



W.P.No.20951 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.20951 of 2021
and W.M.P.No.22217 of 2021

C.Padmanaban

... Petitioner
Vs.

1.The Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George, Chennai - 600 009.

2.The Director of Rural Development and
Panchayat Raj,
Panagal Building, Saiapet,
Chennai - 600 015.

3.The District Collector,
Vellore District, Sathuvachari,
Vellore District.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order of rejection of regularization and pension passed vide Na.Ka.No.50306/2019/D1 dated 14.01.2020 and consequential impugned order of the 3rd respondent vide



W.P.No.20951 of 2021

Na.Ka.PaAa3/15458/2001 dated 03.02.2020 and quash the same and direct the respondents to regularize the service of the petitioner as Junior Assistant w.e.f. 08.03.1993, with continuity of service, with all attendant benefits, promotion and other benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondent 1 to 3 : Mr.D.Gopal,
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking to call for the entire records connected with the impugned order of rejection of regularization and pension passed vide Na.Ka.No.50306/2019/D1 dated 14.01.2020 and consequential impugned order of the 3rd respondent vide Na.Ka.PaAa3/15458/2001 dated 03.02.2020 and quash the same and direct the respondents to regularize the service of the petitioner as Junior Assistant w.e.f. 08.03.1993, with continuity of service, with all attendant benefits, promotion and other benefits.

2. The case of the petitioner is that the petitioner's father Late Mr.Chandran worked as a Secondary Grade Teacher in the Panchayat Union



Primary School at Pernambut. While in service, he died on 18.10.1960 due to illness. The petitioner's family consist of the petitioner and his mother.

Therefore, the petitioner has applied for compassionate ground appointment on 18.12.1989 before the third respondent, duly submitted in the prescribed application with supportive certificates. The petitioner had mentioned in the relevant column of the application against his educational qualification as failed +2 (plus two) in the Higher Secondary School as he could not secure pass marks in English. Similarly, as against the job requirement, he had indicated either as Record Clerk or Office Assistant in the last grade service. After two years, the third respondent herein had appointed the petitioner as Rural Welfare Officer, (RWO) Grade-II, which is equivalent to the post of Junior Assistant and he joined duty on 08.03.1993.

2.2. The second respondent had submitted a proposal to the Government vide his letter dated 21.05.1996 and 19.01.2000 for regularization of petitioner's service with effect from 08.03.1993. But, the first respondent vide letter dated 26.09.2001 had returned the proposal on the ground that as per G.O.Ms.No.825 dated 25.08.1986, the petitioner did not



possess the requisite qualification for compassionate appointment as Rural Welfare Officer Grade-II and directed to revert the petitioner to appropriate post and also to take appropriate action against the officials, who had issued orders of irregular appointment. Pursuant to the said order dated 26.09.2001, the third respondent has issued a charge memo dated 10.05.2002 under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal Rules) on five counts indicating that the petitioner had obtained compassionate appointment without disclosing the fact that he has failed in SSLC examination but mentioned as +2 fail. Thereafter, enquiry was conducted and the charges levelled against the petitioner was not proved. However, without considering the same, the third respondent has passed an order of reverting the petitioner from the post of Rural Welfare Officer Grade-II to the post of Office Assistant vide letter dated 23.10.2003. Challenging the same, the petitioner has filed writ petition in W.P.No.34250 of 2004 and this Court by its order dated 25.11.2004 set aside the order of reversion and remitted the matter back to the third respondent for passing appropriate orders with a direction to issue lesser punishment. However, no order has been passed. Therefore, the petitioner has filed a contempt petition. After notice, the third respondent



W.P.No.20951 of 2021

issued a order dated 11.11.2005, appointing the petitioner as Record Clerk, a post lower than the RWO, Grade-II/Junior Assistant, which is contrary to the direction of this Court. Thus, challenging the order dated 11.11.2005, the petitioner has filed another writ petition in W.P.No.2990 of 2006 and this Court has granted interim stay. Thereafter, the third respondent by proceeding dated 07.03.2006, cancelled the earlier order dated 11.11.2005 and posted the petitioner as Cashier in the Thimiri Panchayat Union, which is equivalent to the post of RWO, Grade-II/Junior Assistant and also by his proceeding dated 13.03.2006, the third respondent has imposed a order of stoppage of increment for a period of two years with cumulative effect.

