

**S.Senthilkumaran ... Vs. the Director and Additional Secretary to Government, and ors.**

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**Court :** Chennai

**Decided On :** Jul-06-2010

**Judge :** T.Raja, J.

**Acts :** Constitution Of India - Article 226

**Appeal No. :** W.P.No.1030 of 2007

**Appellant :** S.Senthilkumaran ...

**Respondent :** The Director and Additional Secretary to Government, and ors.

**Advocate for Def. :** Mr.S.Gopinathan, Adv.

**Advocate for Pet/Ap. :** Mr.S.Ravi, Adv.

**Judgement :**

1. On abolition of the Tribunal, the Original Application in O.A.No.2793 of 2000 filed before the Tamil Nadu Administrative Tribunal stood transferred to this Court and re-numbered as W.P.No.1030 of 2007.

2.The petitioner has come to this Court challenging the order of appointment issued by the third respondent and for direction to the first respondent to appoint the petitioner as Assistant Photographer in accordance with law on the basis of the recommendation of the second respondent with consequential monetary and

service benefits.

3.The petitioner, after completing the Course for Video Cameramanship, obtained a Certificate on 01.12.1992. He was issued a Certificate by Eknaath Video Institute, which is also recognised by the Government of Tamil Nadu. In addition to the above said Certificate, the petitioner has also got experience in Still Photography, Flash Photography, Development and enlarging for about six years. Therefore, he is fully qualified to the post of Assistant Photographer in Government Service. For filling up the vacancies in the Government Departments, names are sponsored by the Employment Exchange to the post of Assistant Photographer. The Director of Information and Tourism Department, by his letters dated 29.11.1999 and 13.01.2000 sent names of five persons through Employment Exchange to the Public Relation Officer, Karur to hold interview for selection to the post of Assistant Photographer. The petitioner was also served with a Telegram by the second respondent to attend the interview on 28.01.2000 in the office of the second respondent along with the original records. Accordingly, the petitioner attended the interview on 28.01.2000 held by the Public Relation Officer, Karur and Chief Photographer from Chennai. Along with the petitioner, three other persons also took part in the interview. It is the case of the petitioner that in the interview, he performed better than the other three persons by answering all the questions. Subsequently, the second respondent in the Proceedings Na.Ka.No.133/97, dated 28.01.2000, also sent a report to the first respondent / Director and Additional Secretary to the Government, Information and Tourism Department, to appoint the petitioner as Assistant Photographer on the basis of the performance of the petitioner in the above said interview held on 28.01.2000. The second respondent, in his report, has placed the marks obtained by the candidates placing the petitioner's name as the first qualified candidate, for the reason that the petitioner had secured marks out of 10, and therefore, was considered to be fully eligible for appointment to the said post of Assistant Photographer at Karur.

4.The learned counsel appearing for the petitioner submits that the petitioner was allotted 9 marks out of 10. Though the report of the second respondent specifically mentioned that the third respondent was allotted only 6 marks out of 10 and in

Office Proceedings No.545, dated 23.03.2000, the first respondent issued the order of appointment appointing one E.Mathivanan as Assistant Photographer on temporary basis, who is the third respondent herein. Therefore, the learned counsel appearing for the petitioner submits that the order of appointment issued in favour of E.Mathivanan, the third respondent herein, has been issued with malafide motive on pressure given by the third respondent. The learned counsel for the petitioner also brought to the notice of this Court that the proceedings in Na.Ka.No.133/97, dated 28.01.2000, issued by the second respondent shows two signatures, one by the second respondent and another signature is signed by another Officer working in the same office.

5.In the said Proceedings, dated 28.01.2000, it has been clearly mentioned that the petitioner has got 9 marks out of 10 and in the case of the third respondent, he was allotted only 6 marks out of 10 by the Interview Committee. That being the case, it is further contended that the appointment of the third respondent cannot be said to be legally sustainable, for the simple reason that the petitioner was allotted with higher marks by the Interview Committee, but the first respondent wrongly appointed the third respondent, who secured lesser marks than the petitioner. Therefore, on the above submissions he prayed for setting aside the order of appointment made in favour of the third respondent with consequential direction to appoint the petitioner as Assistant Photographer.

