



W.P.(MD)No.8433 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.10.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.8433 of 2017
and
W.M.P.(MD)No.6433 & 6434 of 2017

M.A.Rahmath Meera

... Petitioner

/Vs./

1.The Government of Tamilnadu,
Rep. by Secretary to Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai.

2.The District Collector,
Sivagangai District, Sivagangai.

3.The Tahsildar,
Thirupathur Taluk,
Sivagangai District.

4.M.Mohd. Ali

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 3rd respondent/ Tahsildar, Thirupathur in



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Na.Ka.No.a7/16000/13 dated 16.02.2017 selecting the 4th respondent to the post of Village Assistant, Velankudi Group and quash the same and consequently direct the respondents to appoint the petitioner to the post of Village Assistant, Velankudi Group, Thirupathur Taluk, Sivagangai District.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mrs.D.Farjana Ghoushia (R1 to R3)

Special Government Pleader

Mr.S.Ramanathan (R4)

ORDER

The petitioner has challenged the appointment of the fourth respondent as Village Assistant in this Writ Petition. Both the petitioner and the fourth respondent participated in the selection process for the appointment of Village Assistant. Both the petitioner as well as the fourth respondent were called for interview after completing their written test.

2. The petitioner contends that based on the information received under the Right to Information Act, 2005, it is evident that the official respondents did not correct the answer script of the petitioner. According



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to the petitioner, though the petitioner was eligible for being appointed to the post of Village Assistant, having successfully completed the written test and having participated in the mobility test, for the reasons best known to the official respondents, the fourth respondent has been appointed as Village Assistant in place of the petitioner.

3. The learned Counsel for the petitioner drew the attention of this Court to the answer scripts of the petitioner as well as that of the fourth respondent, which were obtained by the petitioner under the Right to Information Act, 2005 and would submit that it is evident from the same that the petitioner's answer script was not corrected, but whereas the fourth respondent's answer script was corrected.

4. According to the learned counsel appearing for the petitioner, despite the fact that the fourth respondent had given correct answers only for five questions, instead of awarding only five marks, the official respondents have awarded 6 ½ marks out of 10 to the fourth respondent arbitrarily and illegally for the reasons best known to the official respondents.



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5. The learned Counsel appearing for the petitioner would also submit that the only eligibility requirement for being appointed to the post of Village Assistant is to ride bicycle. He would submit that when the official respondents have categorically stated in the counter affidavit that the petitioner is eligible for being appointed to the post of Village Assistant and they having accepted the fact that the petitioner had participated in the skill test with regard to the riding of the bicycle, the official respondents ought to have appointed the petitioner in place of the fourth respondent as Village Assistant, in view of the fact that if the answer script of the petitioner was corrected, he would have secured more marks than that of the fourth respondent in the written examination.

6. The learned Government Advocate appearing for the official respondents would submit that since the mobility of the fourth respondent was better than that of the petitioner, pursuant to the skill test conducted by the official respondents, the fourth respondent has given preference in the selection process and he was duly appointed as a Village Assistant. He also drew the attention of this Court to the Tamil



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Nadu Village Assistants Service Rules and in particular referred to Clause 7 therein and would submit that apart from being able to ride a bicycle, a candidate should produce a certificate regarding his physical fitness for the post in the form prescribed under Rule 10 of the Fundamental Rules. He would submit that the requisite certificate was not produced by the petitioner and therefore, the fourth respondent was duly appointed as Village Assistant and the petitioner was not selected.

7. The learned Government Advocate appearing for the official respondents would also submit that since the petitioner is having 60% locomotor disability which is an admitted fact, it is clear that the fourth respondent is more mobile than that of the petitioner and he is more suitable for being appointed to the post of Village Assistant than that of the petitioner. However, the official respondents have not placed on record before this Court such a physical fitness certificate produced by the fourth respondent for being appointed to the post of Village Assistant at the time of taking charge of the post as Village Assistant.



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8. The learned Counsel for the petitioner would contend that only after provisional selection is made for the post of Village Assistant, the necessity of the physical fitness certificate disclosed in Clause 7 of the Tamil Nadu Village Assistants Service Rules will arise. It is also contended by him that the aforesaid stand of the learned Government Advocate appearing for the official respondents has not been raised in the counter affidavit filed by the official respondents before this Court.

9. The learned counsel appearing for the petitioner has also placed on record the physical fitness certificate produced by the fourth respondent with the official respondents and as seen from the same, it is clear that only after the appointment order was issued in favour of the fourth respondent, the fourth respondent had produced the same with the official respondents. Therefore, the contention of the learned Government Advocate appearing for the official respondents that the petitioner did not produce the physical fitness certificate as per the Tamil Nadu Village Assistants Service Rules is rejected by this Court.



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10. This Court had also directed the learned Government Advocate appearing for the official respondents to get instructions as to whether vacancies are still available in the post of Village Assistant.

11. On instructions, the learned Government Advocate appearing for the official respondents has informed this Court, which is supported by the proceedings of the third respondent in Pa.Ve.A4/42/2024, dated 02.09.2024 that three vacancies are available for the post of Village Assistant at three different places. The three places are Keelapattamangalam, Kallipattu and Siravayal, where the petitioner can be accommodated.

12. In view of the fact that the petitioner's answer script was not corrected and there is a pleading in the counter affidavit filed by the official respondents that the petitioner is eligible for being appointed to the post of Village Assistant, as he has underwent skill test namely riding bicycle and in view of the fact that the physical fitness certificate will have to be produced by the petitioner only after appointment orders are issued, this Court is of the considered view that an illegality has been



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committed by the official respondents in not appointing the petitioner to the post of Village Assistant.

13. However, with regard to the appointment order issued in favour of the fourth respondent, this Court, after giving due consideration to the documents placed on record before this Court, is of the view with the available documents that this Court is unable to conclusively conclude that arbitrarily and illegally appointment order was issued to the fourth respondent, which has been challenged in this writ petition. Therefore, the appointment of the fourth respondent cannot be disturbed by this Court. Further, the fourth respondent has been appointed in the year 2017 itself and since then, he has been in employment as a Village Assistant.

14. In view of the fact that there are three vacancies available and as a special case by not treating this order as a precedent, the second and third respondents are directed to obtain the physical fitness certificate from the petitioner and on receipt of the same, shall issue appointment order in favour of the petitioner in the post of Village Assistant at



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Siravayal, Tirupathur Taluk, within a period of three months from the date of receipt of a copy of this order.

15. The learned counsel appearing for the petitioner on instructions would submit that the petitioner is also willing to join duty in the post of Village Assistant at Siravayal Village, Tirupathur Taluk.

16. In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.10.2024

Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:-

- 1.The Secretary to Government,
Revenue Department,
Secretariat,
Fort St.George,
Chennai.
- 2.The District Collector,
Sivagangai District,
Sivagangai.
- 3.The Tahsildar,
Thirupathur Taluk,
Sivagangai District.

Order made in
W.P.(MD)No.8433 of 2017

Dated:
29.10.2024