

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE R.SUBBIAH

Writ Petition No.4411 of 2014

& M.P.Nos.2 & 3 of 2014

P.K.Ramalingam

... Petitioner

Versus

1. The Government of Tamil Nadu,  
Rep. By Secretary to Government,  
Municipal Administration and Water  
Supply (T.P.1) Department,  
Secretariat, Chennai
  2. The Director of Town Panchayat,  
Kuralagam, Chennai - 108
  3. The District Collector, Erode, Erode District
  4. Tamil Nadu Public Service Commission,  
Rep. By its Secretary, Chennai - 600 003
  5. Tmt. A.Rajeswari, Sweeper,  
Athani, Erode District
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records in G.O.Ms.No.10, Municipal Administration and Water Supply (T.P.1) Department, dated 27.01.2014, of the first respondent to the limited extent of non-selection of the petitioner and selection of the fifth respondent, for appointment to the post of Junior Assistant / Tax Collector, by recruitment by transfer, under 20% quota allotted for the basic service employees of the Town Panchayat in Erode District, in the vacancies arose from the year 1998, till the year 2008 and consequently, to direct the respondents to appoint the petitioner, by recruitment by transfer, as Junior Assistant / Tax Collector, in Erode District in the place of the fifth respondent herein, with retrospective effect and to grant all consequential benefits to the petitioner herein.

For Petitioner : Mr. M.Ravi

For Respondents: Mr. S.Gunasekaran, A.G.P.,  
for R-1 to R-3,  
Dr. M.Devendran, for R-4,  
Mr. G.Muthurasu, for R-5

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## O R D E R

This writ petition has been filed by the petitioner, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records in G.O.Ms.No.10, Municipal Administration and Water Supply (T.P.1) Department, dated 27.01.2014, of the first respondent to the limited extent of non-selection of the petitioner and selection of the fifth respondent, for appointment to the post of Junior Assistant / Tax Collector, by recruitment by transfer, under 20% quota allotted for the basic service employees of the Town Panchayat in Erode District, in the vacancies arose from the year 1998, till the year 2008 and consequently, to direct the respondents to appoint the petitioner, by recruitment by transfer, as Junior Assistant / Tax Collector, in Erode District in the place of the fifth respondent herein, with retrospective effect and to grant all consequential benefits to the petitioner herein.

2. The brief facts, which are necessary to decide the issue involved in this writ petition, are as follows:-

The petitioner herein was appointed as Watchman, Drinking Water Supply Scheme, in Anthiyur Town Panchayat, through Employment Exchange, on 30.07.1993, and his services were regularized from the said date. The Government has issued G.O.Ms.No.150, Municipal Administration and Water Supply Department, dated 19.08.1998, providing for appointment to 20% of vacancies as Junior Assistant by transfer among the eligible Record Clerks, Office Assistants and other posts, in basic service in Town Panchayats. The petitioner passed SSLC Examination in March 2007. The Assistant Director of Town Panchayats, Erode, called for proposals under 20% quota for appointment, as Junior Assistant, among the eligible names of 13 persons in the list for Erode District, and the name of the petitioner finds place at No.12. The District Collector, Erode / the third respondent herein recommends to the second respondent, the name of 13 persons, including the petitioner, for appointment by transfer as Junior Assistant, in Erode District. The second respondent recommends the proposals on 16.12.2010 to the Government / first respondent. The first respondent / Government, after getting concurrence of the Tamil Nadu Public Service Commission, has issued orders in G.O.Ms.No.10, Municipal Administration and Water Supply Department, dated 27.01.2014, permitting appointment of 12 candidates only, out of 13 candidates, recommended by respondents 3 and 2, by omitting the name of the petitioner and appointing his junior in S.No.13, who is the fifth respondent herein, as Junior Assistant, under the 20% quota, in the vacancies that arose between 1998 and 2008, in Erode District. The reason for non-inclusion of petitioner's name is that, he has passed SSLC Examination in March 2007 only and he will be eligible for appointment as such in the vacancies that arose in the year 2008-09. Challenging his non-

selection and selection of the fifth respondent, the petitioner has filed this writ petition.