2.3. In the meantime, on 25.10.2004, the petitioner was directed by the Block Development Officer to remit a sum of Rs.1,74,671/- from September 2004 onwards in view of his reversion to the lower post of Record Clerk from 23.10.2003 at the rate of Rs.1200/- per month from September 2004. Accordingly, a sum of Rs.20,000/- was recovered from the salary for the period from September 2004 to September 2006. Therefore, challenging the order of punishment dated 13.03.2006, the petitioner has filed writ petition in



W.P.No.30201 of 2006 and obtained order of interim stay of recovery. Then, the aforesaid writ petition in W.P.No.2990 of 2006 was dismissed as infructuous stating that the petitioner was restored to the post of Junior Assistant and disposed the W.P.No.30201 of 2006 with a direction to submit an appeal before the Appellate Authority. Accordingly, the petitioner has filed an appeal dated 28.07.2010 before the second respondent. However, the second respondent by proceeding dated 25.09.2010, rejected the appeal on the ground that the petitioner had obtained the appointment without having required qualifications as contemplated in G.O.Ms.No.825, Personal and Administrative Department dated 25.08.1986 and confirmed the order of the third respondent dated 13.03.2006.

2.4. The petitioner has made several representations dated 16.04.2015 and 20.02.2018 before the respondents 1 & 2, requesting them to regularize him with effect from 08.03.1993, however, no action was taken. The third respondent vide his letter dated 10.08.2018 forwarded the proposal, recommending the petitioner for regularization of service with effect from 28.05.1999 i.e., the last date on which he had passed plus two. Pending the



WEB COPY

same, the petitioner has attained the age of superannuation on 30.04.2019 and issued with an order of retirement from the service. Hence, he made a representation dated 21.06.2019 before the third respondent, requesting to given him retirement benefits including pension, but the same was rejected on the ground that his appointment was not regularized by the Government. Aggrieved over the same, the petitioner has made a representation dated 15.07.2019 before the respondents 1 & 2, requesting for temporary pension. Thereafter, the petitioner has made another representation dated 29.10.2019 before the third respondent requesting for regularization of his service as Rural Welfare Officer Grade-II/Junior Assistant with effect from 08.03.1993 and requested for all other retirement and service benefits. But the third respondent vide letter dated 03.02.2020 rejected his claim on the basis of the letter of the second respondent dated 14.01.2020 on the ground that his appointment was irregular and not regularized by the Government and could not be made any further recommendation in this regard to the Government. Challenging the aforesaid orders dated 04.01.2020 and 03.02.2020, the petitioner has come forward with the present writ petition.



WEB COPY

3. When the matter was taken up for hearing, learned counsel for the petitioner drew the attention of this Court to the proceeding in Pa.Mu.No.216748/Po.pa.Aa2/81 dated 02.02.1982 issued by the Director of School Education, Tamil Nadu, wherein, it is stated that the candidates, who have appeared and failed in the SSLC (XI standard) public examination after 11 years of regular schooling can be considered to possess the minimum general educational qualification prescribed for entry into public service, irrespective of the marks obtained by them in the public examination.

4. Learned Government Advocate appearing for the third respondent has filed a counter affidavit dated 29.11.2021 and submitted that the petitioner's proposal was sent to the Government by District Collector through Director of Rural Development and Panchayat Raj, Chennai to regularize the petitioner's service in the cadre of Junior Assistant. The Government, after careful examination of petitioner's proposal, it was found that the petitioner has failed in Higher Secondary Examination (12th standard), which held in April 1980. Further, the petitioner has passed his higher secondary course only in the month of March 1999 only, but he was



not passed in SSLC examination. As per the G.O.Ms.No.825, Personal & Administration Reforms Department dated 25.08.1986, the petitioner has not possessed the requisite qualification for compassionate appointment at the time of his appointment.

5. Learned Government Advocate appearing for the respondents 1 to 3 further submitted that the petitioner has deliberately concealed the truth of his original qualification. Hence, the charges were framed against him under Tamil Nadu Civil Rules (Discipline and Appeal) Rules 17(b) vide the Vellore District Collector Charge Memo No.PA3/15458/2001, dated 10.02.2002. The District Collector, Vellore has declared that all five charges against the petitioner were proved and issued the final order against the petitioner vide Letter No.PA3/15458/2001 dated 23.10.2003 and the same is reads as follows:

“திரு.சிபத்ம்நாபன் இளநிலை உதவியாளர், மாவட்ட ஆட்சித்தலைவர் அலுவலகம், சத்துணவுப் பிரிவு மீது சுமத்தப்பட்ட அனைத்துக் குற்றச்சாட்டுகளும் நீரூபணமாகின்றது. இவர் பணியில் சேரும் போது இது போன்ற தவறான தகவலைத் தந்து அரசு பணிப்பெற்றது அரசை ஏமாற்றியதற்கு சமம். இவருக்கு அனைத்து விதிகளும் தெரிந்தே இவர் இத்தவறைச் செய்ததால்,



இவரை பணியில் நீடிக்க வைப்பது அலுவலகப் பணிக்கு குந்தகம் விளைவிக்கும். இவர் செய்த குற்றம் மன்னிப்பு வழங்க முடியாத குற்றம்.

