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W.P.No.27298 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **12.01.2023**

Pronounced on : **25.01.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.27298 of 2021
and
W.M.P.No.28811 of 2021

Eswari

... Petitioner

Vs.

- 1 The Chief Secretary to Government of Tamilnadu,
Secretariat,
St.George Fort,
Chennai.
- 2 Secretary to Government,
Labour and Welfare Department,
Secretariat,
St.George Fort,
Chennai.
- 3 Principal Secretary to Government,
Adi Dravidar Welfare and Hill Tribal Labour Welfare,
Secretariat,
St.George Fort,
Chennai.
- 4 The Additional Chief Secretary,
Government of Tamilnadu,
Secretariat,

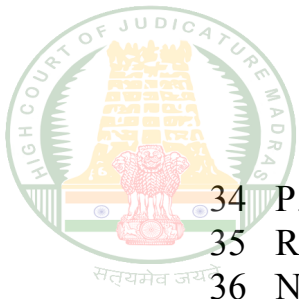


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St.George Fort,
Chennai.

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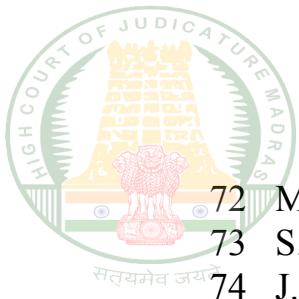
- 5 The District Collector,
O/o.The Coimbatore Collector Office,
Coimbatore.
- 6 The Commissioner of Corporation,
O/o.The Coimbatore Corporation,
Coimbatore - 641 001.
- 7 Maheshwari
- 8 R.Sakthivel
- 9 S.Rojarani
- 10 S.Akilandeswari
- 11 G.Durgadevi
- 12 S.Buvana
- 13 T.Kalai Selvi
- 14 N.Sakthivel
- 15 M.Prabakaran
- 16 K. Jayapriya
- 17 M. J. SuganthaPriyan
- 18 C. Selvaraj
- 19 T. Nivatha
- 20 A. Sakthi Kavitha
- 21 K. Priya
- 22 R. Sandhiya
- 23 S. Sandhiya
- 24 B. Divya
- 25 T. Ragaraj
- 26 K. Kowsalya
- 27 K. Madesh
- 28 T.Vignesh
- 29 S.P.R.Vignesh
- 30 C.M.Vignesh kumar
- 31 G.Divya
- 32 K.Vengatesh
- 33 R.Dhanalakshmi



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- 34 P.Indhumani
- 35 R.Keerthika
- 36 N.Nandhini
- 37 N.Geetha
- 38 Vinodhkumar
- 39 S.Maheshwaran
- 40 T.Harsharaj
- 41 K.Dhamodharan
- 42 S.Chandrakumar
- 43 K.Ajithkumar
- 44 S.Sarankumar
- 45 M.Aasha Banu
- 46 S.Seiyathu Sameer
- 47 S.Kaaviya
- 48 P.Sandiya
- 49 H.Sabana
- 50 A.Sajaarudeen
- 51 P.S.Sabana Begam
- 52 R.Ramesh
- 53 Y.Isack Samuveluraj
- 54 A H Thaariq Hussain
- 55 J.Satheesh
- 56 S.Mohankumar
- 57 M.Ashwin
- 58 T. Raamamoorthy
- 59 N.Jeyaprakash
- 60 P.Mohanapriya
- 61 KANAGAMANI
- 62 M.JAYASEELI JOSEPHINE
- 63 B.KOWSALYA
- 64 A.SURESH
- 65 R.RANJITH KUMAR
- 66 R.ANANDAN
- 67 A.SARAVANAN
- 68 B.GOPINATH
- 69 K.RAVI SHANKAR
- 70 N.KARTHIKEYAN
- 71 M.GANESH



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72 M.MOULIDHARAN
73 S.MANIKANDAN
74 J.BHUVANESWARI
75 P.RAJESH KUMAR
76 R.JAI KRISHNAN
77 K.MAHENDRAN
78 R.NAGENDRAN
79 A.LOGANATHAN
80 N.RAMKUMAR
81 N.SALAMON RAJA

(R61 TO R81

IMPLEADED VIDE ORDER DT 23.06.2022

MADE IN WMP.9280/2022

IN WP.27298/2021 by DKKJ)

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned appointment order in Na.Ka.No.6422/2020/M.C.No.9 dated 08.02.2021 on the file of the sixth respondent and quash the same and consequently directing the respondents 1 to 7 to consider the petitioner for the post of Junior Assistant in the Office of the 6th respondent by virtue of the representation dated 23.08.2021 within a stipulated time as fixed by this Court.

For Petitioner : Mr.Om Prakash
Senior Advocate
for Mr.S.Kumaradevan

For Respondents : R1 - Given up



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W.P.No.27298 of 2016

Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader
for R2 to R6

Mr.M.Sricharan Rangarajan
for Mr.A.P.Balaji
for R9, 15, 16, 17, 23, 43 and 59

ORDER

The issues that arise for consideration in this Writ Petition are as follows:

a) Whether the petitioner is having the *locus standi* to file this Writ Petition, challenging the appointments of respondent Nos.7 to 60, as Junior Assistants in the office of the sixth respondent viz., the Coimbatore Corporation;

and if found to have *locus*;

b) Whether the appointments of the respondent Nos.7 to 60 by the sixth respondent (Coimbatore Corporation) as Junior Assistants is proper and whether all the relevant rules and procedures were adhered to by the sixth respondent before making the appointments.

2. The petitioner belongs to scheduled caste and she was appointed as a sanitary worker in the sixth respondent Corporation on 25.02.2016 on



compassionate basis.

