

(2017) 07 MAD CK 0032

In the Madras High Court

Case No : 302 of 2013 and M P (MD) No 1 of 2013

P.Thamin Moon Ansari

APPELLANT

Vs

The District Collector, Tirunelveli District, & Ors.

RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 16](#), [Article 16\(2\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomo

Citation : (2017) 07 MAD CK 0032

Hon'ble Judges : K.K.Sasidharan, G.R.Swaminathan

Bench : DIVISION BENCH

Advocate : K.K.Sasidharan, G.R.Swaminathan

Final Decision : Dismissed

Judgement

1. The unsuccessful writ petitioner is on appeal, questioning the order dated 09 March 2012 in W.P.(MD) No.340 of 2011.

2. The writ petitioner belongs to Valasai village in Kampaneri Panchayat, Valliyoor Taluk, Tirunelveli District. He passed S.S.L.C. in the year

2002. He subsequently enrolled himself in the District employment exchange. He is also a physically handicapped person. When vacancies arose in

the post of Village Assistant in Tirunelveli District, the writ petitioner's name was also sponsored. The writ petitioner possessed all the prescribed

qualifications for the said post. He was called for interview on 15 November 2010. But, the fourth respondent Kanagaraj was ultimately appointed

as Village Assistant of Kampaneri Puthukudi Part I village, Tenkasi Taluk, Tirunelveli District.

3. According to the petitioner, the order dated 03 January 2011 issued by

Tahsildar, Tenkasi appointing the fourth respondent herein as Village

Assistant of Kambaneri, Pudhukudi Part I village was contrary to the express provision set out in Rule 7 of the special rules governing Village

Assistants issued vide G.O.Ms.No.521 Revenue (Set.VII(32) Department dated 17 June 1998. Rule 7(c) of the said rules no doubt states that the

persons appointed to the post shall belong to the village to which he is appointed or the adjoining village, if no suitable candidate is available from

that village.

4. According to the petitioner, when a suitable candidate is very much available in Kambaneri village, there was no justification in appointing the

fourth respondent, who is neither from the village in question nor the adjacent village. Complaining that Rule 7 (c) of the said special rules stood

contravened, he filed the instant writ petition.

5. The contention of the writ petitioner did not find favour with the learned single Judge, who dismissed the writ petition by order dated 09 March

2012. Aggrieved by the same, the present intra court appeal has been filed.

6. Tr.K.Mahendran, learned counsel appearing for the appellant/writ petitioner forcefully contended that while deciding the correctness of the

order appointing the fourth respondent herein, the aforesaid rule was not applied by the learned single Judge. But, unfortunately for the appellant,

even though the said rule is very much in the statute book, it is patently unconstitutional being violative of Article 16(2) of the Constitution of India.

The learned single Judge placed reliance on the decision of the Division Bench of this Court reported in 2007 (6) MLJ 402 - P.Vasanth and

Others V. The District Collector, Dindigul District, Dindigul and Others, in which, it was held that giving preference based on residential

qualification would be violative of Article 16(2) of Constitution of India. The said decision had been followed by another Division Bench, where it

is held that the selection of candidates on the basis of residential parameter would be violative of Article 16(2) of the Constitution of India.

7. The learned Additional Government Pleader appearing for the respondents 1 to 3 brought to our attention a recent decision of the Division

Bench reported in 2017(1) CWC 161 - M.Saraswathy V. The District Collector, Vellore District. It was observed in the said decision that such

eligibility condition for recruitment for public services contravenes the

constitutional rights guaranteed under Article 14 and 16 of the Constitution of India.

8. In view of the consistent ex-position of law with regard to the stipulation of such residential parameter in the recruitment rules, we have to

necessarily hold that the learned single Judge was right in dismissing the writ petition. When we dismiss this writ petition, we are only respectfully

following the several earlier decisions of this court. We find no merit in this appeal.

9. Accordingly, the writ appeal stands dismissed. No costs.

Consequently, connected miscellaneous petition is also dismissed.