எனவே, இவர் பணி நீக்கம் செய்யப்பட வேண்டியவர். இருப்பினும் இவரது குடும்ப சூழ்நிலையைக் கருத்தில் கொண்டு நிரந்தரமாக அலுவலக உதவியாளராக பணி இறக்கம் செய்து ஆணையிடுகிறேன்.”

6. Learned Government Advocate appearing for the respondents 1 to 3 further submitted that the G.O.Ms.No.225, Labour and Employment Training Department dated 15.02.1972 stated that “The candidates should possess all the prescribed qualification for the posts concerned” and in Rule Tamil Nadu State and Subordinate Service Rules have been superseded by Tamil Nadu Government Servants (Condition of Service) Act 2016 section 20 (1) Schedule-III, it is indicated as follows:

“(i) A person who had appeared for 11 year S.S.L.C. Public Examination and obtained 35% marks in each subject either in one sitting or compartmentally, shall be deemed to have passed the S.S.L.C Public Examination.”

But in this case, the petitioner does not acquire the minimum general qualification for the post of Junior Assistant/Rural Welfare Officer Grade-II at the time of his appointment. Hence, as per the direction of Government



W.P.No.20951 of 2021

letter No.3415/D5/2000-4, Rural Development Department dated 26.09.2001, the petitioner degraded to the post of Office Assistant vide letter No.PA3/15458/2001 dated 23.10.2003 issued by the Vellore District Collector. Challenging the same, the petitioner has filed a writ petition and this Court has set aside the reversion order dated 23.10.2003 with a direction to pass appropriate orders with lesser punishment. Then, he was appointed as Record Clerk at Thimiri Panchayat Union. Subsequently, he has filed another writ petition to claim the post of Junior Assistant, before this Court. Hence, he was posted as Cahier in Thimiri Panchayat Union, which was equivalent to the post of Junior Assistant. Further final order was passed for the disciplinary action against the petitioner for stoppage of increment for two years with cumulative effect as lesser punishment. Challenging the punishment of stoppage of increment for two years, the petitioner has filed an appeal before the Appellate Authority/Director of Rural Development and Panchayat Raj, Chennai and the same was dismissed.

7. Learned Government Advocate appearing for the respondents 1 to 3 contended that the petitioner knows that he did not possess the SSLC



qualification at the time of appointment. Hence, it clearly shows that he concealed the truth of SSLC failed details in the job application and the said petitioner did not pass the SSLC till the retirement (30.04.2019). Further, the Director of Rural Development and Panchayat Raj, Chennai in his letter No.50306/2016/D1 dated 14.01.2020 stated that:

“In this case, it is not possible to recommend to the Government to regularize his service in cadre of Junior Assistant because person who has not passed the SSLC and has no educational qualification in that post, as he has already been denied regularize his service by the Government”.

8. Learned Government Advocate appearing for the respondents 1 to 3 further contended that after serving for about 26 years and on attaining the age of superannuation on 30.04.2019, he retired from service in the cadre of Junior Assistant and did not pass S.S.L.C examination till on his retirement i.e., 30.04.2019. Moreover, as per the Accountant General (A&E), Chennai, Letter No.AG(A&G)/PEN/PO3/10323478/4/R0323478 dated 29.07.2019, the admissible pension benefits like gratuity, pension and family pension and all other benefits have been admitted to the petitioner.



WEB COPY

9. Learned Government Advocate appearing for the respondents 1 to 3 further submitted that the petitioner has appeared for the SSLC public examination in March 1978 and he has secured 18 marks in English and 31 marks in Mathematics, i.e., he has failed in two major subjects. Moreover, he did not pass the 11th year of SSLC (Old SSLC) and joined the new pattern of Higher Secondary course (+1) to higher studies and also, he failed in the +2 public examination in April 1980. Hence, it is clear that the petitioner did not possess the requisite minimum general qualification at the time of appointment and he attempt the English subject in private and passed +2 examination in March 1999, after his appointment in 1993. Further, the G.O.(Ms)No.80, Labour and Employment (Q1) Department dated 02.03.2016 is not squarely applicable to the petitioner for the reason that he has not possessed the requisite qualification.