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3. According to the petitioner, she was qualified to be considered for the post of Junior Assistant, but, she was appointed only as a sanitary worker though similarly placed compassionate appointees were given higher posts. According to the petitioner, she came to know that the respondent Nos.7 to 60 were appointed as Junior Assistants by the sixth respondent Corporation on 08.02.2021. According to her, she was not aware of any recruitment notification issued by the sixth respondent Corporation, inviting aspirants to apply for the post of Junior Assistant.

4. The petitioner claims that the sixth respondent Corporation has appointed the respondent Nos.7 to 60 to the post of Junior Assistant clandestinely by not giving wide publicity and by not adhering to the rules and procedures required to be followed for public appointments.

5. The petitioner contends that she was not aware of the publication of the recruitment notification in two tamil dailies viz., 'Makkal Kural' and 'Maalai Murasu' on 11.01.2021 and she claims that the same was never



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published on 11.01.2021 as claimed by the respondents. The petitioner also claims that the recruitment notification was also not affixed in the notice board of the sixth respondent Corporation, the requirement of which is mandatory. The petitioner also claims that the sixth respondent Corporation claimed expenditure for the cost of publication amounting to Rupees Seven Lakhs by voucher, but whereas no such publication was ever made.

6. The petitioner claims that the appointment of the respondent Nos.7 to 60 as Junior Assistants by the sixth respondent Corporation is a huge scam, involving a former Minister in the State of Tamil Nadu. According to the petitioner, due to the non publication of the recruitment notification in news papers, having wide circulation, and due to non affixture of the notification in the notice board, the petitioner and many others were unable to participate in the selection process.

7. The petitioner contends that the appointment of the respondent Nos.7 to 60 on the very same day of the interview i.e., on 08.02.2021 is illegal. According to the petitioner, the appointments have been made at a lightening speed for extraneous considerations.



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8. The sixth respondent (Commissioner of the Coimbatore City Municipal Corporation) has filed a Counter denying the allegations of the petitioner. At the outset, he would state that the petitioner has no *locus-standi* to file this Writ Petition. He would state that the petitioner was appointed as a sanitary worker on compassionate grounds based on her application, when the vacancies were filled up for sanitary workers by the sixth respondent Corporation. He would state that promotion to the post of Junior Assistant can be given to the petitioner only based on her seniority and other eligibility criteria applicable for the post of Junior Assistant.

9. The sixth respondent Corporation categorically contends that the sixth respondent Office never gave any assurance to the petitioner when she was appointed as a sanitary worker that she would be given a higher post based on her qualification in the near future. According to the sixth respondent, once appointed as a sanitary worker in the year 2016 and her service having been regularized, the petitioner cannot claim the post of Junior Assistant on the ground that she had the requisite qualification. According to the sixth respondent, the appointments to the post of Junior



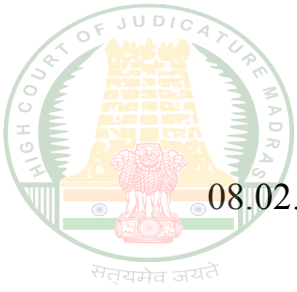
Assistant was made purely on communal rotation basis and no favouritism was shown to anyone as alleged by the petitioner.

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10. The sixth respondent Corporation states that 1/3rd of the vacancies to the post of Junior Assistant were filled up by promoting the eligible candidates from Record Clerk, Sanitary Workers and Drivers based on their seniority, educational qualification, etc., and 2/3rd of the vacancies were filled up on 08.02.2021 by direct recruitment in accordance with the Rules and regulations.

11. According to the sixth respondent Corporation, no irregularities were committed in the selection process for the post of Junior Assistant as alleged by the petitioner.

12. According to the sixth respondent Corporation, based on the Commissioner's order, an interview was conducted to fill up the post of Junior Assistant through direct recruitment on 08.02.2021 and appointment orders have been issued to 54 selected eligible candidates on the basis of communal rotation and Appointment Committee's resolution No.2 dated



08.02.2021 following the appointment Rules.

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13. The sixth respondent contends that in this regard advertisements inviting application for the post of Junior Assistant through direct recruitment were published in prominent Tamil dailies viz., 'Makkal Kural' and 'Maalai Murasu' on 11.01.2021 at a cost of Rs.3,00,316/-. Further, a notification inviting application for the post of Junior Assistant was also placed in the notice board of the respective zonal offices to bring it to the public attention and the Assistant Commissioners have certified the same.

14. According to the sixth respondent, no favouritism or influence was used by the former Local Body and Municipal Administration Minister as alleged by the petitioner. According to the sixth respondent, the selection of 54 Junior Assistants was conducted as per the Rules and Regulations prescribed for the selection procedure and there was no violation in the selection process as alleged by the petitioner.

15. According to the sixth respondent Corporation, a total of 654 applications were received pursuant to the newspaper advertisement in



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'Makkal Kural' and 'Maalai Murasu' editions and from the Coimbatore District Employment Exchange, the District Ex-Servicemen Welfare Board in response to the advertisement and requisition letters inviting applications for filling up 69 vacancies in the Junior Assistant post through direct recruitment. Out of 654 applicants, 440 candidates participated in the interview and certificate verification was conducted by five groups of officials constituted by the then Commissioner vide his proceedings dated 04.02.2021, each group consisting of four members headed by Assistant Commissioners. 54 eligible candidates were selected out of the total candidates participated in the interview that was conducted on 08.02.2021 and they have been appointed based on communal rotation, reservation and following all necessary appointment rules and regulations. They have also stated that the groups submitted the files immediately to the Head Office. The sixth respondent has also stated that the appointment orders were issued on the same day due to the reason that model code of conduct for the Tamilnadu Legislative Assembly Election 2021 might be announced by the Election Commission of India very soon.

