

N.Murugesan Vs. Commissioner of Rural Development and Local Administration

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Court : Chennai

Decided On : Feb-27-2013

Judge : Vinod K.Sharma

Appellant : N.Murugesan

Respondent : Commissioner of Rural Development and Local Administration

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

27. 02.2013 CORAM THE HONOURABLE MR. JUSTICE VINOD K.SHARMA
W.P.No.13780 of 2009 and M.P.No.2 of 2009 N.MURUGESAN 12 V
ALAMPALAYAM POST, ANDHIYUR VIA BHAVANI TALUK, ERODE DISTRICT. ..
PETITIONER -Vs- 1 THE COMMISSIONER OF RURAL DEVELOPMENT AND
LOCAL ADMINISTRATION PANAGAL MAALIGAI CHENNAI-145. 2 THE
DISTRICT COLLECTOR ERODE DISTRICT ERODE. 3 THE DISTRICT
DEVELOPMENT OFFICER SATHIAMANGALAM ERODE DISTRICT. 4
P.SARAVANAN OVERSEER SATHIAMANGALAM PANCHAYAT UNION
SATHIAMANGALAM ERODE DISTRICT. 5 THE DISTRICT EMPLOYMENT
OFFICER EXCHANGE ERODE DISTRICT. .. RESPONDENTS PRAYER: Writ
petitions have been filed under Article 226 of the Constitution of India to issue a
writ of Certiorari, to quash the impugned order passed by the second respondent
issued vide Na.Ka.No.64859/06/PE1 dt.15.12.2007 and quash the same in so far

as petitioner and 4th respondent to appoint the petitioner as Overseer or an alternative issue a direction to the respondents to appoint the petitioner as Overseer in the existing vacancies as per the seniority of registration of qualification before the Employment Exchange with service and monetary benefits.

For petitioner : Mr.R.Saseetharan For respondents : Mr.R.Ravichandran, A.G.P.

**** O R D E R The petitioner has approached this Court with the prayer for issuance of a writ in the nature of Certiorari, to quash the order passed by the respondent No.2 vide Na.Ka.No.64859/06/PE1 dt.15.12.2007, qua respondent No.4 with the consequential direction to appoint the petitioner as Overseer against the existing vacancy as per the seniority of registration of qualification before the employment exchange with service and monetary benefits.

2. The prayer in this writ petition itself is not maintainable, as the petitioner cannot seek direction from this Court for appointment on the basis of employment exchange seniority, nor he can claim monetary benefit prior to appointment to the post. 3 The petitioner has challenged the appointment of the respondent No.4 only on the basis of employment seniority, which is not a qualification for appointment. 4 The petitioner is a diploma holder in Civil Engineering and got himself registered with the employment exchange, Erode on 2.7.1986. The petitioner was assigned registration No.5227/1986, therefore, claims to be eligible for appointment based on the qualification of Diploma in Civil Engineering and seniority of employment exchange.

5. That the petitioner remained registered with the employment exchange for all these years for the suitable employment in Government service, and was called on 01.12.2006 to attend written examination and interview to be held on 8.12.2006 for the post of Overseer. The petitioner in pursuance to the said direction, appeared for written examination and also for interview. It is not disputed that no appointments were made in pursuance to selection which commenced on 1.12.2006.

6. The case of the petitioner is that Government of Tamil Nadu has taken a policy decision to fill up all the posts under the State Government as per seniority of registration with the employment exchange and issued G.O.Ms.No.65, dated

30.3.2007. It was for this reason that the written examination and interview was cancelled.

7. G.O. on which reliance has been placed by the petitioner is ultra vires to the Constitution of India, being violative of Article 14 of the Constitution of India, as the State Government cannot make appointment on the basis of employment seniority, as all eligible persons have a fundamental right to be considered for public post.

8. The petitioner for the reason best known, did not challenge the cancellation of interview and written examination held on 1.12.2006. The petitioner has not even challenged the decision of the State Government.

9. The case of the petitioner is that he had hope to be selected and appointed on the post of Overseer as per seniority of registration with employment exchange. Even though the State Government appointed 14 candidates as Overseer in Rural Welfare department on the basis of seniority of registration with the employment exchange, the name of the petitioner was not included.

10. For the reasons best known to the petitioner, even this selection has not been challenged, nor selected candidates have been made as parties to this writ petition.

11. The reading of the pleading in the affidavit further shows that the petitioner's claim is based only on reservation and seniority of registration with the employment exchange. The petitioner was not considered for appointment being over age, as the petitioner had admittedly crossed the age of 40 years by the time next process of selection commenced.

12. The petitioner made representation on 14.4.2007 stating that the petitioner was senior to the respondent No.4 and was also within the age limit when the post was earlier advertised on 1.12.2006, therefore, had a right to be considered and appointed prior to respondent no.4.

13. It is also submitted, that in the list of backward community, the person selected and appointed namely Mr.P.Kanagaraj was also born on 26.5.1964, and had

crossed the age of 40 years in the month of February, 2007. It is interesting to note that Mr.P.Kanagaraj is also a party to this writ petition.

14. The stand of the petitioner is that though the upper age limit for appointment was 40 years, but the respondents have failed to notice, that the petitioner was fully eligible for appointment on the date, when the earlier notification dated 01.12.2006 was issued. Therefore, the persons appointed under backward community, namely, A.Sengottaiyan and P.Saravanan, being juniors to the petitioner in the employment exchange seniority, were wrongly appointed, which resulted in petitioner being rejected for appointment.

15. This contention cannot be accepted. As already noticed above, merely because the petitioner is senior in the seniority list of registration with employment exchange, which does not give any right to claim appointment in preference to the respondent No.4, who as per the advertisement was below the age of 40, was selected, being fully eligible. The petitioner has also not impleaded A.Sengottaiyan and P.Saravanan.

16. The petitioner has challenged the impugned order on the ground, that the respondents have failed to notice that the petitioner was entitled to 5 years age relaxation vide G.O.Ms.No.98, dated 1.7.2006 and in that case, the petitioner was eligible to be considered for appointment upto the age of 45 years.

17. The learned Additional Govt. Pleader vehemently opposed this contention, by contending that the upper age limit for appointment to the post of Overseer is 35 years and in view of the age relaxation given by G.O.Ms.No.98, dated 1.7.2006 the upper age limit was fixed at 40 which the petitioner had crossed.

18. Though process of selection adopted by the respondents in filling up the posts of Overseer through employment seniority of the persons below 40 years of age cannot be said to be correct process of selection, but at the same time, this writ petition as framed is not maintainable, as the petitioner has not challenged the selection by impleading selected candidates as parties to this writ petition.

19. The only ground of challenge raised in this writ petition to appointment of the respondent No.4 is that he was junior to the petitioner in the registration seniority with the employment exchange, therefore, could not be appointed in preference to the petitioner.

20. This contention cannot be accepted. The petitioner cannot claim appointment, merely on the basis of registration seniority with the employment exchange, as Government order, laying down the procedure for appointment through employment exchange will be unconstitutional, as appointment to public office be made considering all the eligible persons, therefore, petitioner cannot draw any benefit from such Government Order. No merit, dismissed. No costs. Connected miscellaneous petition is closed.
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