

(2014) 11 MAD CK 0268
In the Madras High Court
Case No : Writ Petition No. 27862 of 2011

P. Andiappan

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0268

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Judgement

N. Paul Vasantha Kumar, J.

1. Heard Mr.P.Paramasivam, learned counsel appearing for the petitioner and Mrs.A.Shrijayanthi, learned Special Government Pleader appearing for the 1st respondent and Mr.P.Gunasekaran, learned counsel appearing for the 2nd respondent.

2. This writ petition is filed to quash the Proceedings of the 1st respondent dated 10.7.2009 and the consequential order dated 16.8.2011 cancelling the appointment of the petitioner on the ground that the petitioner has crossed 38 years of age on the date of appointment as Village Assistant.

3. It is the contention of the petitioner that he passed M.Com Degree in the year 1994, Bachelor of Library and Information Science (BLIS) in the year 2001, Master of Library and Information Science (MLIS) in the year 2002 and also studied Diploma in Pre- primary Teacher Training Course in the year 2005. As there was a vacancy for the post of Village Assistant in Thalavai Village Panchayat at Sendurai Panchayat Union, the petitioner has submitted an application for appointment in the vacant post. The petitioner belongs to Scheduled Caste community. After the perusal of the said application and eligibility, a resolution was passed by the 2nd respondent on 18.6.2009, appointing the petitioner as Village Assistant. The said resolution was also forwarded to the Block Development Officer, Sendurai on 23.6.2009 for approval

and the Block Development Officer, Sendurai has also approved the said resolution. The petitioner joined in the said post, however, on 10. 7.2009, the appointment order was cancelled by the 1st respondent without any notice. The said order was challenged by the petitioner before this Court in W.P.No. 27600 of 2009, which was disposed of on 23.2.2010 holding that without giving opportunity, cancellation order should not have been passed and liberty was given to the 1st respondent to give opportunity to the Thalavai Village Panchayat before cancelling the resolution. Thereafter, the 1st respondent-District Collector has passed an order on 16.8.2011 stating that as per G.O.Ms.No. 175, Rural Development and Panchayat Raj (E-5) dated 05.12.2006, the prescribed age for appointment as Village Assistant is 33 years and the petitioner was aged 38 years. Hence, the resolution of Thalavai Village Panchayat is not valid, as the petitioner was over-aged. The said order of the 1st respondent is challenged in this writ petition.

4. The only reason stated in the counter- affidavit filed by the 1st respondent to sustain the order is that the appointment of the petitioner is not valid, since he was above 38 years of age, when the resolution of Thalavai Village Panchayat was passed and therefore, the resolution of Thalavai Village Panchayat was cancelled.

5. The learned counsel appearing for the petitioner has relied on Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules, which states that the maximum age limit prescribed in the special rules shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes and Denotified communities or of the Destitute Widows of all Castes to a post included in a service for which the Special rules prescribe a qualification lower than a Degree of any University mentioned in the Schedule II of this Part, if such candidate possesses a general educational qualification, which is higher than that referred to in sub-rule (a) and he is otherwise qualified for appointment.

6. The learned counsel for the petitioner contended that the prescribed qualification for the post of Village Assistant is passing plus two and the petitioner having passed Bachelor Degree and Master Degree respectively, the petitioner is well within the qualification and age in terms of Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules. The rules framed in Tamil Nadu State and Subordinate Service Rules is statutory in nature, which will prevail any executory orders.

7. The learned counsel for the petitioner further submits that similar issue was considered by the Division Bench of this Court in W.A.No. 981 of 2009, which was preferred against the order of the learned single Judge in W.P.No. 3756 of 2009, dated 8.4.2009 along with W.P.(MD)No. 8297 of 2008.

8. The Division Bench, by common judgment dated 19.4.2010 disposed of the writ appeal observing that the candidates, who had passed out of the appellant

Institute in W.A.No. 981 of 2009, have already been called for interview, whoever has been selected in the interview shall be appointed in the posts kept vacant by direction of this Court, however, allowed the writ petition holding that the petitioner in W.P.(MD) No. 8297 of 2008 is entitled to succeed, as the maximum age limit will not apply, in view of Rule 12(d) and therefore, there is no illegality in the order of the learned single Judge.

9. Applying the said judgment to the facts of the present case and in view of the fact that the only reason stated by the 1st respondent to cancel the resolution passed by the Thalavai Village Panchayat appointing the petitioner as Village Assistant, being over age, the impugned order cannot be sustained and the same is quashed. Even though the 3rd respondent was served with notice, no one has chosen to appear on behalf of the 3rd respondent inspite of his name was printed in the cause list to oppose the prayer made by the petitioner.

10. In the result, the writ petition is allowed and the impugned order of the 1st respondent is set aside. The 1st respondent is directed to accommodate the petitioner in anyone of the vacancy available in Ariyalur District as Village Assistant, without any back wages but with continuity of service, within a period of four weeks from the date of receipt of a copy of this order. No costs.