3. Heard the learned counsel appearing for both sides.

4. The learned counsel for the petitioner submitted that the impugned order is unsustainable in law and on facts and is liable to be set-aside; the first respondent had omitted to consider the proposal and recommendation of respondents 2 and 3, in a proper perspective, by including the petitioner for recruitment by transfer as Junior Assistant / Tax Assistant and had accepted the untenable advice of the fourth respondent herein; the respondents have failed to consider that the vacancies are admittedly up to the year 2008 and as the petitioner has acquired the SSLC Qualification during March 2007 itself, the reason assigned for petitioner's non-selection is unsustainable and untenable; the act of respondents 1 and 4 in omitting to select the petitioner and favouring the fifth respondent, suffers from vice of selective discrimination and malice of law.

5. The learned counsel for the petitioner further submitted that the impugned Government Order is liable to be set-aside and the petitioner is entitled to the relief sought for herein. In support of the said contentions, the learned counsel relied upon the decision reported in (2009) 3 MLJ 727 (SC) (Somesh Towari v. Union of India and others) wherein it has been held that the High Court while exercising its writ jurisdiction must consider the fact of each case and the mechanical application of the normal rule "no work no pay" may be found to be wholly unjust and no absolute proposition of law in this behalf can be laid down.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Standing Counsel appearing for the fourth respondent submitted that the Government Order issued by the first respondent is sustainable in law and on facts and is liable to be upheld. The learned counsels further submitted that the petitioner had failed to understand that the vacancies were upto the year 2007-08 and not for the calendar year 2008; as admitted by the petitioner, he acquired his SSLC educational qualification only in March 2007, for which results had been published only during May-June 2007, thus, as on the prescribed cut-off date, i.e., 01.03.2007, the petitioner was unqualified and ineligible, for the Junior Assistant / Tax Collector, the name of the petitioner was not included in the combined seniority list of Feeder Category employees.

7. The learned counsel appearing for the fifth respondent, by reiterating the submissions made by the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Standing Counsel for the fourth respondent, submitted that viewed from any angle, the

Government Order passed in G.O.Ms.No.150, dated 19.08.1998, is liable to be upheld. He further submitted that, if the essential educational qualification for recruitment to a post is not satisfied ordinarily the same cannot be condoned and such an act cannot be ratified; an appointment which is contrary to the statute / statutory rules would be void in law; an illegality cannot be regularized, particularly, when the statute in no unmistakable term says so; only an irregularity can be. In support of the said submissions, the learned counsel relied upon the decision reported in Secy., State of Karnataka v. Umadevi (2006) 4 SCC 1 : 2006 SCC (L&S) 753, National Fertilizers Ltd. v. Somvir Singh (2006) 5 SCC 493 : 2006 SCC (L&S) 1152 and Post Master General, Kolkata v. Tutu Das (Dutta) (2007) 5 SCC 317 : (2007) 2 SCC (L&S) 179. The learned counsel further submitted that the petitioner herein did not hold the requisite qualification as on the said cut-off date, hence, he was not eligible therefor.

8. This Court has carefully considered the submissions made by the learned counsel for both sides and perused the materials available on record.

9. The undisputed facts are that, in Special Village Panchayats Department, persons working as Office Assistants were promoted as Record clerks and similarly, Bill Collectors and Record Clerks were promoted as Junior Assistants. In view of the provincialization of the posts of Head Clerks, Revenue Inspectors, Junior Assistants, Typists including Steno Typists and Bill Collectors, the persons working in the posts of Office Assistants and Record Clerks, working in Special Village Panchayats, had lost their chance for promotion. Therefore, the Government had provincialized the post of Junior Assistant in Panchayat Union Service from 01.04.1979. By G.O.Ms.No.863, Rural Development Department, dated 23.11.1990, 10% of the vacancies in the post of Junior Assistants, Rural Welfare Assistants Grade - II and Cashiers were earmarked for promotion from the post of Record Clerk, in Panchayat Union Service and the same treatment was sought to be implemented for Town Panchayat Service also, but with the vacancies being earmarked at 20%.