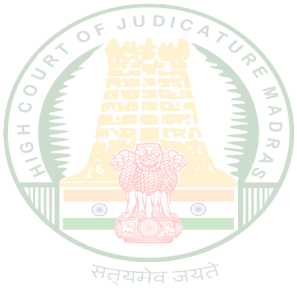


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16. Counters have been filed by some of the appointees to the post of Junior Assistant and more or less, their contentions with regard to the petitioner's allegations in this Writ Petition are as follows:

a) The petitioner has no *locus-standi* to file the Writ Petition. Having accepted the appointment as a sanitary worker on compassionate basis, the petitioner cannot seek for appointment as a Junior Assistant after the introduction of G.O.(Ms.)No.87, dated 19.08.2020;

b) The petitioner's contention, that she chose to accept the post of sanitary worker based on the assurance allegedly given by the sixth respondent Corporation that if she chose to accept the post of sanitary worker, she would later be granted appointment to a higher post based on her qualification, is not true. The same is infact negatived by the conspicuous absence of such contentions in her own representation dated 17.09.2020 as well as by the categorical denial of the sixth respondent Corporation in its Counter Affidavit;



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c) The petitioner's contention, that procedure as contemplated under G.O.(Ms.)No.1499, Labour and Employment Department (Q1) dated 03.08.1989 for compassionate appointment was not followed, is liable to be dismissed on the following grounds:

i) The petitioner having accepted her appointment as a sanitary worker without any protest is estopped from seeking any higher post that she claims to be eligible as on date;

ii) In cases of compassionate appointment, higher post cannot be claimed as a matter of right;

iii) Petitioner who was appointed in the year 2016 to the post of sanitary worker due to her lack of qualification, has not once initiated any appropriate legal action to challenge the alleged violations of the aforementioned Government Order.;

d) The petitioner had knowledge of the selection process as seen from the following:

i) The petitioner has categorically admitted in her own representation dated 23.08.2021 that she has knowledge about the ongoing



recruitment process for Junior Assistant and that she had sent a representation dated 17.09.2020. Infact, the representation dated 17.09.2020 has been submitted in the very early stage of the recruitment process. The absence of knowledge of any open advertisement does not in any way create a ground of challenge when the petitioner had knowledge about the ongoing recruitment process;

ii) The sixth respondent in his Counter Affidavit in paragraph No.8 has stated that advertisement inviting applications for the post of Junior Assistant were published in two prominent Tamil dailies viz., 'Makkal Kural' and 'Maalai Murasu' and that the notification inviting applications for the post of Junior Assistant was also placed on the notice board of the respective zonal offices to bring it to the public attention;

iii) The typed set of papers filed along with the Writ Petition itself reveals that more than 650 candidates have applied for the post of Junior Assistant. Therefore, any allegation that the selection process was not widely published is contrary to facts.;

e) The selection process was conducted in accordance with Rules and Regulations. The petitioner's contention that the selection process was



conducted in one day i.e., on 08.02.2021 is denied in the following two-fold manner:

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i) Firstly, the recruitment process was started as early or before 14.09.2020, as the respondents had called for lists from all eligible applicants from the District Collector, Joint Director, District Employment Exchange Office and Ex-servicemen Association and that the lists were also obtained. On 09.01.2021, the official advertisement for application for the post of Junior Assistant was released and the same was published in two prominent Tamil dailies viz., 'Makkal Kural' and 'Maalai Murasu' on 11.01.2021;

ii) 25.01.2021 was the last date for submitting applications to the post of Junior Assistant. Officers were also appointed for scrutinizing the applications for the post of Junior Assistant. After scrutiny, an Office Note dated 29.01.2021 came to be issued stating that 690 applications were received from the public out of which only 309 applications were found eligible and shortlisted and 330 applications were received from Employment Exchange and 15 applications were received from Ex-Service Association and a total of 654 applications were called for interview on 08.02.2021. Therefore, only after following the necessary procedures,



successful candidates came to be selected. Thus, the entire selection procedure and recruitment process was conducted in accordance with the Rules and Regulations.;

f) In any event, having not added the members of the selection committee and having failed to prove her allegations of malafides and illegality of the sixth respondent Corporation, the petitioner cannot maintain a challenge on the basis of malafides or arbitrariness in the recruitment process;

g) As regards the impleaded respondents viz., respondent Nos.61 to 81, having based their challenge on the petitioner's representation dated 23.08.2021, they also do not have *locus-standi* to challenge the appointments as they have neither added any substantial new grounds of challenge nor brought in any new facts to maintain a challenge against the impugned appointment order;

h) The present Writ Petition cannot be made to be a Public Interest Litigation and the impleaded respondents cannot piggyback on the



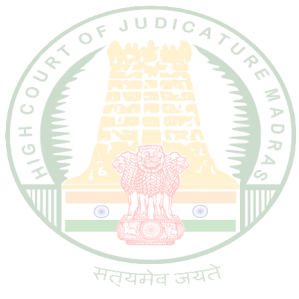
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petitioner's representation and contentions, when they do not have any independent case of their own. It is settled proposition of law that a Public Interest Litigation is not maintainable in service matters.

17. Heard, Mr.Om Prakash, learned Senior Counsel for Mr.S.Kumaradevan appearing for the petitioner and Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader for R2 to R6 and Mr.M.Sricharan Rangarajan, learned senior counsel for Mr.A.P.Balaji for respondent Nos.9, 15, 16, 17, 23, 43 and 59. R1 has given up.

