

(2011) 11 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 16181 of 2011 and M.P. No. 1 of 2011

Alavudeen

APPELLANT

Vs

Tahsildar, Tirukovilur, Villupuram District.

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0132

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : S.Padma, for the Appellant; I. Arokiasamy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice M.M. Sundresh

1. On consent, the writ petition itself is taken up for final disposal.
2. The petitioner herein was appointed as Village Assistant through the Employment Exchange. After satisfying the records produced by the petitioner, the petitioner was given the said appointment. Thereafter a show cause notice issued to the petitioner to show cause as to why his appointment should not be cancelled. Challenging the order of cancellation of the appointment passed by the respondent, the writ petition has been filed.
3. Learned counsel for the petitioner submitted that merely because the petitioner has passed 10th standard as against the qualification of passing 5th standard being minimum and failure in the 10th standard being the maximum, the order of cancellation of appointment, cannot be issued to the petitioner. The petitioner has not suppressed any facts and after verifying the records, the order of appointment has been made. Therefore, he submitted that the writ petition be allowed.
4. Per contra, learned Government Advocate for the respondent, based upon the

counter affidavit submitted that in as much as the appointment was being contrary to Government order passed in G.O. Ms. No.521, Revenue Department, dated 17.04.1998 which prescribed the qualification, when the petitioner having acquired the higher qualification, the writ petition will have to be dismissed.

5. Considering the very same issue, this Court in W.P. No.15788 of 2011 dated 05.07.2011 in R. Parameshwari vs The Secretary to Government and others has held as follows:

3. The impugned order was passed on 24.06.2011 by the third respondent terminating the service of the petitioner on the ground that the petitioner did not possess qualification as prescribed in the Government letter No.631 Revenue Department dated 07.11.2008, wherein it is prescribed that for appointment to the post of Assistant to V.A.O., minimum qualification is 5th std. and maximum qualification is 10th std. Fail and since the petitioner passed 10th std., she was not eligible to hold the post. Hence, the petitioner has filed the present writ petition to quash the impugned order dated 24.06.2011.

4. Heard Mr. K. Shankar, learned counsel for the petitioner and Mr. R.M. Muthukumar, learned Government Advocate for the respondents.

5. As rightly contended by the learned counsel for the petitioner, the show cause notice dated 26.10.2010 is vague and it is not stated as to how she does not possess the educational qualification to hold the post. Show cause notice dated 26.10.2010 reads as under:

VERNACULAR (TAMIL) PORTION DELETED

6. A perusal of show cause notice shows that it does not give any details as to how the third respondent came to the conclusion that the petitioner does not possess the educational qualification to hold the post of Assistant to V.A.O. Secondly, an interview was conducted where she produced all the certificates as required in the call letter and upon satisfying the conditions laid down in the call letter, the petitioner was appointed to the said post. The third respondent was informed that she passed S.S.L.C. and there was no suppression of facts on the part of the petitioner about her educational qualification.

7. The learned counsel for the petitioner has relied on the decision of this Court in W.A. No.1940 of 2000 dated 05.1.22006 (Life Insurance Corporation of India vs R. Chandrasekaran) wherein, the Life Insurance Corporation sought to dispense with the service of the peon on the ground that he was over qualified and a learned Single Judge allowed the writ petition and the Division Bench confirmed the same.

8. I have already held that the show cause notice is vague since nowhere it is stated that the petitioner was over qualified and that therefore, she was sought to be terminated from service. Hence, the petitioner had no opportunity to effectively answer the show cause notice. Further, it is not the case of the respondent that the petitioner suppressed about her qualification. Thirdly, the

judgment in W.A. No.1940 of 2000 of this Court squarely applies to the facts of the case.

9. For all three reasons, the impugned order is quashed and the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

6. Merely because the petitioner has passed 10th standard, he cannot not be discriminated against those candidates who have failed in 10th standard. The petitioner was allowed to participate in the interview conducted and his name has been sponsored by the employment exchange and only after verifying the records, the petitioner has been given the appointment. Considering the very same issue, this Court as already held that the order of termination cannot be sustained. It is not as if the petitioner has acquired a higher qualification, as this Court does not find any difference between a failed candidate in the 10th standard and a candidate who has passed. Instead of encouraging the candidate who has passed the examination, the appointment cannot be cancelled on the ground that had he been failed he would have been considered.

7. Therefore this Court is of the view that the judgment relied upon is squarely applicable to the facts of the case. Accordingly, the order impugned is set aside and the writ petition is allowed directing the respondent to reinstate the petitioner to the post of Village Assistant within a period of four weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is also closed. No costs.