be to be empathetic with the difficulties faced by the first



8. For the reasons stated, this Court finds every reason to interfere with the order of the learned Single Judge. Accordingly, this Writ Appeal is allowed



W.A.(MD) No.699 of 2019

WEB COPY

and the order of the learned Single Judge dated 31.10.2018 made in W.P. (MD) No.6299 of 2011 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (P.V.M., J.)
09.07.2024

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

ABR

To

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W.A.(MD) No.699 of 2019

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W.A.(MD) No.699 of 2019

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