18. Learned senior counsel appearing for the petitioner drew the attention of this Court to the following:

- a) Copy of G.O.Ms.No.44 of 2015 dated 11.03.2015;
- b) Appointment order of the petitioner dated 25.02.2021;
- c) Copy of the representation of the petitioner to the sixth respondent dated 17.09.2020;
- d) Proceedings of the sixth respondent dated 18.09.2020;
- e) Approval of advertisement expenditure in the news papers by the sixth respondent dated 13.10.2020;



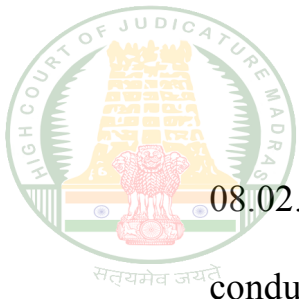
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- f) Proceedings of the sixth respondent dated 06.11.2020;
- g) Recruitment Notification of the sixth respondent dated 09.01.2021;
- h) Proceedings of the sixth respondent dated 25.01.2021;
- i) Proceedings of the sixth respondent regarding Certificate Verification Norms dated 29.01.2021;
- j) Impugned appointment order dated 08.02.2021 in favour of the respondent Nos.7 to 60 by the sixth respondent;
- k) Allotment order dated 09.02.2021 for allotting work to respondent Nos.7 to 60;
- l) Allotment order dated March 2021 for allotment of work to the respondent Nos.7 to 60 in the General Election to Tamilnadu Constituency Assembly;
- m) Representation of the petitioner dated 23.08.2021 to the sixth respondent.

19. After relying upon the aforementioned documents / proceedings, learned senior counsel for the petitioner would submit that appointments to the post of Junior Assistant have been made by the sixth respondent arbitrarily and illegally. He would submit that on the very same day i.e., on



08.02.2021 itself, it is alleged by the sixth respondent that interviews were conducted for 654 aspirants who were shortlisted and on the very same day, appointment orders were issued to 54 persons which is highly impossible. According to him, it is humanly not possible to conduct interviews for 654 aspirants and issue appointment orders for the 54 selected candidates on the very same day.

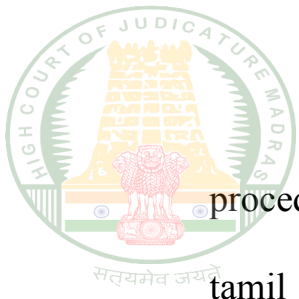
20. Learned senior counsel for the petitioner would submit that only for extraneous consideration, the appointments have been made in haste and the said appointments are arbitrary and illegal. Learned senior counsel for the petitioner would also submit that the petitioner is having the *locus-standi* to file this Writ Petition. Being a sanitary worker employed with the sixth respondent Corporation and who is eligible to be appointed as a Junior Assistant and having not been informed about the recruitment notification issued for selecting Junior Assistant by giving wide publicity, the petitioner is entitled to file this Writ Petition as she is a person interested in being appointed as a Junior Assistant in the sixth respondent Corporation.



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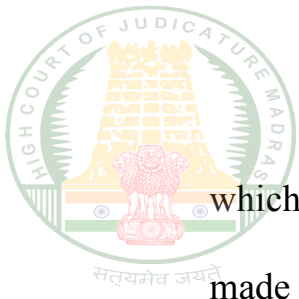
21. Learned senior counsel for the petitioner would also submit that the petitioner being a person belonging to the scheduled caste community, who is eligible to be appointed as a Junior Assistant, is entitled to bring to light the alleged gross illegalities and violations committed by the sixth respondent in appointing respondent Nos.7 to 60 as Junior Assistants. In support of the said contention, learned senior counsel for the petitioner drew the attention of this Court to a Judgment of the Andhra Pradesh High Court dated 23.07.2008 in the case of ***B.Krishna Reddy Vs. Sri Venkateswara University and Others*** passed in ***W.P.No.6852 of 1997***. Relying upon the said Judgment, learned senior counsel for the petitioner would submit that in identical cases, the Andhra Pradesh High Court held that the petitioner therein was having *locus* to file the Writ Petition challenging the illegal appointments.

22. Per contra, learned Additional Government Pleader appearing for the sixth respondent Corporation would reiterate the contents of the Counter and Additional Counter Affidavits filed by the sixth respondent. In his submissions, he would submit that only by following the Rules and



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procedure and only as per the recruitment notification published in two tamil dailies, the respondent Nos.7 to 60 were appointed as Junior Assistants purely on merit. He would submit that five selection committees were constituted for the conduct of the interview by the sixth respondent and only based on the results declared by the selection committees, the respondent Nos.7 to 60 were appointed as Junior Assistants on merit by the sixth respondent Corporation. According to him, only due to the fact that Elections for the Tamilnadu Legislative Assembly were likely to be declared by the Election Commission very soon, the appointment order was issued on the same day i.e., on the date of the interview i.e., on 08.02.2021. He would submit that 654 aspirants were called for interview and only 54 of them were selected to the post of Junior Assistants. Therefore, the allegation levelled by the petitioner that the appointments made by the sixth respondent is illegal is false. He would also submit that the petitioner was aware of the recruitment process initiated by the sixth respondent for appointing Junior Assistants and she having not applied for the subject post, has no *locus-standi* to file this Writ Petition. He would also submit that the cost of the advertisement made in 'Makkal Kural' and 'Maalai Murasu' for effecting the recruitment notification was also paid by the sixth respondent



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which is not in dispute. According to him, the advertisements were duly made inviting aspirants to apply for the post of Junior Assistants. According to him, there is no irregularity in the selection process as alleged by the petitioner.

