

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.7895 of 2010 and
M.P.Nos.1 & 2 of 2010

1.K.Rajamahendra Varmen

2. A.Gopal Raj

3. V.Palaniappan

(withdrawn in respect of the
petitioners 1 & 2 as per the order
dated 28.1.14 by TRJ in M.P.No.1/13
in W.P.No.7895/10)

... Petitioner

Vs.

1. The Government of Tamilnadu
Rep. By its Secretary to Government,
Personal and Administrative Reforms,
Department, Secretariat, Chennai-9.

2. The Commissioner,
Transport Department,
Government of Tamil Nadu,
Ezhilagam, Chennai-600 005.

3. Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Omandhurar Government Estate,
Chennai-600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, directing the respondents 1 to 3 to give the petitioners permanent posting as Junior Assistants since they have got through the Special competitive exam held in pursuance to G.O.Ms.155 dated 19.09.2006 immediately and while doing so give them posting in the Transport department where they have been working for the past 6 years.

For Petitioner : Mr.K.Srinivasa Murthy

For R1 & R2 : Mr. Rajendra Prasad

For R3 : Mr. M.Devendran SC TNPSC

O R D E R

The prayer in the writ petition is for a writ of mandamus, directing the respondents 1 to 3 to give the petitioners permanent posting as Junior Assistants since they have got through the Special competitive exam held in pursuance to G.O.Ms.No.155 dated 19.09.2006 immediately and while doing so give them posting in the Transport department where they have been working for the past 6 years.

2. During the pendency of the writ petition by order dated 28.1.2014 in M.P.No.1 of 2013, the writ petition was dismissed in respect of petitioners 1 and 2 as they have withdrawn the writ petition. Therefore, only the third petitioner, namely, V.Palaniappan is only pursuing the case, insofar as the prayer sought for in the writ petition.

3. The case of the petitioner is that the petitioner was appointed as Junior Assistant in the Transport Department on 08.07.2003 on contract basis. Like that so many other persons, who had been appointed like the petitioner had been working in various departments of the State Government throughout the State. Taking into account the welfare of those appointed temporarily on contract basis as those, who were continuing in service for a long time, the Government by way of policy decision has decided to conduct Special Competitive Examination in Group-IV standard through the third respondent Tamil Nadu Public Service Commission so as to absorb them as Junior Assistant in Tamil Nadu Ministerial Service/ Tamil Nadu Judicial Ministerial Service. Accordingly, the first respondent came out with a Government Order in G.O.Ms.No.155, Personal and Administrative Reforms Department, dated 19.09.2006. The Government Order inter alia states as follows:

"Order:

In the Government Orders read above, orders have issued for appointment of temporary Assistants / Junior Assistants in Secretariat and in various Departments in the Districts on contract basis. Taking into account the welfare of those appointed temporarily on contract basis and are continuing in service at present, Government have decided to conduct a Special Competitive Examination in Group IV standard, through the Tamil Nadu Public Service Commission so as to absorb them as Junior Assistant in Tamil Nadu Ministerial Service/ Tamil Nadu Judicial Ministerial Service."

4. Pursuant to the said Government Order, the third respondent conducted a Special Competitive Examination of Group - IV 2007 on 17.2.2008. The petitioner participated in the said

examination along with other similarly placed persons for whom such examination was conducted pursuant to the said Government order.

