

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.10.2016

Delivered On: 07.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.16758 of 2015

S.Veeramani

... Petitioner

Vs.

1. The Secretary to the Government of Tamil Nadu,  
The Municipal Administration and  
Water Supply Department,  
Fort St.George,  
Chennai.
2. The Director of Town Panchayats,  
Chepauk, Chennai-5.
3. The District Collector,  
Dharmapuri District,  
Dharmapuri.
4. The Assistant Director of Town Panchayats,  
Office of the Assistant Director of  
Town Panchayats,  
Dharmapuri, Dharmapuri District.
5. The Executive Officer,  
B.Mallapuram Town Panchayat,  
Boomidi Post,  
Pappireddipatti Taluk,  
Dharmapuri District-635 301.

6. P.Santhosh Kumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 5 to provide deemed appointment to the petitioner who is presently working as Sweeper right from his appointment on compassionate grounds in the 5<sup>th</sup> respondent office; as a Junior Assistant from 28.02.2007 the date on which, similarly qualified 6<sup>th</sup> respondent was subsequently appointed on compassionate ground as Bill Collector with consequential benefits.

For Petitioner : Mr.M.Purushothaman

For Respondents : Mr.S.Gunasekaran,  
Additional Government Pleader  
for R1 to R4

Mr.Digvijay Pandian,  
Additional Government Pleader  
for R5

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Mandamus directing the respondents 1 to 5 to provide deemed appointment to the petitioner who is presently working as Sweeper right from his appointment on compassionate grounds in the fifth respondent office as a Junior Assistant from 28.02.2007 the date on which, similarly qualified sixth respondent was subsequently appointed on compassionate ground as Bill Collector with consequential benefits.

2. The petitioner would state that his father Late R.Sigamani was working as Sweeper in the office of the fifth respondent and he died at an young age of 39 years on 07.10.2006 and the petitioner was appointed as a Sweeper on compassionate grounds on 24.01.2007 in the office of the fifth respondent. At the time of appointment, the petitioner had passed 12<sup>th</sup> Standard and he discontinued B.Sc., physics graduation due to family circumstances. The petitioner would further state that the sixth respondent, namely Thiru.P.Santhosh Kumar, who was having same qualification and whose father was Bill Collector, got an appointment on compassionate grounds as Bill Collector (Rank- Junior Assistant) after one month from the date of appointment of the petitioner. The petitioner would also state that when the sixth respondent who is junior to the petitioner has been appointed to a higher post, he is also eligible for the same, but the petitioner's request was not considered and hence, came forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner made a detailed submission by adverting to the submissions made in the affidavit and mainly contending that when the sixth respondent, who had joined the fifth respondent Panchayat on compassionate grounds after one month from the date of appointment of the petitioner, was given appointment as Bill Collector, the petitioner is also equally entitled for the same.

4. Per contra, Mr.Dig Vijay Pandian, learned Additional Government Pleader appearing for the fifth respondent has drawn the attention of this Court to the counter affidavit of the fifth respondent and would submit that as per G.O.No.206, MAWS Department dated 02.11.1995, the legal heirs of the deceased person who have worked as Record Clerk, Office Assistant and Night Watchman can be considered for compassionate ground appointment as Junior Assistant if he/she possess the required educational qualifications and as far as the father of the petitioner is concerned, he was working as Sweeper in the Town Panchayat and since the appointment in the Town Panchayat are based on G.O.No.206, MAWS Department dated 02.11.1995, the respondents cannot appoint the petitioner in the post of Junior Assistant. It is further stated by the fifth respondent that as per the provisions in G.O.No.206 (MAWS Department) dated 02.11.1995, the sixth department, being the legal heir of Thiru.Perumal, who was an Office Assistant and provisional staff in the fourth respondent at the time of his death, was eligible for appointment as Bill Collector in the fifth respondent based upon his qualification through the proceedings of the third respondent. Further, the last grade government servants of Town Panchayat Administration are purely guided by the service rules as laid down by G.O.No.205 (RDLA Department) dated 23.03.1989 whereas the Junior Assistant service which happens to be part of superior Government service is guided by the service rules laid under Tamil Nadu Ministerial Service Rules. Moreover the petitioner is eligible for promotion to superior Government service that is Ministerial Service as Junior Assistant/Bill Collector vide G.O.No.150 (MAWS Department) dated 19.08.1988, vide which he has an opportunity for promotion on seniority basis to fill up the vacancies that arise up to the extent of 20% of total vacancies. Further, at the time of joining duty in the fifth respondent Panchayat, the petitioner has given a consent affidavit accepting the post of Sweeper and therefore, the petitioner now cannot turn around and contend that he ought to have been appointed in the post of Junior Assistant and thus sought for dismissal of the writ petition. Therefore, the petitioner cannot have any grievance with regard to appointment as Sweeper and thus sought for dismissal of the writ petition.

5. By way of reply, the learned counsel appearing for the petitioner relied upon the decision in W.P.No.19932 of 2008 dated 15.06.2011 [P.G.Ramesh v. The Government of Tamil Nadu, rep by its Secretary to Government, Municipal Administration & Water Supply Department, Chennai and Others], wherein a learned Single Judge of this Court has made a detailed discussion with regard to G.O.Ms.No.205, Municipal Administration & Water Supply (Town Panchayats 1) Department dated 02.11.1995. The learned counsel appearing for the