23. Mr.M.Sricharan Rangarajan, learned senior counsel appearing for respondent Nos.9, 15, 16, 17, 23, 43 and 59, who have been issued appointment orders to the post of Junior Assistants by the sixth respondent Corporation, would reiterate the contentions of the appointees that the selection process was done in a fair and transparent manner by the sixth respondent Corporation. In support of the contentions raised in the Counter Affidavit filed by the private respondents who have been issued appointment orders for the post of Junior Assistant, Mr.M.Sricharan Rangarajan, learned counsel relied upon the following authorities:

a) *Md. Ismail Hoque Vs. Imran Hossain* reported in **2014 SCC Online Cal 17775**;

b) *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed* reported in **1976 (1) SCC 671**;



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- c) ***B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*** reported in ***2006 (11) SCC 731***;
- d) ***Umakant Saran Vs. State of Bihar*** reported in ***1973 (1) SCC 485***.

24. Relying upon the aforesaid decisions, Mr.M.Sricharan Rangarajan, learned senior counsel would submit that the petitioner does not have any *locus-standi* to file this Writ Petition.

25. Mr.M.Sricharan Rangarajan, learned senior counsel appearing for respondent Nos.9, 15, 16, 17, 23, 43 and 59 also drew the attention of this Court to the following authorities in support of his contention that in case of compassionate appointment, higher post cannot be claimed as a matter of right and a candidate cannot seek for an appointment as a Junior Assistant on compassionate grounds after he has accepted a lower post:

- a) ***Secretary to Government, Department of Co-operation, Food and Consumer Protection Vs. Kingston David*** reported in ***MANU/SC/1323/2021***;



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b) Division Bench Judgment of this Court in the case of ***The State of Tamil Nadu and Others Vs. V.Muthamilselvan*** reported in ***MANU/TN/3368/2022***.

26. Mr.M.Sricharan Rangarajan, learned senior counsel would also submit that the Division Bench of the Madras High Court in the case of ***General Manager, Tamil Nadu State Transport Corporation Ltd., Vs. P.Pandiarajan*** reported in ***MANU/TN/6684/2020*** has categorically held that the absence of knowledge of any open advertisement does not in any way create a ground of challenge when the petitioner had the knowledge about the ongoing recruitment process.

27. Mr.M.Sricharan Rangarajan, learned senior counsel also relied upon a Judgment of the Honourable Supreme Court in the case of ***B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn.***, reported in ***2006 (11) SCC 731*** and would submit that as per the said decision, the petitioner having not added the members of the selection committee and having failed to prove her allegations on



illegalities, she cannot maintain the Writ Petition on the basis of malafides and arbitrariness in the recruitment process.

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28. Mr.M.Sricharan Rangarajan, learned senior counsel would further submit that the newly impleaded respondents viz., the respondent Nos.61 to 81 have neither added any substantial grounds of challenge nor brought in any new facts to maintain a challenge against the impugned appointment orders. According to him, having based their challenge on the petitioner's representation dated 23.08.2021, their case will also have to fail.

Discussion:

29. This Court will have to first decide as to whether the petitioner is having the *locus-standi* to file this Writ Petition, challenging the appointments of the respondent Nos.7 to 60 to the post of Junior Assistant in the sixth respondent Corporation.

30. The following are the undisputed facts:

a) The petitioner was appointed as a sanitary worker in the year 2016

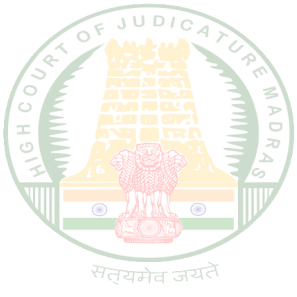


on compassionate basis;

b) The petitioner never applied for the post of Junior Assistant, pursuant to the recruitment notification published by the sixth respondent Corporation. She has challenged the appointments of the respondent Nos.7 to 60 to the post of Junior Assistant only after finalization of the selection process by the sixth respondent Corporation;

c) In their representation dated 23.08.2021, the petitioner along with others, to the sixth respondent Corporation, have admitted that as early as on 17.09.2020, they have given a representation after coming to know the sixth respondent's intention to recruit Junior Assistants through direct appointment, seeking for appointment to a higher post than the post of sanitary worker which they are presently holding. The extract of the representation dated 23.08.2021 of the petitioner and others is reproduced hereunder:

"கடந்த 08.02.2021 அன்று கோயம்புத்தூர்
மாநகராட்சி ஆணையாளர் அவர்களுக்கு 17.09.2020
நேரிலும், பதிவு அஞ்சல் மூலமாகவும் எனது கல்வித்
தகுதியின் அடிப்படையில் பணி வழங்குமாறு கடிதம்
எழுதியுள்ளேன். என்னைப் போன்று வாரிசுப் பணி
பெற்றுள்ளவர்களும் மற்றும் வேலை வாய்ப்பு அலுவலகம்



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மூலமாக 2014ம் ஆண்டு வரை துயிமைப் பணியாளர்களாக பணியில் சேர்ந்தவர்களும் மனுக்கள் அளித்தோம், ஆனால் எங்களது கோரிக்கை மனுவை கருத்தில் கொள்ளாமலும், உரிய பதில் அளிக்காமலும் 54 இளநிலை உதவியாளர்களை சட்ட விரோதமாக நேரடி நியமனம் செய்து பணி ஆணையினை வழங்கியுள்ளார்கள். இந்த நியமனத்தால் எங்களுக்கு கிடைக்க வேண்டிய இளநிலை உதவியாளர் பணியிடம் கிடைக்காமல் போகும் அவலம் ஏற்பட்டுள்ளது. மேலும் நாங்கள் பதவி உயர்வு பெறவும் முடியாத சூழல் உருவாகியுள்ளது. இப்பணி நியமனங்கள் சட்ட விரோதமாக நடந்துள்ளது, எங்களது உரிமை தட்டிப் பறிக்கப்பட்டுள்ளது."