5. Though the Special Competitive Examination was conducted on 17.2.2008 itself, no further action was forthcoming from the respondents as there was no communication whatsoever either from the third respondent or from the second respondent about the postings to be given for the petitioner. In the meanwhile, the Government through the first respondent has issued another Government Order in G.O.Ms.No.170, Personal and Administrative Reforms (S) Department dated 18.12.2009, whereby, the Government has directed the appointing authorities concerned to appoint retired Government servants/personnells retired from quasi Government organisations temporarily on contract basis under Rule 11 of General Rules for Tamil Nadu State and Subordinate Services against the sanctioned posts in the Government departments subject to the condition that there should be emergent need for such appointment and there should be a reason to believe that work will get affected due to dearth of employees in the departments. Since, the said Government Order in G.O.Ms.No.170, dated 18.12.2009 was issued directing the appointing authorities of various departments to appoint the retired persons temporarily, in order to tide over the situation where the Government work was affected because of dearth of employees, the petitioner, who was waiting for getting postings pursuant to the Special Competitive Examinations conducted by the third respondent was driven to approach this Court by way of the present writ petition with the aforesaid prayer as according to the petitioner, if the Government Order in G.O.Ms.No.170, dated 18.12.2009 was given effect to, only temporary appointments would be made out of the retired persons and in that case the absorption or posting to the petitioner and similarly placed persons may not be possible in the near future and only in that context, the petitioner has approached this Court.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would contend that in the circumstances mentioned above only, the petitioner has come out with the present petition as he has been working all along from day one i.e., 08.7.2003 at the second respondent/Transport Department as Junior Assistant. Though he was working in the said post which is otherwise a substantive vacancy, he was not paid actual salary under time scale of pay but was originally paid Rs.4000/- as a consolidated pay which was subsequently, raised to Rs.5000/-. According to the learned counsel for petitioner, even after the Special Competitive Examination which was conducted as early as on 17.2.2008, the respondents have not come forward to give postings to the

petitioner and instead, the Government has come out with G.O.Ms.No.170, dated 18.12.2009 whereby it paved way for appointment of retired employees on temporary basis. Therefore, the writ petition was filed and it was pursued before this Court where by order dated 20.7.2010, this Court passed the following interim order:

" Mr.K.Surendarnath learned counsel, takes notice for the third respondent.

Even though, interim injunction is sought for, there shall be an interim direction not to reject the claim of the petitioners, as the petitioners are prepared to wait for selection in the transferred department."

8. The effect of the said interim order is that the petitioner's candidature seeking for absorption as Junior Assistant at the Transport Department itself where he was working on contract basis from 08.7.2003 shall not be rejected for want of postings/vacancy as the petitioner was ready and willing to wait for sometime as at that time of passing the interim order, it was reported that there was no vacancy at the Transport Department to accomodate the petitioner. In view of the said interim order of this Court dated 20.07.2010, the candidature of the petitioner was not rejected for want of vacancy in the Transport Department by the respondents especially, the third respondent and the same has been kept pending all along till date.

9. The learned counsel for the petitioner would further contend that other similarly placed persons like that of the petitioner, who has also written the same competitive examination on 17.2.2008 had been given postings at various point of time either in the same department or some other departments as allotted by the respondents depending upon the availability of the vacancies. In that course of action on 08.2.2012, the third respondent called the petitioner for counseling to chose any one of the departments where vacancies are available for accommodating the petitioner. Though the petitioner had attended the counseling had not chosen any specific department as he thought of that he was being protected under the interim order dated 20.07.2010 as his candidature would not be rejected by the third respondent for want of vacancy in the Transport Department. The petitioner therefore, has been continuing all along in the Transport Department itself as Junior Assistant with that temporary status by getting the consolidated pay only. Therefore, the learned counsel for the petitioner would contend that the petitioner would be entitled to get absorption, if possible in the same department, otherwise in any other department, but with absorption and continuity of service from the date of his original appointment on contract

basis i.e., from 08.7.2003 as the petitioner had been working in that post of Junior Assistant in the Transport Department which is a substantive vacancy and has rendered service to the department fully as that of a permanent employee. Therefore, the learned counsel for the petitioner would pray that this writ petition has to be allowed.

10. Per contra, the learned standing counsel appearing for the third respondent Service Commission would submit that the third respondent had conducted a Special Competitive Examination pursuant to the Government Order on 17.2.2008. Large number of people including the petitioner had participated in that examination. Thereafter, based on the marks obtained by the respective candidates, ranking list were published and according to the ranking list, the candidates were called for counseling. Insofar as the petitioner is concerned, he was called for counseling on 08.2.2012, where he attended the counseling and the petitioner had chosen the Agricultural Marketing committee at Erode, where the vacancy was available as his choice. Though he has chosen the said employer for his accommodation with permanent postings and absorption, he could not get the postings because of the pendency of the writ petition as well as the interim order dated 20.07.2010 which was still in force where the petitioner's candidature shall not be rejected for want of vacancy in the Transport Department. Since the said order has not been modified or altered, the third respondent had no option except to wait for the final outcome of the writ petition. Therefore, the learned standing counsel for the third respondent would further submit that the petitioner based on his marks and his ranking was offered counselling and he accepted the counselling and chosen the department, namely, Agricultural Marketing Committee at Erode where the petitioner can join at any time.