6.On the other hand, the learned counsel for the third respondent submits that the appointment of the third respondent as Assistant Photographer has been made by the first respondent on the recommendation made by the second respondent. After his appointment on 23.03.2000, he was allowed to continue in the said post till now. The order of the second respondent has nothing to do with any act done by the third respondent because the conduct and performance shown by the third respondent made them to select him as a suitable candidate. Therefore, he was appointed to the said post. If the third respondent is not allowed to continue in the post of Assistant Photographer, it would cause grave prejudice to him and his family and he also relied upon the Judgment of the Supreme Court wherein it is observed that if a candidate is allowed to continue for a long time, he should not be disturbed and on that basis prayed for dismissal of the writ petition.

7. However, the learned counsel appearing for the third respondent has not filed any counter in support of his contention. Even in respect of respondents 1 and 2, no counter has been filed, but an Application was filed denying the correctness of the proceedings issued in Na.Ka.No.133/97, dated 28.01.2000, showing more marks allotted to the petitioner and lesser marks allotted to the third respondent. The said brief notes leading to the application filed by the respondents 1 and 2 denies the very proceedings dated 28.01.2000 has been forged by the petitioner to suit his convenience for the purpose of getting order from this Court.

8. Heard the learned counsel on either side.

9. The petitioner, while participating in the interview along with three other persons, the Interview Committee consisting of the Public Relation Officer and Chief Photographer, as per the proceedings dated 28.01.2000, allotted 9 marks out of 10 in favour of the petitioner. In respect of the third respondent, the Interview Committee has allotted only 6 marks out of 10 in favour of the third respondent. It is relevant to keep in mind the qualification possessed by the petitioner as well as the third respondent. The petitioner admittedly has passed +2 examination and also acquired a Certificate issued by Eknaath Video Institute, which is also recognised by the Government as one of the institute for training the candidates in Video CameramanSHIP. In addition to the above, he possessed six years of experience in Still Photography, Flash Photography, Development and Enlarging and the petitioner was also awarded 9 marks out of

10. In the case of the third respondent, he has passed SSLC with 5 years experience in Photography but has not acquired any other qualifications like the petitioner who has got one extra Certificate issued by the Eknaath Video Institute. When comparing the qualifications, the merit of the petitioner and the third respondent, the proceedings in Na.Ka.No.133/97, dated 28.01.2000 passed by the second respondent goes to show that the petitioner having acquired more marks with six years experience and possessed extra Certificate, he should have been considered for the above said post. The proceedings dated 28.01.2000 also further goes to show that the petitioner is more competent than the third respondent. That being the case, not appointing the petitioner in the above said

post, and appointing the third respondent as Assistant Photographer creates a bonafide doubt in the mind of this Court about the veracity of the statement made by the counsel for the respondent. 10. This Court, in order to find out whether the proceedings Na.Ka.No.133/97, dated 28.01.2000 is correct or not, issued a direction to produce the original records. Though repeated adjournments were granted, the Department did not come forward to file the above said proceedings dated 28.01.2000 which also indicates that the first and second respondent have not selected the third respondent on the basis of the marks obtained by the candidates in the interview held on 28.01.2000. That apart, even at the time of admitting the Original Application by the Tribunal, there was a direction that the continuance of the petitioner in the said post as Assistant Photographer would be subject to the result of the outcome of the application.

11. Therefore, this Court is of the view that the comparative merits as well as the non-production of the Proceedings dated 28.01.2000 prima facie proves the case of the petitioner and, therefore, this Court has no other option than to direct respondents 1 and 2 to appoint the petitioner in the place of third respondent. It is for the respondents to decide whether the third respondent's appointment should be disturbed or not. However, it is made clear that while appointing the petitioner, since he has not worked from the date of appointment of the third respondent, is not entitled to have the backwages. Accordingly, the petition is allowed by setting aside the order passed by the first respondent in Office Proceedings No.545, dated 23.03.2000. Since the matter was pending for the past ten years, the respondents 1 and 2 are directed to implement the order passed by this Court within a period of four weeks from the date of receipt of a copy of this order.

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