31. The petitioner has not challenged the recruitment notification issued by the sixth respondent Corporation for the post of Junior Assistant based on which the respondent Nos.7 to 60 were appointed as Junior Assistants by the sixth respondent Corporation. The petitioner in the aforesaid representation dated 23.08.2021 has admitted that the recruitment notification for the post of Junior Assistant issued by the sixth respondent Corporation was published in both 'Makkal Kural' and 'Maalai Murasu'. However, her grievance was that publishing the recruitment notification in



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'Makkal Kural' and 'Maalai Murasu' alone will not give wide publicity to enable all the aspirants including the petitioner to apply for the post of Junior Assistant. The relevant extract in the petitioner's representation dated 23.08.2021 is reproduced hereunder:

"1. இளநிலை உதவியாளர் பணியிடங்களை நிரப்ப வெளியிடப்பட்டதாக கூறப்பட்ட தினசரி நாளிதழ் விளம்பரம் தவறானது. மக்கள் குரல், மாலைமுரசு ஆகிய இரண்டு பத்திரிக்கையில் மட்டுமே விளம்பரம் வெளியிடப்பட்டது. இவை இரண்டில் மக்கள் குரல் நாளிதழ் மக்களிடையே அதிகம் வாசகர்கள் இல்லாத பத்திரிக்கையில் நாளிதழாக வெளிவராமல் இவ்விளம்பரத்தை மின் நாளிதழில் (E-Paper) பிரசுரம் செய்திருக்கிறார்கள். இரண்டாவது நாளிதழ் மாலைமுரசு மாலை நேரத்தில் மட்டுமே வெளியிடப்படுவதால் அதிக மக்கள் பார்த்திருக்க வாய்ப்பில்லை."

32. As seen from the aforementioned undisputed facts, it is clear that the petitioner was aware of the sixth respondent Corporation's intention to recruit persons for the post of Junior Assistants even prior to the recruitment notification issued by them. It is also clear that the petitioner was appointed



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as a sanitary worker only on compassionate appointment basis and she has also not challenged the recruitment notification issued by the sixth respondent Corporation for the post of Junior Assistants, but instead, has challenged only the appointments of the respondent Nos.7 to 60 to the post of Junior Assistants by the sixth respondent Corporation that too only after the entire selection process got completed.

33. Learned senior counsel for the petitioner has submitted before this Court that the recruitment notification in both the vernacular dailies was published only in E-paper of the said dailies and were never published in their physical edition. However, this Court is of the considered view that the petitioner having knowledge in his representation dated 23.08.2021 to the sixth respondent Corporation that she was aware of the publication of the recruitment notification in 'Makkal Kural' as well as 'Maalai Murasu', the contention of the learned senior counsel for the petitioner that the publication of the recruitment notification was not effected properly has to be rejected by this Court.



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34. Admittedly, the sixth respondent Corporation has paid the cost of the publication for publishing the recruitment notification to the two vernacular dailies. Having paid the cost and also having produced the advertisement which appeared in the two vernacular dailies, that too when the petitioner has admitted in her representation dated 23.08.2021 that she was aware of the recruitment notification, the petitioner is estopped from raising a dispute with regard to the publication of the recruitment notification in the two vernacular dailies.

35. The petitioner is thirty eight years old as on 09.01.2021 when the appointment orders were issued by the sixth respondent Corporation to the respondent Nos.7 to 60 to the post of Junior Assistants. As per the recruitment notification of the sixth respondent Corporation for the post of Junior Assistants, it stipulates age eligibility as 18 to 35 years for the aspirants hailing from SC/Arunthathiyar/ ST Community. The petitioner who has crossed thirty five years of age is therefore, not eligible to make an application to the post of Junior Assistant as per the recruitment notification issued by the sixth respondent Corporation.



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36. The petitioner does not have an independent legal right to challenge the appointments of the respondent Nos.7 to 60 to the post of Junior Assistants, pursuant to the recruitment notification issued by the sixth respondent Corporation. The petitioner being ineligible to apply for the post of Junior Assistant, as per the recruitment notification issued by the sixth respondent Corporation, is not an aggrieved person, but, is a stranger to the selection process. Hence, she cannot legally maintain a Writ Petition, seeking to challenge the appointments of the respondent Nos.7 to 60 to the post of Junior Assistants by the sixth respondent Corporation.

37. The Honourable Supreme Court in the case of ***Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed*** reported in ***1976 (1) SCC 671*** held that a stranger who is not an aggrieved person cannot maintain a Writ for either *Certiorari* or *Mandamus*. The relevant paragraphs of the aforesaid decisions of the Honourable Supreme Court is reproduced hereunder:



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W.P.No.27298 of 2017

"50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a "stranger" unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a "stranger", and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of Respondents Nos. 1 and 2, which they have under Article 19(1)(g) of the Constitution, to carry on trade or business subject to "reasonable restrictions imposed by law". "

38. The case on hand is a case where the petitioner even without challenging the recruitment notification and even without questioning the



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eligibility of the respondent Nos.7 to 60 to hold the post of Junior Assistants, pursuant to the recruitment notification issued by the sixth respondent Corporation, has attempted to challenge the appointments only on the ground that she has a priority for being appointed as a Junior Assistant ahead of the respondent Nos.7 to 60.