11. The learned Government Pleader appearing for the first and second respondents would contend that the issue raised in the writ petition, i.e., claiming absorption in the very same departments where the persons who are already working temporarily pursuant to the competitive examination, is no more res integra as atleast two rounds of litigations ended where final order was passed by the Hon'ble Apex Court. The learned Government Pleader would further contend that the similar plea put forward by the temporarily working employees like the petitioner for absorption in the same department came to be considered ultimately, by the Division Bench of this Court in W.A.(M.D)No.242 of 2010 and by order dated 27.7.2010, the Division Bench of this Court, dismissed the writ appeal rejecting the claim of those who wants absorption in the same department where they were working temporarily. In fact, as against the said order of the Division Bench, they have gone to the Hon'ble Apex Court and the SLP also got dismissed.

Nevertheless, the petitioners in those cases i.e., covered under the order dated 27.7.2010 in W.A.(MD)No.242 of 2010 had filed a Review Application MD.No.121 of 2010. The said review came to be considered by a Division Bench of this Court and ultimately, by order dated 29.11.2010, this Court dismissed the review. The learned Government Pleader invited the attention of this Court in paragraph 6 and 8 of the said order of the Division Bench which are reproduced here under:

"6.Of Course, G.O.Ms.No.155 dated 19.09.2006 contemplates scheme of absorption; but does not mean absorption in the very same Department, where the review petitioners are working. All the contentious points raised by the learned counsel appearing for the review petitioners were duly considered by the Division Bench at Para.11 and 12, which reads as under:

"11.Besides, a direction has been issued by the learned Single Judge to accommodate the private respondents/writ petitioners in the Registration Department in the vacancies available on the date of passing the order. As far as this portion of the order of the learned Single Judge is concerned, when the learned counsel for the private respondents/writ petitioners himself admits that as a matter of right, they cannot claim appointments in any particular department and when the allotment is depending upon so many factors, as referred to above, whether they are eligible for this relief as per the rules and when their name has been examined, is the point to be decided. According to the learned Senior Counsel appearing for the Service Commission, even the top rankers could not be accommodated as per the option exercised by them in the particular departments as far as the Registration Department is concerned, no vacancies were notified for Registration Department in the said notification and as far as the subsequent vacancies are concerned, recruitment was not done; under such circumstances, the question of accommodating the private respondents/writ petitioners in the Registration Departments does not arise and that request is also un-sustainable. This argument is prima facie sustainable. One other factor to be noted in this case is that if the selected candidates have to be allotted each of the departments according to their whims and fancies, it will lead to a hazardous situation and while getting appointment also, it will give a right to them or it will give rise to a situation where in a new recruit, as a matter of right, can claim any department. If this has to be given effect to, then, matters relating to rule of

reservation, vacancy position and marks secured by the candidates have to be given a go-by.

12.

According to the learned counsel for the private respondents/writ petitioners, now, the private respondents/writ petitioners are willing to join in the departments to which they are allotted. But according to the learned Senior Counsel, since the private respondents/writ petitioners have not join the posts, those posts have been surrendered to the Government. But, since these private respondents have come out successful in the competitive examination conducted and also taking a sympathetic view, the Secretary to Government of the respective department, as detailed below, to which the private respondents/writ petitioners were originally allotted, are directed to issue fresh orders based on the initial orders passed in the favour of the private respondents/writ petitioners, within a period of ten days from the date of receipt of a copy of this order and thereafter, within a period of 15 days, the private respondents/writ petitioners are at liberty to join the concerned department and in the event of their failure to the concerned department, the Service Commission as well as the Government is at liberty to take appropriate steps to fill up those vacancies.

Name of the private respondent & Registration No.	Department
M.Kannan Regn.No.01009045	Treasuries and Accounts Department
J.Lakshmanan Regn. No.01007173	HR & CE Department
V.J.Aravazhuti Regn.No.01009134	P.W.D
R.Nagarajan Regn.No.01009184	Police Department

.....
8. In the result, the review application is dismissed. No costs. After we have passed the order dismissing the review applications, the learned counsel appearing for the petitioners submitted that if the review petitioners joined the concerned departments they will be losing 7 years of service. It is opened to the review petitioners to make a representation to the concerned Departments to which they have been appointed for continuity of service and on such representation, it is for the respective

Departments to consider the same and pass appropriate orders. No costs."

