



W.P.(MD).No.30947 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 20.11.2024

ORDER PRONOUNCED ON : 25.11.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.30947 of 2023
and WMP(MD).No. 26539 and 26540 of 2023**

Suganya

....Petitioner

Vs

1.The District Collector
Dindigul District, Dindigul

2.The Chariman
Office of the Panchayat Union
Nilakkottai
Dindigul District

3.The Commissioner
Office of the Panchayat Union
Nilakkottai, Dindigul District

4.Edwin Albert

5.The Vice Chairman
Office of the Panchayat Union
Nilakkottai, Dindigul District

6.A.Regina Nayagam
The Chairman
Office of the Panchayat Union
Nilakkottai, Dindigul District



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7.Yagappan
The Vice Chairman
Office of the Panchayat Union
Nilakkottai
Dindigul District

.....Respondents

(R5 to R7 are impleaded vide Court
order dated 15.07.2024)

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the selection process by selection the 4th respondent to the post of Office Assistant under General category in the third respondent panchayat union as per notification dated 18.12.2020 of the first respondent proceeding in Na.Ka.No.8394/2019/U.VA3 and quash the same as illegal and consequentially direct the respondents 1 to 3 to appoint the petitioner as Office Assistant under General category in the third respondent panchayat union within a time frame as fixed by this Court.

For Petitioner : Mr.S.Sukmar

For Respondents : Mr.A.Baskaran
Additional Government Pleader for R1 & R3

:Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates for R2

:Mr.M.U.Mohammed Aslam for R4

:No appearance for R5 to R7

ORDER

The instant writ petition has been filed seeking to call for the records relating to the selection process for appointment of Office Assistant under



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General category in the third respondent Panchayat Union and quash the same and direct the respondents 1 to 3 to appoint the petitioner as Office Assistant under the General category in the said Panchayat.

(A)Facts leading to the filing of this writ petition are as follows:

2.A notification was issued by the first respondent herein on 18.12.2020 calling for application for three posts of Office Assistants in the third respondent Panchayat Union. One post was declared to be general, the second post was reserved for SC(A) Women (Destitute Widow) and the third post was reserved for MBC & DNC. The notification further discloses that the upper age limit for open category candidate is 30 years and backward class candidate is 32 years.

3.Pursuant to the said notification, the writ petitioner as well as the fourth respondent and some other candidates have submitted their applications and have attended the interview. The petitioner belongs to scheduled caste category and selected candidate namely the fourth respondent belongs to backward class category.

4.The Selection Committee consists of the Chairman of Panchayat Union, Vice Chairman of Panchayat Union and the Commissioner of Panchayat Union. As per Rules, the selection made by the Selection Committee has to be approved and appointment order has to be issued by the first respondent.



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5.A perusal of the marks allotted in the interview reveals that the petitioner has secured 2 out of 10 and the fourth respondent has secured 9 out of 10 marks. The fourth respondent who belongs to backward class category has been selected and appointed under the general category. Two other candidates who were selected have been appointed to the scheduled caste and most backward class categories. The petitioner herein has not chosen to challenge the appointment order issued to two other candidates under the scheduled caste and most backward class categories. The writ petition is restricted to the selection and appointment of the fourth respondent under the general category. Therefore, it is clear that the petitioner is also claiming only under the general category.

(B)Contentions of the counsels appearing on either side are as follows:

6.The selection of the fourth respondent is challenged by the writ petitioner on the following grounds.

(a)As per notification, the upper age limit for a general category candidate to be considered for appointment is 30 years as on 01.07.2020. However the fourth respondent had completed 30 years on 06.05.2020 itself. Therefore, the fourth respondent cannot be considered under the general category. The application itself should have been rejected and the fourth



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respondent ought not to have been called for interview.

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(b)The selected candidate is the brother of the second respondent's daughter-in-law. Knowing fully well about the relationship, the second respondent who is arrayed in her personal capacity as sixth respondent, has chosen to be part of the Selection Committee and selected the fourth respondent under the general category. Therefore, the selection is vitiated by bias.

7.The learned counsel for the writ petitioner had relied upon a judgment of the Hon'ble Supreme Court reported in **(1985) 4 SCC 417 (Asok Kumar Yadav and others Vs. State of Haryana and others)** and **(2019) 20 SCC 17 (Dr.(Major) Meeta Sahai Vs. State of Bihar and others)** to impress upon the Court that very presence of the second respondent is sufficient to establish the bias and it is not necessary to prove the actual bias. He had further contended that it is sufficient to invalidate a selection process if it is shown that there was reasonable likelihood of bias. Hence, he prayed for allowing the writ petition.

8.Per contra, the learned Senior Counsel appearing for the second respondent had contended that though the petitioner was selected under the general category on the basis of his merits, he being a backward class candidate, would be eligible to participate in the selection process till he completes 32 years of age. In the present case, the petitioner having not



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completed 32 years, his selection process cannot be put to question. He had further contended that on 01.07.2020, the petitioner is running the age of 30 and he would be completing 30 years only on 06.05.2021 and therefore, even assuming that the age of 30 is the upper age limit, the selection of the petitioner cannot be questioned.

9.The learned Senior Counsel had relied upon Section 20(8)(ii) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and contended that the petitioner having acquired higher educational qualification namely, degree, such age restriction is not applicable to him. He had further contended that the petitioner having secured just 2 out of 10 marks, cannot be considered under the general category when there are other candidates who have secured more marks than her. In such circumstances, merely quashing the order of appointment of the fourth respondent would not render any relief to the writ petitioner and therefore, the present writ petition is not maintainable. He had further contended that, in the writ petition, the petitioner is only challenging the selection process and it is not a writ of quo-warranto. Therefore, the petitioner cannot seek employment.