39. This Court cannot accept the contentions of the petitioner as raised in this Writ Petition, in view of the fact that she is a stranger as far as the appointments of the respondent Nos.7 to 60 to the post of Junior Assistants are concerned as they have been appointed under a recruitment notification which was not the subject matter of any challenge before any Court of law.

40. The Honourable Supreme Court in the case of ***B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*** reported in ***2006 (11) SCC 731 (II)*** also makes it clear that the burden of establishing the malafides is very heavy on the person who alleges it and the relevant paragraphs of the aforesaid Judgment of the Honourable Supreme Court is extracted hereunder:



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W.P.No.27298 of 2017

"89. *In E.P. Royappa v. State of T.N. further question before us is whether the appointment made by the Government includes any component of mala fides. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a higher order of credibility. Here Respondents 1 and 2 have flung a series of charges of oblique conduct against the then Chief Minister through their advocate. The anxiety of the Court should be all the greater to insist on a high degree of proof. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.*

90. *This Court, in the above judgment, held that such is the judicial perspective in evaluating charges of unworthy conduct against Ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set-up, these*



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considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy."

41. The Honourable Supreme Court in the case of ***Umakant Saran Vs. State of Bihar*** reported in ***1973 (1) SCC 485*** also makes it clear that a person who is not eligible for consideration for appointment at the relevant point of time has no right to question the appointments since he is not an aggrieved person.

42. The Division Bench of the Madras High Court in the case of ***General Manager, Tamil Nadu State Transport Corporation Ltd., Vs. P.Pandiarajan*** reported in ***MANU/TN/6684/2020*** has held that a person having accepted her appointment to a lower post without any protest is estopped from seeking any higher post that she claims she is eligible as on date. The relevant paragraphs of the aforesaid decision are extracted hereunder:

"21. Having considered the submissions raised, there cannot be any quarrel over the proposition of law



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W.P.No.27298 of 2012

laid down by the Honourable Apex Court that all public employments are supposed to stand the test of Articles 14 and 16 of the Constitution of India, for which, the initial step of any process of selection has to be through an open advertisement. However, when the present set of cases came to be decided, it is evident that the law relating to the subject was being debated in the Supreme Court and came to be finally settled quite in close proximity of the selection process presently involved that had been notified in the year 2012. Nonetheless, there was a statutory compliance by the appellant Corporation by proceeding with the process of selection of calling for names from Employment Exchange. The only question is whether this could have been done exclusively through this method or a public advertisement was necessary.

22. We do not think that there can be a second opinion on this that a public employment of the nature as involved in the present case has to be advertised in order to attract the best of the talents. Nonetheless, one of the methods of calling for names through Employment Exchange is not prohibited in law. The arguments of the learned Additional Advocate General that the respondents / writ petitioners were well aware



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of the notifications having been issued and the process adopted appears to be correct and therefore, the respondents / writ petitioners cannot be said to have been prohibited from seeking the relief from the appellant Corporation in order to participate in the selection process. They, therefore, formed a class, who had knowledge of the entire process and therefore, in our opinion, they cannot plead that the lack of advertisement resulted in any lack of opportunity to them. Such an argument, in our opinion, would be open for a candidate, who had not registered with the Employment Exchange could have claimed that he did not know about the selection process as there was no open advertisement, but, in the present case, the respondents / writ petitioners, as rightly pointed out by the learned Additional Advocate General, had full knowledge of the entire selection process. The absence of an advertisement, therefore, could not have been a ground for them so as to contend that they have lost the opportunity of seeking employment. This is not to shift the burden of the arguments, but, on a plain understanding as is available on the facts of the present case, all the respondents / writ petitioners are candidates, who were registered with the Employment Exchange. It is in this situation, they cannot be heard



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to plead as a matter of fact or in law that there being no advertisement, they have been deprived of the opportunity of participating in the selection process. They had an opportunity to apply and even otherwise they did seek such a relief through writ petitions filed by them. Thus, the absence of knowledge of any open advertisement, does not in any way create a ground for challenge insofar as the respondents / writ petitioners are concerned in the above background. Accordingly, the respondents / writ petitioners cannot be said to be either affected or aggrieved by any non advertisement of the posts."

43. The Division Bench of this Court in the case of ***The State of Tamil Nadu and Others Vs. V.Muthamilselvan*** reported in ***MANU/TN/3368/2022*** has also held that in cases of compassionate appointment, higher post cannot be claimed as a matter of right and further held that a candidate under G.O.(Ms.)No.1499, Labour and Employment Department (Q1) dated 03.08.1989, cannot seek for an appointment as a Junior Assistant under compassionate grounds after she has accepted the post of Record Clerk, which is a lower post.



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44. As seen from the aforesaid decisions, it is clear that the petitioner who had knowledge about the proposed selection of Junior Assistants by the sixth respondent Corporation cannot now plead that due to lack of proper advertisement she did not apply for the subject post.