12. The learned Government Pleader further submit that as against the said order of the Division Bench of this Court Special Leave Petition was also filed in a SLP (civil) No.8403 of 2011 and the same also was dismissed by the Hon'ble Supreme Court by its order dated 23.9.2013 and the said order is as follows:

"Heard Mr.Rajan, learned senior counsel in support of this special leave petition and Mr. Subramonium Prasad, learned counsel appearing for the respondents. No reason to interfere. The special leave petition is dismissed."

13. The learned Government Pleader further submits that in view of the said categorical finding of this Court which is confirmed by the decision of the Hon'ble Apex Court as stated supra, the issue has been settled and it has reached its finality. Therefore, the prayer sought for in the writ petition to give absorption to the petitioner from the date he joined in service on contract basis i.e., from 08.07.2003 and also in the same department, namely, the Transport Department where the petitioner had worked on contract basis all along, cannot be worthy to be considered. Therefore, in that view of the matter, the learned Government Pleader wants the writ petition to be dismissed.

14. This Court have heard the respective counsels and considered their respective submissions including the records placed before this Court.

15. The issue raised in the writ petition for seeking absorption from the date of original appointment i.e., on 08.7.2003 on contract basis and also in the same department, namely the Transport Department has already been decided by more than one decisions of this Court and the same has ultimately, been confirmed by Hon'ble Apex Court in the Judgment referred to above. Therefore, this Court does not have any other option except to accept and follow the said decisions, insofar as the said part of the prayer in the writ petition is concerned.

16. In respect of the relief which can be given to the petitioner is concerned, it is the fact that he joined on 08.07.2003 at the Transport Department of the respondent as a Junior Assistant on contract basis and he has been working all along in the said capacity by getting a meagre amount by way of consolidated payment. Only in order to give solace to these people like the petitioner, the Government had come forward to issue the Government Order by way of policy decision in G.O.Ms.No.155 dated 19.09.2006. The very purpose of the said

Government Order itself is to absorb these Junior Assistants appointed on contract basis in Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service. Only for this purpose, the third respondent was directed by the Government to conduct the Special Competitive Examination. Only in response to the same, the Special Competitive Examination was conducted by the third respondent on 17.2.2008. The petitioner had participated in the examination and has come out successfully. Though the examination was conducted in the year 2008, the respondents did not come forward to give postings by way of absorption for those who have written the examination including the petitioner, immediately and in the meanwhile the Government has also issued Government Order in G.O.Ms.No.170, dated 18.12.2009 whereby the appointing authorities of various departments were given liberty to appoint retired persons on temporary basis to tide over the situation. Only in that context, the present writ petition was filed by the writ petitioner with the above said prayer. Since the petitioner was very particular about getting absorption in the very same department, viz., Transport Department where he worked on contract basis and during the time of consideration of the relief in the year 2010 since it was reported that there was no vacancy in the Transport Department to accommodate the petitioner, this Court by way of an working arrangement passed the interim direction to the respondent not to reject the claim of the petitioner as the petitioner was prepared to wait for selection in the Transport Department. Therefore, the petitioner's move to get an absorption in the Transport Department is explicit in view of the said order having been passed by this Court on 20.07.2010 and the same is still in force. Only in that context, the respondents were not able to give postings to the petitioner on the basis of his marks and ranking. At any rate, on 08.2.2012 along with others, the petitioner was called for counseling where he attended the counseling. Though the fact that the petitioner had chosen Agricultural Marketing Committee at Erode as his employer is disputed by the petitioner, it is reiterated by the respondent. The learned counsel for the third respondent pleads that the petitioner had chosen Agricultural Marketing committee, Erode, where the post of Junior Assistant is still lying in vacant in which the petitioner can any time join. Though such a counseling was offered and the petitioner as chosen the said department, the posting could not be given to him because of the pendency of the writ petition where the petitioner as stated supra obtained an interim order whereby he expressed his willingness to wait for selection in the Transport Department. Since no vacancy arose in the Transport Department, such a plea of the petitioner could not be considered at any point of time for all these years where the writ petition was pending.