petitioner also relied upon the decision in W.P.No.29845 of 2011 dated 03.09.2013 [V.Raju v. The Secretary to Govt. of Tamilnadu, MAWS Department, Chennai and Others] wherein this Court held that the posts mentioned in the Government Order viz., Night Watchman, Office Assistant, Record Clerk are only indicative in nature and does not exclude the other lower posts and following the same, prays for allowing the present writ petition. With regard to the consent affidavit given by the petitioner accepting the post of Sweeper, it is replied by the learned counsel for the petitioner that at the time of appointment, he was not informed about the availability of the post of Junior Assistant for appointment on compassionate ground and that is the reason why, he has given consent affidavit.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The contention of the learned counsel appearing for the petitioner is twofold viz., (1) On the date of appointment, he has passed XII Standard and a discontinued BSC graduate and therefore, he is eligible to be appointed to the post of Junior Assistant and (2) The fifth respondent, who joined after one month from the date of appointment of the petitioner, was appointed as Bill Collector and when that being so, the petitioner is also entitled to the said post. However, the respondents would submit that the petitioner's father was working as Sweeper and therefore, as per G.O.Ms.No.206, MAWS Department dated 02.11.1995, only the legal heirs of the following posts viz., Night Watchman, Office Assistant, Record Clerk, are entitled to the said posts. But a learned Single Judge of this Court in W.P.No.29845 of 2011 dated 03.09.2013 [V.Raju v. The Secretary to Govt. of Tamilnadu, MAWS Department, Chennai and Others] held that the posts mentioned in the Government Order viz., Night Watchman, Office Assistant, Record Clerk are only indicative in nature and does not exclude the other lower posts.

8. I am of the opinion that though the post of Sweeper was not specifically indicated in G.O.Ms.206, there cannot be any impediment on the part of the respondents to give appointment to the petitioner in the post of Junior Assistant, since the posts mentioned in G.O.No.206 is only indicative in nature and the same will not prevent the respondent to appoint the petitioner, whose father was Sweeper, in the higher post of Junior Assistant. However, it is the submission of the learned Additional Government Pleader that the petitioner having given consent affidavit accepting the post of Sweeper at the time of joining, now cannot turn around and seek for appointment as Junior Assistant, but it is the reply of the petitioner that he was not informed at the time of admission

with regard to the availability of the post of Junior Assistant and had the availability of the post of Junior Assistant been informed to him, he would not have given the consent affidavit. On a reading of the consent affidavit, I am of the opinion that the said consent affidavit will not preclude the petitioner in anyway to claim appointment to the post of Junior Assistant. When the sixth respondent, being the legal heir of one late Perumal, who was a junior to the petitioner has been appointed as Bill Collector, different yardstick cannot be applied to the petitioner. Therefore, I find considerable force in the submission made by the learned counsel appearing for the petitioner.

10. In view of the reasons assigned above, this Writ Petition is allowed and the first respondent is directed to issue suitable orders to appoint the petitioner in the post of Junior Assistant. Since the petitioner is employed as Sweeper, he will be entitled to receive salary in the post of Junior Assistant from the date of this order. The petitioner, however, will not be entitled to any backwages except service benefits like continuity of service etc., for the purpose of getting retirement benefits. The first respondent Government is directed to pass appropriate orders within six weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jvm

To

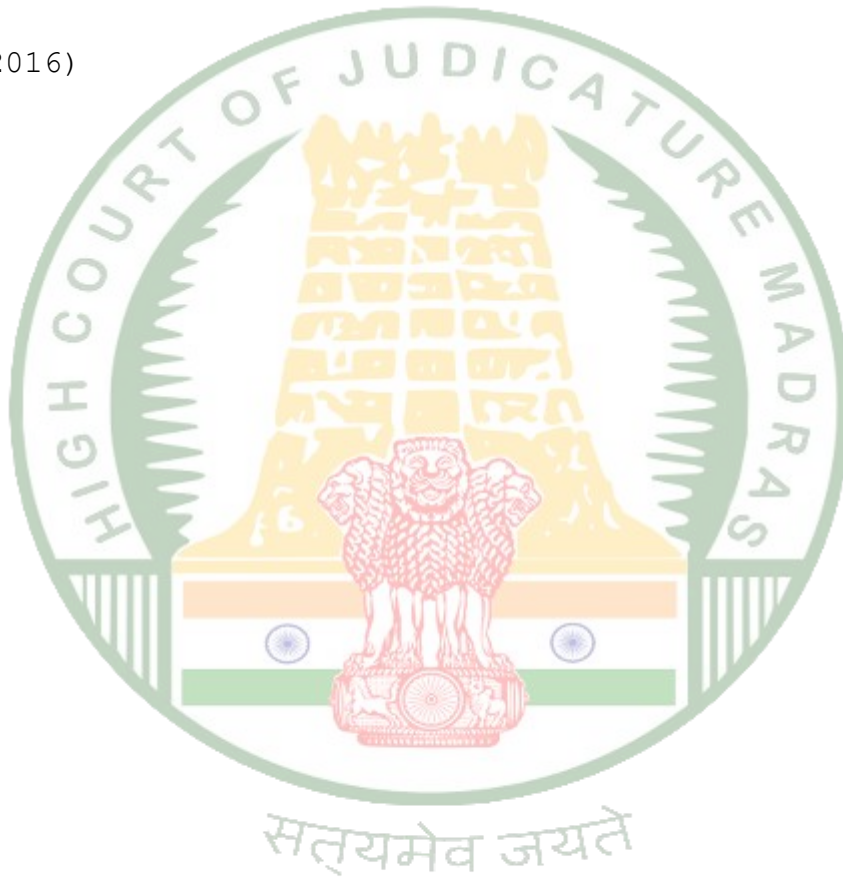
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Dharmapuri District-635 301.

+2cc's to Mr.M.Purushothaman, Advocate, S.R.No.57925  
+1cc to Mr.Digvijay Pandian, Advocate, S.R.No.58687

W.P.No.16758 of 2015

LRS (CO)  
CA(24/11/2016)



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