45. The relief sought for in this Writ Petition is in the nature of a Public Interest Litigation. The petitioner does not have any grievance with regard to the eligibility of the respondent Nos.7 to 60 to be appointed to the post of Junior Assistants by the sixth respondent Corporation, but her grievance is that when there are already existing eligible persons in the employment of the sixth respondent Corporation, who are eligible to get the said post, the requirement to issue a fresh recruitment notification to select candidates for the post of Junior Assistants will not arise, which in the considered view of this Court is not a person centric litigation but is in the nature of a Public Interest Litigation. Further, the petitioner has also not challenged the recruitment notification but has only challenged the appointments of the respondent Nos.7 to 60, pursuant to the recruitment notification. Undoubtedly, the grievance of the petitioner and the



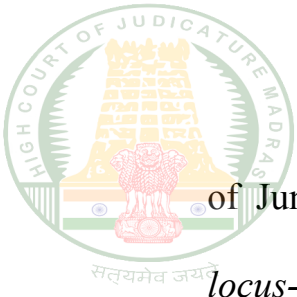
W.P.No.27298 of 2014

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respondent Nos.61 to 81 who sail together are in the nature of public interest. It is settled law that Public Interest Litigation is not maintainable in service matters barring Writ of Quo Warranto as held by the Honourable Supreme Court in the case of ***Madan Lal Vs. High Court of J&K*** reported in ***2014 (15) SCC 308***.

46. As seen from the above, it is clear that the petitioner is not an aggrieved person but a stranger to the selection process for appointments of respondent Nos.7 to 60 as Junior Assistants by the sixth respondent Corporation, pursuant to the recruitment notification issued by them. Therefore, the petitioner does not have *locus-standi* to maintain this Writ Petition and only persons who had applied for the subject post of Junior Assistants based on the recruitment notification issued by the sixth respondent Corporation, who were unsuccessful, have, if at all, any legal right to file a Writ Petition, challenging the selection process.

47. For the foregoing reasons, this Court is of the considered view that this Writ Petition filed by the petitioner is not maintainable on the ground that the petitioner is a stranger and not eligible to apply for the post



of Junior Assistant due to her age and therefore, she does not have the *locus-standi* to challenge the appointments of the respondent Nos.7 to 60 as Junior Assistants by the sixth respondent Corporation, pursuant to recruitment notification issued by them.

48. Undoubtedly, the recruitment process to any public post should be conducted in a fair and transparent manner. If the candidates are selected by any criterion other than merit and efficiency, the public authority will suffer for all the times to come. It is in public interest that the process of selection and appointment should be transparent to make it foolproof from corrupt practices.

49. In the case on hand, admittedly, interview and selection of candidates for the post of Junior Assistants was completed by the sixth respondent Corporation on the very same day i.e., on 08.02.2021. 654 persons were called for interview on 08.02.2021 and 54 persons were selected by the sixth respondent Corporation on the very same day, which under normal circumstances may not be possible. However, the sixth respondent Corporation contends that five selection boards were constituted



for completing the selection to the post of Junior Assistants on the very same day of the interview i.e., on 08.02.2021.

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50. The appointment orders for the respondent Nos.7 to 60 to the post of Junior Assistants were also issued immediately on the next day of their selection i.e., on 09.02.2021, which under normal circumstances may not be possible. The sixth respondent Corporation's contention that only due to the reason that Election notification for the Tamil Nadu Assembly will be issued by the Election Commission soon, they had to complete the selection process for appointing Junior Assistants at a rapid pace with the assistance of the five selection boards and that the selection process was done in a fair and transparent manner or not, can be tested only if a person unsuccessful in getting selected challenges the selection process but not by a stranger who has not participated in the selection process. As persons, who applied to the post of Junior Assistants, pursuant to the recruitment notification issued by the sixth respondent Corporation, have not challenged the appointments of the respondent Nos.7 to 60 to the said posts, the question of entertaining this Writ Petition filed by a stranger challenging the selection process will not arise.



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51. For the foregoing reasons, this Court is dismissing this Writ Petition only on the ground that the petitioner does not have a *locus-standi* to file this Writ Petition. The decisions relied upon by the learned senior counsel for the petitioner in the cases of

a) State of Orissa Vs. Mamata Mohanty reported in **2011 (3) SCC 436;**

b) Renu Vs. District and Sessions Judge, reported in **2014 (14) SCC 50;**

c) Prema Latha and Others Vs. State of Tamil Nadu, Higher Education Department and Others in W.P.No.19939 of 2014, High Court of Madras ;

is not required to be considered by this Court since this Writ Petition is dismissed only on the ground that the petitioner is not having the *locus standi* to challenge the appointments of the respondent Nos.7 to 60 to the post of Junior Assistants.



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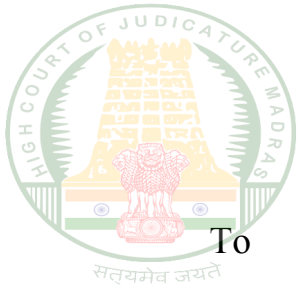
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52. In the result, this Writ Petition is dismissed. No Costs.

Consequently, the connected Writ Miscellaneous Petition is closed.

25.01.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

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- 1 The Chief Secretary to Government of Tamilnadu,
Secretariat,
St.George Fort,
Chennai.
- 2 Secretary to Government,
Labour and Welfare Department,
Secretariat,
St.George Fort,
Chennai.
- 3 Principal Secretary to Government,
Adi Dravidar Welfare and Hill Tribal Labour Welfare,
Secretariat,
St.George Fort,
Chennai.
- 4 The Additional Chief Secretary,
Government of Tamilnadu,
Secretariat,
St.George Fort,
Chennai.
- 5 The District Collector,
O/o.The Coimbatore Collector Office,
Coimbatore.
- 6 The Commissioner of Corporation,
O/o.The Coimbatore Corporation,
Coimbatore - 641 001.



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W.P.No.27298 of 2021

ABDUL QUDDHOSE. J.,

ab

**Pre-delivery Order in
W.P.No.27298 of 2021**

**25.01.2023
(1/2)**