10. Heard the learned counsel on either side and perused the materials available on record.

11. The petitioner was appointment as Rural Welfare Officer (RWO)



Grad – II on 08.03.1993, which was equivalent to the post of Junior Assistant. At the time of appointment, in the application proforma dated 14.10.1991, it was mentioned in qualification column as +2 fail and the post for which he has applied is Record Clerk in the Ministerial Service, which is the basic servant in the last grade Government services. It is pertinent to note that the petitioner does not have a required qualification of SSLC pass at the time of his appointment on 08.03.1993. Hence, at the time of appointment itself, it is the duty of the authorities to verify all the certificates establishing the educational qualification, the community to which he belongs and the birth certificate, etc. But in this case, the petitioner's proforma has mentioned only as +2 fail and he has not mentioned anything about the SSLC and the authorities have miserably failed to verify whether the petitioner has passed in SSLC, which is the basic required qualification for the post of Rural Welfare Officer (RWO) Grade-II.

12. The proposal for regularization of the petitioner was rejected by the Government on 26.09.2001, since the petitioner did not possess the



basic qualification of SSLC pass. The petitioner was appointed on 08.03.1993 and he got superannuated on 30.04.2019, after serving for 26 years. The authorities have failed to notice that the petitioner did not possess the required qualification for the post for which he was appointed and it was noticed only on 26.09.2001. Even after the Government has rejected the proposal for regularization of the petitioner, he was allowed to continue his service till his superannuation on 30.04.2019, i.e., for 18 years, despite the fact that the petitioner does not have the required qualification at the time of his appointment as Rural Welfare Officer (RWO) Grade-II.

13. In the counter affidavit of the third respondent, it is stated that the charges were framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) by the District Collector, Vellore, the third respondent herein, that the petitioner has concealed the truth of his educational qualification and it is the duty of the appointing authority to verify all the documents at the time of appointment of the petitioner on 08.03.1993. Initially, the Government vide letter 26.09.2001



returned the proposal of regularization of the petitioner, since he does not possess the required qualification.

14. Then subsequently on 10.08.2018 the proposal was sent by the District Collector, Vellore District to the second respondent/Director of Rural Department and Panchayat Raj by recommending the petitioner for regularization of his service. The petitioner has also submitted several representation to the respondents 1 to 3, however, the same was not considered. The impugned order was passed on 14.01.2020 by the second respondent/Director of Rural Department and Panchayat Raj. Subsequently, the second impugned order dated 03.02.2020 was passed by the third respondent/District Collector, Vellore, based on the order passed by the second respondent/Director of Rural Department and Panchayat Raj that he cannot recommend the name of the petitioner again to the Government for regularization, since the same was already rejected by the Government.

15. When the matter was taken up for hearing, learned counsel for the



W.P.No.20951 of 2021

petitioner drew the attention of this Court to the proceeding in Pa.Mu.No.216748/Po.pa.Aa2/81 dated 02.02.1982 issued by the Director of School Education, Tamil Nadu, wherein, it is stated that the candidates, who have appeared and failed in the SSLC (XI standard) public examination after 11 years of regular schooling can be considered to possess the minimum general educational qualification prescribed for entry into public service, irrespective of the marks obtained by them in the public examination.

16. It is an admitted fact that the petitioner did not possess the SSLC qualification, at the time of appointment as Rural Welfare Officer (RWO) Grade-II on 08.03.1993 and the same was found only in the year 2001, after a lapse of 8 years and the petitioner was allowed to continue in service from 08.03.1993 to till his date of superannuation on 30.04.2019 for 26 years. Having allowed the petitioner to serve for 26 years, it is not fair on the part of the respondents to reject the proposal or to deny the proposal of the petitioner's service as Junior Assistant. It is the appointing authority, who has to be found fault for not verifying the educational qualification records at the time of the petitioner's



appointment on 08.03.1993, for no fault on the petitioner, he cannot be punished by denying the regularization of services, despite the fact that he has served for 26 years.

17. Moreover, the first respondent has also directed the District Collector, Vellore to initiate appropriate action against the officials who has issued the irregular appointment order to the petitioner.

18. In view of the above factual matrix of the case, this Court is of the considered view that the impugned order dated 14.01.2020 and the consequential impugned order dated 03.02.2020 are liable to be quashed and the same are hereby quashed.

19. In the result, this writ petition is allowed and the respondents are directed to regularize the services of the petitioner as Junior Assistant with effect from 08.03.1993, with continuity of service, with all attendant benefits, promotion and other benefits, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected



W.P.No.20951 of 2021

miscellaneous petition is closed.

WEB COPY

19.09.2023

vca/vm

Index : Yes/No

Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vca/vm

To:

- 1.The Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Fort St. George,

Page No.19 of 20



W.P.No.20951 of 2021

Chennai - 600 009.

2. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saiapet,
Chennai - 600 015.

3. The District Collector,
Vellore District,
Sathuvachari,
Vellore District.

W.P.No.20951 of 2021

19.09.2023