10.The learned Senior Counsel had further contended that though respondents 5 to 7 were part of the Selection Committee, the ultimate appointment order was issued only by the first respondent. Therefore, mere participation of some of the distant relative of the fourth respondent cannot in



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any way vitiate the selection process. The learned Senior Counsel, relying upon Rule 2(6) of the Tamil Nadu Government Servant Conduct Rules read with 17(b) of the said Rule had contended that only if the fourth respondent falls within any one of the close relatives as defined in the above said Rules, his participation and selection could be questioned. In the present case, the fourth respondent is the brother of the second respondent's daughter-in-law. Therefore, in such circumstances, the contention of the petitioner that the selection process is vitiated by bias is not legally sustainable. Hence, he prayed for sustaining the order of selection process and the order of appointment in favour of the fourth respondent.

11.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

12.A perusal of the notification issued on 18.12.2020 calling for application to the post of Office Assistants reveals that the upper age limit for a candidate under the general category is 30 years as on 01.07.2020. The Selection Committee proceedings reveal that the date of birth of the fourth respondent is 06.05.1990. Therefore, the fourth respondent had completed 30 years on 06.05.2020 itself. Therefore, as on 01.07.2020, the running age of the fourth respondent is 31 years and not 30 years. The upper age limit prescribed under the Service Rules would only mean the completed age.



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Therefore, the contention of the learned Senior Counsel that the second respondent would be completing 30 years only on 06.05.2021 is not sustainable in the eye of law.

13.The further contention of the learned Senior Counsel is that though the fourth respondent was selected under the general category, yet he continued to be a backward class candidate and therefore, the upper age limit of 32 years for a backward class candidate would continue to be available to the fourth respondent. Therefore, the selection of the fourth respondent under general category may be sustained. This argument has to be noted only to be rejected. When a candidate is competing under the general category, irrespective of class or religion to which he belongs, he would get accommodated under the general category, only when he fulfils all the conditions which are applicable to a general category candidate. Even if a backward class candidate had secured higher marks, if he wants to be accommodated in the general category, he cannot breach the age limit fixed for the general category. The fourth respondent cannot carry the advantage of the age relaxation as a backward class candidate while entering into the general category.

14.The Hon'ble Supreme Court in a judgment reported in **(2018) 11**

SCC 352 (Gaurav Pradhan and others Vs. State of Rajasthan and others)



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and another judgment reported in **(2019) 7 SCC 383 (Niravkumar Dilipbhai**

Makwana Vs. Gujarat Public Service Commission and others) has held that whenever a reserved category candidate avails the benefit of age relaxation in the selection process, he cannot be accommodated in or migrated to general category. It is further held that the age relaxation granted to reserved category candidate is an incident of reservation under Article 16(4) of the Constitution and not a concession. Therefore, the contentions of the learned Senior Counsel for the second respondent are liable to be rejected.

15.The learned Senior Counsel has also relied upon Section 20(8)(ii) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 to contend that when the fourth respondent is having higher qualification, namely degree, the maximum age limit prescribed in the said Rules shall not be applicable. However, a perusal of the above said Rules clearly reveal that this exception is applicable only when a candidate is competing in his own communal category. This is an additional advantage granted to a candidate participating in the communal reservation for having acquired higher qualification. But when a candidate wishes to migrate to the general category, such an exception relating to maximum age limit cannot be sought for by him. If such an interpretation is granted, then it amounts to again applying communal reservation within the general category. Therefore, such a contention is not legally sustainable.



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16.The learned Senior Counsel had further contended that though the fourth respondent may be a distant relative of one of the Selection Committee Members, the selection list was finalized and appointment orders were issued only by the first respondent and therefore, the appointment order of the fourth respondent cannot be considered to be based upon bias. A perusal of the Selection committee records reveals that the Selection committee members alone are awarding marks to the candidates and the same is ranked and the selection list and appointment orders were issued by the District Collector.

17.That part, the fourth respondent is none other than the brother of the second respondent's daughter-in-law. In other words, the fourth respondent is the brother-in-law of the second respondent's son. Therefore, it is clear that having full knowledge about the Selection Committee members, the fourth respondent has submitted his application.

18.A perusal of the notification reveals that no post is reserved for Backward Class candidates. However, the petitioner herein belonging to Backward class has chosen to apply knowing fully well, that he is likely to be selected under the general category due to the presence of his close relative in the Selection Committee. In such circumstances, the selection of the fourth respondent is not only contrary to the Service Rules, but also vitiated by bias on the part of the Selection Committee members. Therefore, the selection and appointment of the fourth respondent is liable to be set aside.



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19.As a consequential prayer, the petitioner has sought for a mandamus to appoint her under the general category. The petitioner has not chosen to allege any bias as against the Selection Committee members with regard to the appointment of other two Office Assistants under the category of scheduled caste and Most Backward Class. A perusal of the Selection Committee records reveal that four candidates from backward class and three candidates from scheduled caste have secured more marks than the writ petitioner. In such circumstances, over looking their candidature, the request of the petitioner to appoint her under the general category, cannot be considered.

(D)Conclusion:

20.In view of the above said deliberations, this Court is inclined to pass the following orders:

(a)The selection and appointment of the fourth respondent as Office Assistant to the third respondent Panchayat Union pursuant to the notification dated 18.12.2020 is hereby set aside.

(b)In other respects, the writ petition stands dismissed.



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21. Accordingly, the writ petition stands partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2024.

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

1. The District Collector
Dindigul District, Dindigul

2. The Commissioner
Office of the Panchayat Union
Nilakkottai, Dindigul District



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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