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Court : Chennai Madurai

Decided On : Nov-16-2016

Judge : M.V. Muralidaran

Appeal No. : Writ Petition (MD) No. 6289 of 2012

Appellant : K. Senthilkumar

Respondent : The Director of Library Mount Road, Chennai and Others

Judgement :

(Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in impugned order in m3/2077/2012, dated 20.04.2012 issued by the 3rd respondent, quash the same and further direct the 3rd respondent to sponsor the petitioner to the post of Village Librarian to be appointed by the 2nd respondent in Tuticorin District forthwith.)

ORDER

1. This writ petition has been filed to challenge the impugned order, dated 20.04.2012, issued by the third respondent and for further direction to the 3rd respondent to sponsor the petitioner to the post of 'Village Librarian' to be appointed by the 2nd respondent in Tuticorin District forthwith.

2. The case of the petitioner is that he has completed 12th Standard and he has completed the Course of Certificate in Library and Information Science (CLIS) as

early as 1998. He belongs to Schedule Caste Community. He has registered his name with the 2nd respondent on 24.06.1992 and his employment registration No. TTD 1992 M0001692. His name is still alive in the register of the second respondent for sponsoring of employment. While being so, there are 32 vacancies arose for the post of Librarian in the Tuticorin District. Therefore, the respondents 1 and 2 have requested the third respondent to sponsor names of the candidates at the ratio of 1:5 for the purpose of conduct an interview to select Village Librarian, which was fixed on 10.04.2012 to 12.04.2012. Pursuant to above request made by the respondents 1 and 2, even though the respondents 1 and 2 requested for 160 candidates, the third respondent had sent list of only 137 candidates.

3. The further case of the petitioner is that when news article in Tamil News Paper relating to irregularities in sponsoring candidates by third respondent, the petitioner came to know about the proposed recruitment and sponsorship by joint efforts of the respondents. Immediately, he made verification that he came to know that the third respondent had sponsored 137 candidates for the post of Village Librarian of 32 posts to fill up through out the District. The petitioner further states that out of 137 candidates, 21 candidates has already been sponsored by the third respondent employment exchange before 4 years and they have been selected and appointed and they were working as Librarian on permanent basis. Out of the said 21 candidates, 10 candidates have been promoted as Grade III Librarian from the post of Village Librarian. Even without verifying this vital aspect, the act of sponsorship and consequence interview have been conducted by the respondents 2 and 3.

4. Aggrieved over the said illegal committed by the respondents, the petitioner had submitted representation to all the respondents requesting them to rectify illegality committed by them. When there was no reply from the respondents, the petitioner has approached this Court and filed writ petition in W.P(MD)No.4705 of 2012. This Court, by an order, dated 11.04.2012, was pleased to order as follows:-

Considering the limited scope of the matter, I direct the second respondent to sponsor the name of the petitioner to the post of Village Librarian at Tuticorin

District, if the petitioner is eligible for the same and if he stands in the line queue, within a period of two weeks from the date of receipt of a copy of this order. On receiving the same, the first respondent is at liberty to consider the claim of the petitioner on merits and in accordance with law.

5. In the meantime, on 17.04.2012, the petitioner received a letter, dated 12.04.2014, from the third respondent, wherein it was fairly admitted by the third respondent that there was a improper sponsorship of candidates for appointment of Village Librarian and the third respondent also stated that excise was made as the appointment of the 12 candidates were not properly to the third respondent office. Pursuant to the order passed by this Court on 11.04.2012 in the above writ petition, the third respondent has passed the present impugned order, dated 20.04.2012, wherein it is stated by the third respondent that he had sponsored Schedule Caste Candidates registered upto 05.10.1998.

6. The petitioner also come forward by saying that the petitioner has registered his name in the year 1992, but the course of CLIS was registered in the month of April 1999, therefore, the petitioner challenged the said impugned order.

7. It is the further case of the petitioner that as per the letter, dated 12.04.2012, sent by the third respondent, it was clearly admitted that out of 21 employed candidates sponsored by the third respondent, 9 had not even their registration. About remaining 12 candidates, he was not informed about their appointment. Therefore, it is well known fact that these 12 candidates are working as Village Librarian for more than 4 years. They have been promoted as Grade - III Librarian by 2nd respondent. That was already communicated to respondents 1 and 3. They are drawing time scale of pay and each is getting a monthly salary of Rs.17,000/-. Therefore, deliberately the third respondent is giving false information and they are temporarily employed on Rs.1,500/- per month. Therefore, this writ petitioner states that the third respondent is attempting to play a fraud on very recruitment procedure and deprive the appointment opportunity of a deserving Schedule Caste candidate, namely, the petitioner. The petitioner also states that if at all the respondents 2 and 3 had taken proper care and diligence before calling for sponsorship, employed candidates would have been deleted. Then definitely the

petitioner would have been sponsored as he was the 2nd person in the list of seniority. So due to cavalier and arbitrary action of respondents valuable right of employment stands denied. Therefore, the impugned order is prima facie illegal and there is error apparent on the face of record.