17. That apart, the said plea of absorbing the petitioner in the same department has already been negatived by a decision of the Division Bench of this Court and the same having been approved by the Hon'ble Apex Court as stated supra, that position need not be gone into at this stage. The learned counsel appearing for the petitioner also during the hearing has expressed the willingness of the petitioner to join in any other department, including the department, namely, the Agricultural Marketing committee at Erode, immediately, provided the learned counsel for the petitioner wants the respondents to consider his case of absorption atleast from the date when he was called for counseling with other similarly placed persons who had been given posting pursuant to the said counseling, i.e. from 08.2.2012. The reason being, according to the learned counsel for the petitioner for seeking this relief is, that the same Junior Assistant Post, he has been working all along is a substantive vacancy. Since he has rendered service to the respondents, especially the second respondent department, he would be eligible and entitled to seek pay parity and pay arrears atleast from 08.2.2012 which was admittedly the date on which the petitioner was offered the post at Agricultural Marketing Committee at Erode.

18. In respect of the said plea made by the learned counsel for the petitioner at present, though it cannot be directed to be given by way of a positive direction by this Court, it will have some force to be considered by the authorities concerned and in that view of the matter, this Court is of the considered view that atleast the said plea made on behalf of the petitioner to consider his appointment and absorption atleast from the date on which the post was offered to him i.e., 08.2.2012 for the purpose of absorption as well as pay parity and pay arrears, can be considered by the respondents.

19. In this context, the Judgment of the Division Bench referred to above, especially in paragraph 8 can be pressed into service where the Division Bench has stated that the petitioners in that case would be at liberty to make a representation to the concerned department to which they have been appointed for continuity of service and on such representation, it is for the respective departments to consider the same and pass appropriate orders. Whether pursuant to the said order of the Division Bench, those persons had approached the department and if so, what was the decision taken by the respective department is not known as of now. However, such a right is always accrued on the petitioner to stake his claim for absorption from an early date, either from the date i.e., 08.07.2003, the date on which he was appointed on contract basis or atleast from the date i.e., 08.02.2012, the date on which the offer of appointment by way of counseling was made to the petitioner by the third respondent. When such a plea is made by the petitioner, this Court expects

that a pragmatic approach should be adopted by the respondents concerned to whom such a representation is made taking into consideration of the totality of the situation where the petitioner and the similarly placed persons have been given a chance to get absorption and only for that purpose, the Government has passed G.O.Ms.No.155 dated 19.09.2006 by way of policy decision.

20. In the result, the writ petition is ordered in the following terms:

(a) The third respondent is directed to give selection pursuant to the said Special Competitive Examination to the petitioner according to his ranking and marks within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such order of selection issued by the third respondent, the concerned department shall issue a posting order to the petitioner within two weeks, thereafter.

(c) The petitioner shall be at liberty to make a representation to claim absorption and all other benefits accruing to him from such absorption either from 08.07.2003, or 08.02.2012 including pay parity and pay arrears to the concerned authority to whom, he is going to join pursuant to the order of posting to be given by the second respondent within two weeks from the date of joining in service.

(d) On such receipt of representation from the petitioner, the authority concerned, namely, the employer, to whom such representation is made by the petitioner shall consider the same taking into account the policy decision taken by the Government which is reflected in G.O.Ms.No.155 dated 19.09.2006 and the long service, the petitioner had put in as Junior Assistant in the second respondent department from 08.7.2003 without any break in service and pass a reasoned order either to confirm the benefit as claimed by the petitioner or any other benefits for which the petitioner is entitled to according to the assessment of the authority concerned and that shall be done within a period of eight weeks on receipt of such representation from the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government,
Government of Tamilnadu
Personal and Administrative Reforms,
Department, Secretariat, Chennai-9.

2. The Commissioner,
Transport Department,
Government of Tamil Nadu,
Ezhilagam, Chennai-600 005.

3. The Secretary
Tamil Nadu Public Service Commission,
Omandhurar Government Estate,
Chennai-600 002.

1 cc to M/s. Row and Reddy, Advocate, Sr. 63802
1 cc to Dr.M. Devendran, Advocate, sr. 63619
1 cc to Government Pleader, Sr. 64130

W.P.No.7895 of 2010

SCD (CO)
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