

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.16759 of 2015

M.Jayabal

... 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.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to appoint the petitioner who was appointed on compassionate grounds as Sweeper in the 5th respondent office; as a Junior Assistant from 06.09.2012 in accordance with G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 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 to appoint the petitioner, who was appointed on compassionate grounds, as Sweeper in the 5th respondent office; as a Junior Assistant from 06.09.2012 in accordance with G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 with consequential benefits.

2. The petitioner would state that his father Late T.Madhu who was working as Sweeper in the office of the fifth respondent died at an younger age of 45 years on 29.01.2011 and was appointed as a Sweeper on compassionate ground on 06.09.2012 in office of the fifth respondent. At the time of appointment, the petitioner had passed 12th Standard and had passed Diploma in Teacher Education Course. Similarly, one Mr.S.Veeramani, who too had passed +12 Standard and discontinued B.Sc., Physics Graduation due to family circumstances, was also appointed as Sweeper under the office of the fifth respondent on compassionate grounds. The petitioner would further state that after his appointment, he came to know that since his father was sweeper, he was appointed as Sweeper and whereas, based on his qualification, he should have been appointed as Junior Assistant. The petitioner would further submit that as per G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989, he ought to have been appointed as Junior Assistant on the date of his appointment itself and the respondents have shown discrimination by appointing him as a Sweeper. Hence, the petitioner has come forward with this writ petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner had made a detailed submission by advertising to the submissions made in the affidavit and mainly contended that in respect of one P.Santhosh Kumar, whose father was a Bill Collector, was provided appointment on compassionate grounds as Bill Collector (Rank-Junior Assistant) and when that being so, the petitioner is also equally entitled for the same post.

4. Per contra, Dr.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. 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. 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.

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 that though the petitioner's father was working as Sweeper at the time of death, as per G.O.Ms.No.1499 dated 03.08.1989 issued by the Labour and Employment (Q1) Department, he ought to have been appointed as a Junior Assistant on the date of his appointment itself. 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 when the post of Sweeper was 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.

9. 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 as per G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989. 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

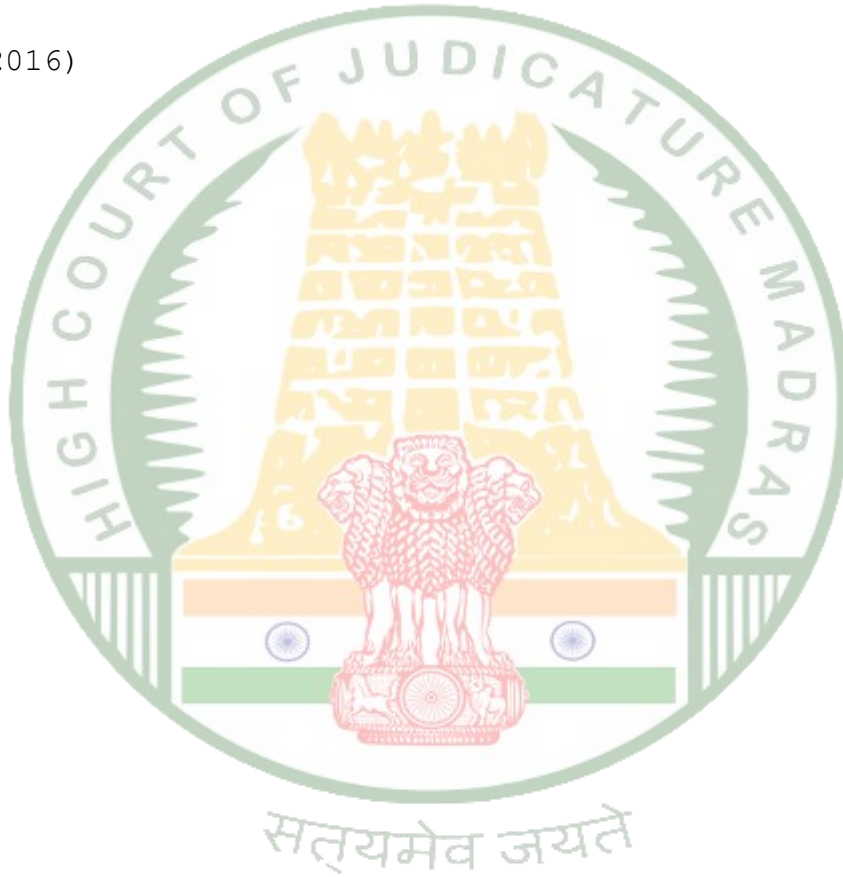
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+1cc to Mr.M.Purushothaman, Advocate, S.R.No.57925

W.P.No.16759 of 2015

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



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