

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.10445 of 2014

and M.P.No.2 of 2014

P.Ravisankar

.. Petitioner

vs.

1.The Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-9.

2.The Director of Town Panchayats,
Kuralagam, Chennai-108.

3.The District Collector,
Thanjavur.

4.The Assistant Director of Town Panchayat,
Thanjavur Zone, Thanjavur.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the proceedings of the first respondent in its letter No.1810/TP.1/2007-16 dated 26.8.2013 and quash the same and consequently direct the respondents to regularize the petitioner's service as Bill Collector from the date of his initial appointment.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.N.Srinivasan

Additional Government Pleader

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the first respondent in letter No.1810/TP.1/2007-16 dated 26.08.2013 and consequently direct the respondents to regularize the

petitioner's service as Bill Collector from the date of his initial appointment.

2. The petitioner's father, namely late Panneerselvam was working as Junior Assistant in Adiramapattinam Town Panchayat and he died in harness on 29.12.1987 and at that time, the petitioner was only 11 years of age. The petitioner's mother made an application in March 1989 seeking appointment on compassionate grounds and the said application was kept pending as there was ban from 1991 to 1996. Subsequently, the application was processed and orders were issued on 18.03.1997 appointing the petitioner as Bill Collector in the Perumugalur Town Panchayat and he joined duty on 02.04.1997 and have completed 17 years of service as of now. Thereafter, steps were taken by the respondents 3 and 4 to get his services regularized. While so, vide proceedings of the first respondent dated 26.08.2013, the petitioner was informed that he should have been appointed in a lower post in view of the educational qualification he possessed at the time of making application for compassionate appointment i.e., in March 1989 and the first respondent directed the respondents 3 and 4 to revert the petitioner to a lower post. However, no orders have been passed by the respondents 3 and 4. Since the impugned order of the first respondent negatived the petitioner's case for regularization as Bill Collector, the petitioner has come forward with this writ petition.

3. When the matter is taken up for consideration, Mr. Vijay Shankar, learned counsel appearing for the petitioner submitted that the petitioner's father who was working as Junior Assistant in Adiamapattinam Town Panchayat and he died in harness, but the petitioner was minor at that time and he was aged about only 11 years. Therefore, the petitioner's mother made an application for appointment on compassionate grounds and since the petitioner was minor he could not be appointed to the post of Bill Collector and he was given appointment only in the year 1997, after attaining majority. At the time of appointment, the petitioner was having necessary qualification to the post of Bill Collector and the petitioner also continued in the said post for the past 17 years. While so, after continuing in the said post for long years, the impugned order came to be passed stating that the petitioner should have been appointed in a lower post in view of his educational qualification at the time of his appointment. The learned counsel appearing for the petitioner would contend that actually the petitioner possessed higher qualification at the time of joining duty as Bill Collector and moreover he continued in service for more than 16 years and hence, the impugned order is liable to be set aside.

4. Per contra, Mr.N.Srinivasan, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit of the respondents and would submit that the petitioner was erroneously appointed as Bill Collector, without verifying his educational qualification as on the date of his original application seeking compassionate appointment and the petitioner was not qualified and/or eligible for appointment as Bill Collector and his subsequent acquiring of qualifications will not cure the defect as on the date of his application and therefore, his appointment was irregular and the same had been set right by directing the respondents 2 to 4 to appoint the petitioner in a lower post and regularize the same from the date of his initial entry into service on 02.04.1997 without any recovery for the excess payments he had already received and prays for dismissal of this writ petition.

5. Keeping the submissions made on either side, I have gone through the entire materials placed before it.

6. In my considered opinion, on the date of making application on compassionate ground, the petitioner was minor and therefore, he could not be appointed to the post of Bill Collector. However, at the time of assuming duty, he possessed necessary qualification and therefore, he was posted as Bill Collector and he continued in the said post for about 16 years and thereafter, the impugned order came to be passed stating that at the time of appointment, the petitioner was not having necessary qualification. In the considered opinion of the Court, when the petitioner is having necessary qualification at the time of joining duty as Bill Collector, the impugned order cannot be sustained. This Court, in an identical situation in G.Vasudevan v. State of Tamil Nadu [(2012) 3 MLJ 38], has quashed the impugned order holding that the petitioner therein had rendered 19 years of service and therefore, the same principle could be applied to the case of the petitioner also. In the case on hand, the petitioner was having necessary qualification at the time of joining duty and he has rendered 16 years of service and therefore, the impugned order is liable to be set aside in the light of the above cited judgment.

7. In the result, this Writ Petition is allowed and the proceedings of the first respondent in letter no.1810/TP.1/2007-16 dated 26.08.2013 is set aside and the respondents are directed to consider the claim of the petitioner for regularization of service and pass orders within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary to Government of Tamilnadu,
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Fort St.George, Chennai-9.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai-108.
- 3.The District Collector,
Thanjavur.
- 4.The Assistant Director of Town Panchayat,
Thanjavur Zone, Thanjavur.

+1cc to Mr.V. Vijayshankar, Advocate, S.R.No.61333
+1cc to the Government Pleader, S.R.No.61918

sai (CO)
md(21/11/2016)

सत्यमेव जयते W.P.No.10445 of 2014

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