10. In the meanwhile, the Government had issued G.O.Ms.No.90, dated 12.03.1991, stating that appointment to the post of Junior Assistant in Tamil Nadu Ministerial Service, by recruitment by transfer, be made out exceeding 10% of vacancies in the said category and it was enhanced to 20%, vide G.O.Ms.No.257, dated 01.08.1992. Further, the Government had passed G.O.Ms.No.43, dated 15.02.1994, whereby 20% of the seats in the posts of Junior Assistants, Junior Assistants cum Typists and Typists were earmarked for promotion from the lower category personnel in the services other than the Tamil Nadu Ministerial Service, who have no promotional avenues or even after more than one promotion in the respective service, a category carrying scale of pay lower than that

of the Junior Assistants, Junior Assistant cum Typists and Typists in Tamil Nadu Ministerial Service, subject to possession of required qualification. Akin to the said Government Order, the Government had passed G.O.Ms.No.150, dated 19.08.1998, for Special Village Panchayat Service, whereby 20% of the seats in the posts of Junior Assistants, Junior Assistant cum Typists and Typists were earmarked for promotion from the lower category like Record Clerks, Office Assistants etc., in Special Village Panchayat Department. Following the said Government Order, viz., G.O.Ms.No.150, dated 19.09.1998, a combined seniority list, dated 25.08.2010, consisting of Record Clerks, Office Assistants, Sanitary Supervisors, Sweepers, Water Supply workers, Over Head Tank Operators, Turn Cook, Gardener, Over Head Tank Watchman, Watchman, Night Watchman, Waterman-cum-watchman, cleaner, etc., in the then composite Erode District Town Panchayat Unit, was prepared. In the seniority list, the petitioner was placed at Serial No.211.

11. The panel was prepared consisting of 13 personnel, including the petitioner and the fifth respondent herein, for filling up of the vacancies from 2002-03 to 2007-08, along with one back log vacancy from 1998-99 to 2001-02. The said panel was approved, vide Resolution No.1, dated 25.08.2010, by the Selection Committee, comprising of the third respondent herein / District Collector, as the Chairman and the Assistant Director of Town Panchayats and the P.A., to the Collector (Development), as Members. The proposal was sent, vide Rc.No.22250/2010/P2, dated 21.09.2010 by the third respondent and the said proposal was recommended by the second respondent, vide proceedings dated 16.12.2010 to the first respondent. The Government had sent the proposal to the fourth respondent, for its concurrence, as per proviso to Regulation 16 (B) of the TNPSC Regulations, 1954.

12. When the undisputed facts stood, as stated supra, the fourth respondent, vide letter, dated 05.12.2013, had conveyed its concurrence to the Government with the said panel, by excluding the petitioner, since he had passed his SSLC Examination only in March 2007 and was not qualified for the post, as on 1<sup>st</sup> March of the year 2007, stating that he was eligible for the year 2008-2009. Based on the said concurrence of the fourth respondent, the Government had issued G.O.Ms.No.10, dated 27.01.2014, approving the said panel with 12 names. Consequent to the said Government Order, the third respondent has issued appointment orders, vide proceedings, dated 17.02.2014, for nine personnel, including the fifth respondent. Similarly, the District Collector, Tiruppur, had issued appointment order, vide proceedings dated 17.02.2014, for three personnel and based on the said orders, 12 personnel had joined duty on 17.02.2014. Aggrieved over the non-selection of the petitioner and the selection of the fifth respondent, the petitioner has come up with this

13. The first thing to be borne in mind is that qualifications for holding a post have been laid down under a statute and any appointment in violation thereof would be a nullity.

14. In the case on hand, the 1<sup>st</sup> March of the Panel year is the cut-off date, for taking into consideration the qualifications and eligibility of the candidates. As on 1<sup>st</sup> March, 2007, the petitioner was unqualified and ineligible, since admittedly he had passed the SSLC Exams (qualification for holding the post) only in March 2007, for which results had been declared only during May-June 2007. Thus, admittedly, the petitioner was not qualified and not eligible for appointment as Junior Assistant / Tax Collector, for 2007-2008 and he has rightly excluded by respondents 1 and 4. Whereas the fifth respondent had passed SSLC in the year 1985 and had become qualified and eligible for appointment as Junior Assistant / Tax Collector and she was rightly included by respondents 1 and 4.

15. In the instant case, for appointment to the post of Junior Assistant / Tax Collector, it is mandatory to have the minimum educational qualification of SSLC, as per Tamil Nadu Basic Service Rules. In any event, the petitioner had not acquired the qualification as on the cut-off date on which the panel was prepared. Further, the seniority relied upon by the petitioner was only for inclusion in the combined seniority list of feeder category employees and not for appointment to the higher post.

16. Further, the petitioner must establish the existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to claim the same on par with his juniors.

17. It is also worthwhile to mention that the petitioner has not substantiated any of his allegations and has not explained as to how, he was eligible and qualified as on 1<sup>st</sup> March of 2007, for being considered for appointed as Junior Assistant / Tax Collector, under the 20% quota by recruitment by transfer.