8. The petitioner also raised a ground stating that while passing the impugned order, the third respondent did not even give an opportunity of hearing. So there is gross violation of the principles of natural justice. The petitioner also states that already he enrolled his name in 1992 and for the past 20 years, his name has not been sponsored by the third respondent even when the first respondent called the third respondent to sponsor the eligible candidates during last year. Therefore, the petitioner's fundamental rights of equal opportunity in public employment on par with others guaranteed under Article 14 and 16, have been seriously infringed by the second respondent unreasonably and unjustifiably. The petitioner also states that his right of seniority in sponsoring his name, has been overlooked and ignored by the 3rd respondent. The 3rd respondent has not followed the rule of seniority in sponsoring his name and failure to follow the rule of seniority has resulted in denial of his fundamental right of equality of opportunity in public employment and is likely to offend and defeat the object of the principle enunciated under the Constitution. The petitioner raised a ground that under Article 309 of the Constitution of India, the right of employment as per rule of seniority guaranteed to every citizen. The said provision mandates that if a person is denied seniority by a misdeed or wrong application of rule or without any reasonable ground, the Court may direct the competent authority to place him above his junior with effect from the date when his junior was placed therein with consequential monetary benefits. In fact, if a junior is appointed ignoring his right of seniority, his seniority would be counted from the date of his appointment and in such event, his lawful right of seniority will be seriously affected. Therefore, the petitioner filed the present writ petition seeking the relief as stated supra.

9. A counter affidavit has been filed by the second respondent, wherein, the second respondent admitted that the petitioner belongs to Schedule Caste community and got his S.S.L.C and registered with the 3rd respondent and not with the 2nd respondent on 24.06.1992. The petitioner got the following

qualification registered in the registration No. TTD 1999 M00001692 with the 3rd respondent.

S.S.L.C Seniority : 24.06.1992

H.Sc. Seniority : 08.12.1998

Librarian Seniority : 09.04.1999

Conductor Seniority : 29.09.2006

10. The second respondent also admitted that the 2nd respondent requested the third respondent to sponsor the names of 160 qualified as per roster against the 32 vacancies @ 1:5 for the post of village librarians.

11. The second respondent also admitted that the third respondent sponsored only the names of 137 candidates due to non-availability of candidates for 5 posts meant for five categories, namely, SCA Widow (1) ST (1) SC(W-Destitute Widow)(NP)-1 BCM Widow (NP)-1 MBC Destitute Widow (NP)-1.

12. The second respondent also admitted that the names of 10 candidates sponsored by the third respondent have already been in service. The sponsorship of 10 names of those already employed in library service does not deprive or deny the petitioner's right of being sponsored, if he is eligible and stands in the line of queue. The second respondent also stated that even if the ten already employed had not been sponsored, the petitioner would not have been entitled to be sponsored for the post of the village librarians, as he does not stand in the queue along with or next to them. The second respondent further stated that ten already employed candidate were sponsored by the third respondent cannot be a personal grievance of the petitioner, because as per rules of employment seniority, he is not eligible to be sponsored as so he is not an aggrieved party.

13. The second respondent further states that on 02.01.2012, the third respondent gave a press not regarding the tentative seniority list for the post of Village Librarians and requested the candidates concerned to come to Employment Exchange within 05.01.2012 and confirm their seniority with reference to the

qualifications, age limit, for the posts to be notified. The press note was published in many dailies on 02.01.2012. The petitioner slept over the news bulletin and did not bother to verify and confirm his seniority for the post of Village Librarians from the records of the third respondent. In consequence, the petitioner made a representation asking for appointment on 07.04.2012. For that, the third respondent sent a reply on 12.04.2012. In which, it reveals that the seniority for SC non-priority is 05.10.1998. But the petitioner's registration date for seniority is 09.04.1999 for SC non-priority. So, his name was not sponsored in accordance with law. In obedience to the order of this Court in W.P(MD)No.4705 of 2012, dated 11.04.2012, third respondent replied to the petitioner that he is ineligible and does not stand in the queue to be sponsored for the post of Village Librarians. The respondents complied with the directions in letter and spirit and accordingly, the petitioner was informed of his position in the seniority list maintained by the third respondent. Therefore, the prayer in the present writ petition on the same cause of action with similar prayers is vexatious and frivolous and on abuse of process of law.

14. The second respondent further states that the petitioner himself admits that he passed CLIS in 1998 and got it registered in April 1999. But the claim of the petitioner is that since he belongs to SC and so his seniority must be reckoned from 1992 onwards, when he registered his SSLC is not legally tenable and the third respondent, who is sponsoring authority, has nothing to do with the grievance of the petitioner.

