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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A(MD) No.2113 of 2025
and
C.M.P.(MD)No.12134 of 2025

P.Thangapandian @ Thangapandi ... Appellant / Writ Petitioner

Vs.

1.The District Collector,
Sivagangai, Sivagangai District.

2.The Revenue Divisional Officer,
Sivagangai, Sivagangai District.

3.The Tahsildar, Sivagangai Taluk,
Sivagangai.

4.Vinothkumar ... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.12.2024 in W.P.(MD)No. 25398 of 2023 and allow the writ petition as prayed for.

For Appellant : Mr.M.Jerin Mathew

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For Respondent : Mr.N.Satheeshkumar
Additional Government Pleader
for R1 to R3

: Mr.R.Alagumani for R4

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner is the appellant herein. He challenged the recruitment notification dated 10.10.2022 issued by the Tahsildar, Sivagangai Taluk calling for applications from eligible candidates for the post of Village Assistant. The appellant herein was an aspirant for the very same post during the earlier recruitment process also. The appellant challenges the appointment of the fourth respondent solely on the ground that the fourth respondent, as a person suffering from locomotor disability, is not eligible to be appointed as Village Assistant. The learned counsel for the appellant draws our attention to Rule 7(a)(iii) of the Tamil Nadu Village Servants Service Rules, 1980. The said Rule reads as follows:-

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"7.Other Qualifications

(a) No person shall be eligible for appointment to the post unless

(i) he is able to ride a bicycle

(ii) .....

(iii) he produces a certificate regarding his physical fitness for the post in the form prescribed under Rule 10 of the Fundamental Rules."

Rule 10 of the Fundamental Rules reads as follows:-

"10.No person except a military pensioner may be substantively appointed (otherwise than as a menial paid from contingencies) to a permanent post (whether pensionable or not) in a Government service unless he has produced a certificate of physical fitness in the Form prescribed in Annexure I-A. The Government may, in individual cases, dispense with the production of such certificate and may, by general order, exempt any specified class of Government servants from the operation of this rule."

Annexure 1-A of the Fundamental Rules contains quite a few forms in which the certificate of physical fitness have to be issued. The relevant extracts from the Form under Fundamental Rule 10 are as follows :

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"Certificate of Physical Fitness by a single Medical Officer/the Civil Medical Board

I/We do hereby certify that I/we have examined (full name) ..... a candidate for employment under the Government of Tamil Nadu in the .....service as ..... and cannot discover that he/she has any disease, communicable or otherwise, constitutional affliction or bodily infirmity except that his/her weight is in excess of in excess of/Below the standard prescribed, or except

I/We do not consider this a disqualification for the employment he/she seeks.

His/Her age is according to his/her own statement ..... years and by appearance about ..... years.

I/We also certify that he/she has marks of smallpox/vaccination..."

3.The fourth respondent obviously suffers from a bodily infirmity. He is not in a position to ride a bicycle as mandated in the aforesaid Rule. He also cannot produce the certificate of fitness in the manner prescribed. The moot question is whether on this ground, he can be disqualified. The answer is in the negative.

4.Our founding fathers forbade discrimination on grounds of religion, race, caste, sex or place of birth. Though persons with

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disabilities were also suffering from severe discrimination, somehow their plight escaped the attention of the Constitution-makers. Due to sustained activism of the members of the civil society, Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Since the provisions of this Act fell short of achieving the stated objectives, the Central Act 49 of 2016 came to be enacted. The 2016 Act intends to give effect to the U.N Convention on the Rights of Persons with Disabilities adopted in December, 2006. The Hon'ble Supreme Court has been delivering path breaking judgments upholding the rights and dignity of the differently abled. Some of them are **Vikash Kumar v. UPSC (2021) 5 SCC 370), Jeeja Ghosh v. Union of India (2016) 7 SCC 761,** ***Rajive Raturi v. UOI (2024 INSC 858)*** and **In Re Recruitment of Visually Impaired in Judicial Services v. The Registrar General, The High Court of Madhya Pradesh (2025 LiveLaw (SC) 274)**.

5.A paradigm shift from a benevolence-based approach to a rights based approach has taken place. The fundamental postulate upon which the 2016 RPwD Act is based is the principle of equality and non-

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discrimination. Section 3 casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy : (*i*) the right to equality; (*ii*) a life with dignity; and (*iii*) respect for their integrity equally with others. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution **(vide Vikash Kumar v. UPSC (2021) 5 SCC 370).** This vision cannot be effectuated unless the person with disability is empowered by granting him employment. When such a person applies in response to a recruitment notification, he must be given reasonable accommodation. The nature and extent of such accommodation will depend upon the facts and circumstances of each case. All artificial barriers erected during earlier eras will have to be dismantled or ignored. Technology is a big enabler. If with the aid of technology, a candidate can perform the function associated with the post in question, the fact that he cannot otherwise on his own discharge the said function becomes irrelevant. The recruitment rule for the post of Village Assistant requires the candidate to be able to ride a bicycle. A person with locomotor disability cannot ride a bicycle. But with the help of a motorised vehicle or any assistive device, he can certainly move

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from one place to another and his physical disability will not come in the way of discharging his official duties.

6.A literal application of the statutory Rule would mean that a person suffering from bodily infirmity is disqualified for the post of Village Assistant. Such a Rule might still be in the statute book but it not only sounds obnoxious and insensitive but militates against constitutional guarantees. Central Act 49 of 2016 is a parliamentary enactment. Section 20 of the said Act reads as follows:-

> "20. Non-discrimination in employment.—
>
> (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.
>
> (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability..."

A subordinate legislation framed under a State legislation has to necessarily give way, if it is repugnant to a parliamentary enactment. The rule relied on by the writ petitioner is patently opposed to the statutory

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mandate set out in Section 20 of the 2016 Act. Even if the subordinate legislation is not formally repealed or amended, still, the employer cannot attach any weight to the same. So long as the appropriate government had not notified that persons with particular benchmark disabilities cannot be recruited or appointed for the post in question, the recruiting agency can not only not discriminate against the differently abled but travel an extra mile to provide them reasonable accommodation. Admittedly, the Government of Tamil Nadu has not notified that considering the nature of functions to be discharged by Village Assistants, persons with locomotor disability cannot be appointed to the said post.

7.Section 3 of the 2016 Act is as follows :

> "3.Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.
>
> (2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

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(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

Sub-section (3) of the above provision contains a leeway by which a differently abled person can be discriminated. To avoid this situation, the Government of Tamil Nadu formulated the Tamil Nadu Rights of Persons with Disabilities Rules, 2018 in which it was specifically provided as follows :

"3. Establishment not to discriminate on the ground of disability.--- (1) The head of each establishment shall ensure that the provisions of sub-section (3) of Section 3 of the Act are not misused to deny any right and benefit to persons with disabilities covered under the Act.

(2) No establishment shall compel persons with disabilities to partly or fully pay any of the costs incurred to provide reasonable accommodation..."

When the department has not taken the stand that a person suffering from locomotor disability cannot discharge the duty of the Village Assistant, the writ petitioner who is a rival candidate cannot be permitted to

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question the ability of the differently abled candidate. The endeavour of any employer should be to see if a person suffering from disability is capable of discharging the duties annexed to the job or post in question. So long as the capability is not in dispute, the candidate cannot be deemed as ineligible only on account of his or her disability.

8.For the foregoing reasons, we uphold the order of the learned single Judge. The Writ Appeal stands dismissed. No costs.

(G.R.S., J.) (K.R.S., J.)
29.07.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
rmi/skm

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