

J. Vanitha Vs. The Chief Judicial Magistrate, Madurai

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Court : Chennai Madurai

Decided On : Sep-27-2016

Judge : M. Sathyanarayanan & The Honourable Ms. Justice V.M. Velumani

Appeal No. : W.P.(MD)No. 17603 of 2016 & W.M.P.(MD)Nos. 12713 & 12714 of 2016

Appellant : J. Vanitha

Respondent : The Chief Judicial Magistrate, Madurai

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the respondent, dated 26.07.2016 in D.No.1344/16.08.2016, quash the same and consequently, direct the respondent to permit the petitioner to participate the interview for the post of Office Assistant in Madurai District Court Recruitment 2016.)

V.M. Velumani, J.

1. This Writ Petition has been filed to call for records relating to the impugned order passed by the respondent, dated 26.07.2016, in D.No.1344/16.08.2016 and quash the same with the consequential direction to the respondent to permit the petitioner to participate in the Interview for the post of Office Assistant in Madurai

District Court Recruitment 2016.

2. The petitioner is a Graduate in Bachelor of Science [Home Science] and registered her qualification in the District Employment Office at Madurai, vide Registration No.MDD1994F00003517, dated 22.06.1994. She belongs to Most Backward Community. The respondent invited online application in the month of June 2016 from the candidates for various posts, through Paper Publication and the Official Website. The petitioner applied for the post of Office Assistant through online on 15.06.2016 and her Application Number is 1030. As per the said advertisement, there is no age limit for the persons possessing Educational Qualification of +2 and Bachelor Degree.

3. The petitioner was not called for interview and her application was rejected, vide impugned order, dated 26.07.2016, in D.No.1344/16.08.2016, on the ground that she is over-aged on the date of her application. On receipt of the said impugned order dated 26.07.2016, the petitioner gave a representation dated 31.08.2016 to the respondent requesting him to consider her application, as she is a Graduate and as per the Advertisement, no upper age limit is fixed for Graduates. She did not get any reply from the respondent. Therefore, she filed the present writ petition for the relief stated supra.

4. The learned counsel for the petitioner submitted that as per the Advertisement, no age limit is fixed for the persons possessing Educational Qualification of +2 and Bachelor Degree. Therefore, the impugned order is contrary to the law and facts and the application of the petitioner has been wrongly rejected based on the Letter of the Madurai District Employment Office, No.A4/3146/2016, dated 09.06.2016. The respondent has rejected the application contrary to the general instructions given in the advertisement and prayed for allowing the writ petition.

5. Per contra, the learned counsel for the respondent contended that as per Letter of the Madurai District Employment Office, No.A4/3146/2016, dated 09.06.2016, the petitioner is overaged and therefore, her application could not be favourably considered. The impugned order is valid and legal. The respondent has given valid reason for rejecting the application of the petitioner. There is no arbitrariness or discrimination in the impugned order. In the advertisement, by inadvertence, it has

been mentioned that there is no age limit for persons possessing +2 and Bachelor Degree. The learned counsel for the respondent further contended that more than 4,000 individual applications were rejected on this ground and individual orders were issued rejecting their applications on the ground of over-age.

6. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

7. The contention of the petitioner is that having advertised that there is no upper age limit for persons possessing +2 and Bachelor Degree, the respondent erred in rejecting the application of the petitioner on the ground that she is over-aged. The respondent failed to consider that the petitioner is a B.Sc. Graduate in Home Science and therefore, she ought to have been called for interview. This contention is untenable. It is well settled that a candidate has no vested right to be appointed in a post advertised by employer. Even the person selected and included in the select list has no vested right for appointment in a particular post. When the employer has given valid reason for not considering the application of a person or the order is not arbitrary, the Courts will not issue a Mandamus directing the employer to appoint a person to a particular post.

8. This has been held by the Hon'ble Apex Court in the following Judgments:

(i) S.S.Balu and another Vs. State of Kerala and others [2009 (2) CTC 172], wherein in paragraphs 15 and 16, it has been held as follows:

15. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See Pitta Naveen Kumar v. Raja Narasaiah Zangiti and ors., 2006 (10) SCC 261).

16. The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus.

(ii) Kulwinder Pal Singh and another Vs. State of Punjab and others [2016 (6) SCC 532], wherein in paragraphs 10 and 12, it has been held as follows:

10. It is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India V. Bhanu Lodh [2005 (3) SCC 618 : 2005 SCC (LandS) 433], All India SC and ST Employees' Assn. V. A.Arthur Jeen [2001 (6) SCC 380 : 2007 (2) SCC (LandS) 362] and UPSC V. Gaurav Dwivedi [1999 (5) SCC 180 : 1999 SCC (LandS) 982].

12. In Manoj Manu V. Union of India [2013 (12) SCC 171 : 2014 (2) SCC (LandS) 706], it was held that (SCC p. 176, para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 6.7.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.

9. This issue was considered by us, vide order dated 16.09.2016, in W.A.(MD)Nos.861 and 1102 of 2015 and we upheld that a person has no vested right to seek a direction for appointment in a particular post.

10. Further, it is to be pointed out at this juncture that the advertisement is merely an offer to participate in the selection process and the selection and recruitment

are governed by Statute. In terms of Rule 5(1) of the Tamil Nadu Basic Service Rules read with the Circular of the Department of Employment and Training Ma.Ve.Su.Enn.8/2013, dated 29.08.2013, in which, it is categorically stated that the Tamil Nadu State and Subordinate Service Rules is not applicable to the Tamil Nadu Basic Service Rules. Admittedly, at the time of applying for the post in question, the petitioner was 38 years old and taking into account the said fact, her candidature was rightly rejected by the respondent.

11. From the reading of the impugned order shows that the respondent has given reasons for rejecting the application of the petitioner. There is no infirmity in the said order. Further, it is not the case of the petitioner that she was discriminated in not being called for interview and similarly placed persons, like the petitioner were called for interview. The statement of the learned counsel for the respondent that all the applications of persons over-aged were rejected and individual communication was sent is also not disputed by the petitioner.

12. Similar order of respondent was challenged by another applicant in W.P.(MD)No.15797 of 2016 and the said writ petition was dismissed by this Court, vide order dated 22.09.2016 holding that the order of the respondent is valid.

13. In the circumstances, this writ petition is dismissed. No costs. Consequently, W.M.P.(MD)Nos.12713 and 12714 of 2016 are closed.

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