15. The second respondent also stated that the petitioner as alleged by him is not the second person in the list of seniority. It is only a sweeping statement by the petitioner that had the employed candidates not been sponsored by the third respondent, he would have been sponsored. Out of 10 employed candidates, 2 belongs to SC General Non-Priority like the petitioner. The names of those sponsored candidates and their seniority dates are as follows:-

1. M.Subramanian : 12.04.1993

2. V.Sivakumar : 17.06.1996

16. The second respondent also stated that the petitioner totally confused, since he has registered his name on 09.04.1999. Therefore, the second respondent stated that he is not authority to sponsor the candidates and the petitioner is not entitled to the benefit of provisions of Articles 14 and 16 of the Constitution of India, as his case does not come within the purview of these Fundamental Rights. The respondents are neither arbitrary nor discriminatory in not considering the petitioner for the post of Village Librarians. Therefore, the second respondent sought for dismissal of this writ petition.

17. Heard Mr.M.V.Venkateshan, learned counsel appearing for the petitioner as well as Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and perused the materials available on records.

18. Admittedly, the petitioner has passed his educational qualification on 24.06.1992 and his employment Registration No.TTD 1992 M0001692, when the recruitment proposal was called for by the respondents 1 and 2 and made a request to the third respondent for sponsoring 160 candidates for interview to be conducted by the second respondent for the post of 'Village Librarians'.

19. Admittedly, the second respondent requested the third respondent to sponsor 160 candidates, but out of which, the third respondent has sponsored only 137 candidates and remaining 23 candidates have not been sponsored for the reasons best known to the third respondent. When the second respondent made request to the third respondent to sponsor 160 candidates for appointment of 32 Village Librarians post at the ratio of 1:5, why the third respondent restricted themselves and decided cut off dates upto 05.10.1998. Either the third respondent or the second respondent have not produced any letter for request of sponsoring candidates by the third respondent. When the third respondent by wrongly sponsoring 10 candidates, who have already been appointed and worked as Village Librarians and subsequently, they were promoted as Librarians on permanent basis, why they have not included other 10 candidates or remaining 23 candidates as sought for by totally 160 candidates by the second respondent.

20. When the second respondent specifically stated that for the post of 32 vacancies, the second respondent requested the third respondent to sponsor 160

candidates to be appointed at the ratio of 1:5, when 137 candidates alone were sponsored by the third respondent and the second respondent has not explained on what basis or on what ratio, they made appointment by filling up the 32 candidates.

21. When the second respondent has fixed the ratio at 1:5 by calling totally 160 candidates, the second respondent has not given any reply to that effect how they calculated 137 candidates or on what ratio, they made appointment of the 32 candidates. Both the respondents 2 and 3 were totally violated the instructions made by them with total lack of their eyes and the third respondent has sponsored only 137 candidates, whereas, the request made by the second respondent is 160 candidates. But even otherwise, if 137 candidates were sponsored by third respondent and what basis of ratio, the second respondent had conducted interview and made appointment for 32 posts. Therefore, it clearly shows that the total non-application of mind on the part of the both the respondents 2 and 3 and appointment made is totally illegal in the eye of law.

22. The counter affidavit filed by the second respondent also very silent in respect of the above points. If as per the request made by the second respondent, third respondent sponsored 160 candidates, definitely the name of this petitioner would include in the 160 candidates and he would get the chance for getting employment. It is not the case of the petitioner that he is not selected, but his case is he was not sponsored as per law. If at all the petitioner sponsored by the third respondent and he has failed in interview, there would not be question arose about non-selection of the petitioner. But in this case, totally principles of natural justice was violated by the both the respondents, particularly, the third respondent, since he would have sponsor only 160 candidates on the basis of the recommendation made by the second respondent. But the second respondent has also not bothered about the sponsorship made by the third respondent, since when the second respondent made request to sponsor 160 candidates, for what reason the third respondent has sponsored only 137 candidates, that too, out of 137 candidates, there are 10 candidates were already sponsored through employment exchange and they were appointed and subsequently, they were also promoted.

23. In all corners, the very recommendation and very sponsorship and appointment of 32 candidates made by the respondents 2 and 3 are totally against the law and principles of law and this Court can set aside the entire 32 appointments, but on looking in the sufferings to be meted out by the respondents as well as the Government and the 32 appointees, this Court is not inclined to set aside the 32 appointments, but on the other hand, in the interest of justice, a direction can be issued to the respondents, particularly, the second respondent should made request to the third respondent to sponsor this petitioner's name by creating a new post or in the existing vacancy and to conduct interview and appoint the petitioner as Village Librarian, that would meet the ends of justice.

24. Therefore, I am inclined to pass the following orders:-

(a) the second respondent is hereby directed to create new one post of Village Librarian or in any vacancy is in existence, to make request to the third respondent within a period of two weeks from the date of receipt of this order for sponsoring the petitioner's name for the post of Village Librarian.

(b) On receipt of the said request made by the second respondent, the third respondent is hereby directed to sponsor this petitioner's name to the second respondent, within one week thereafter.

(c) then the second respondent should conduct an interview and verify the certificates of the petitioner and appoint the petitioner either in the existing vacancy or in creation of new Village Librarian Post in Tuticorin District, within a period of two weeks, thereafter.

With the above directions, this writ petition is disposed of. No costs.

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