18. This Court is of the firm view that the settled principles of law laid down by the Hon'ble Supreme Court, in the case of Pramod Kumar v. U.P. Secondary Education Services Commission and others, reported in (2008) 7 SCC 153, relied upon by the learned counsel appearing for the fifth respondent, is squarely applicable to the facts of the case on hand, as in this case also, the impugned Government Order, dated 27.01.2014, was passed not with malafide intention, but on the other hand, the same was passed, only after following the due process of law.

19. As far as the decision relied upon by the learned counsel for the petitioner, in the case of Somesh Tiwari v. Union of India, reported in (2009) 3 MLJ 727 (SC), for the proposition that, while exercising the jurisdiction under Article 226 of the Constitution of India, the High Court must consider the fact of each case; mechanical application of the normal rule "no work no pay" may, in a case of this nature, be found to be wholly unjust; no absolute proposition of law in this behalf can be laid down, is concerned, it has to be pointed out that there is no quarrel with respect to the settled legal position enunciated therein, but the facts of the said decision is totally different / distinguishable from the facts of the case on hand. Further, the disputed questions of fact cannot be adjudicated upon by this Court under Article 226 of the Constitution of India.

20. Therefore, I am of the considered view that there is no illegality or irregularity committed by the Respondents, while passing the impugned Government order and they have exercised their powers within their purview. None of the grounds raised in the affidavit are tenable and hence, the petitioner is not entitled to the relief, as prayed for by the petitioner, in this writ petition.

21. In the result, the writ petition stands dismissed. No costs. Consequently, the connected MPs are closed.

21.10.2016

ORDER: This Writ petition is coming under the caption "being mentioned" on Monday, the 14th day of November 2016, upon perusing the petition and the order of this Court dt.21.10.2016 and made herein and upon hearing the arguments of Mr.M.Ravi, advocate for the petitioner and of Mr.S.Gunasekaran, Additional Gover Pleader for R1 to R3 and of Dr.M.Devendran, Advocate for the 4th respondent and of Mr.G.Mutharasu, advocate for the 5th respondent the court made the following order:

This matter is listed today under the caption 'for being mentioned', at the instance of the learned counsel for the petitioner.

2. The petitioner sought for a writ of certiorarified mandamus to quash the Government Order passed by the first respondent in G.O.Ms.No.10, Municipal Administration and Water Supply (T.P.1) Department, dated 27.01.2014, to the limited extent of non-selection of the petitioner and selection of the fifth respondent, for appointment to the post of Junior Assistant / Tax Collector, by recruitment by transfer, under 20% quota allotted for the basic service employees of the Town Panchayat in Erode District, in the vacancies arose from the

year 1998, till the year 2008 and consequently, for a direction to the respondents to appoint the petitioner, by recruitment by transfer, as Junior Assistant / Tax Collector, in Erode District in the place of the fifth respondent herein, with retrospective effect.

3. This Court, by an order, dated 21.10.2016 dismissed the prayer of the petitioner in entirety.

4. Today, the learned counsel for the petitioner submitted that in paragraph 9 of the counter affidavit, it has been clearly stated that the petitioner was eligible for appointment for the year 2008-09 and therefore, pleaded that a direction may be given to the respondents to appoint the petitioner as Junior Assistant / Tax Collector.

5. But this Court is not inclined to give any positive direction, in this matter. However, it is for the respondents to consider the petitioner's claim with regard to his appointment as Junior Assistant / Tax Collector, as he has subsequently reached the eligibility for the said post, in the panel year 2008-09 and pass appropriate orders, as early as possible, if he is otherwise found eligible.

6. The order dated 21.10.2016 passed in the above writ petition is modified only to the extent indicated above and in all other respects, the order dated 21.10.2016 shall remain unaltered.

Sd/-  
Asst.Registrar (CS VII )

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government, Government of Tamil Nadu,  
Municipal Administration and Water  
Supply (T.P.1) Department,  
Secretariat, Chennai
2. The Director of Town Panchayat,  
Kuralagam, Chennai - 108
3. The District Collector, Erode, Erode District
4. The Secretary, Tamil Nadu Public Service Commission,  
Chennai - 600 003

+1 cc to Mr.M.Ravi,advocate,sr.65649

+1 cc to Dr.M.Devendran,advocate,sr.66185

krd 8/11

krd 24/11

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