

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.25943 of 2015

K.Veerasamy

... Petitioner

vs.

1. The Secretary to Government,
Adi Dravidar Welfare Department,
Fort St. George,
Chennai 600 009.
2. The District Collector,
Erode District at Erode.
3. The Commissioner,
Adi Dravidar Welfare,
Chepauk,
Chennai 600 005.
4. The District Adi-Dravidar and
Tribal Welfare Officer,
Erode District,
Erode - 11.
5. The Special Tahsildar,
Adi-Dravidar Welfare,
Erode.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the first respondent to consider the petitioner's representations dated 10.07.2012 and 10.07.2014 and the 2nd respondent to consider the petitioner's representation dated 10.07.2012 and 17.12.2014 and reinstate the petitioner into service.

For Petitioner : Ms.I.Bobby Portia
For Respondents : Mr.S.N.Parthasarathi,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the first respondent to consider his representations dated 10.07.2012 and 10.07.2014 and a direction to the 2nd respondent to consider his representations dated 10.07.2012 and 17.12.2014 and reinstate him into service.

2. It is the case of the petitioner that the 3rd respondent, in order to fill up some vacant posts of Night Watchman in the Boarding Schools and Hostels coming under the control of the third respondent, called for an interview vide his proceedings Rc.No.54801/2006/81, dated 31.10.2006 and the petitioner is one such candidate. Accordingly, the petitioner appeared for interview on 07.11.2006 and got selected. The 3rd respondent vide proceedings in Rc.No.T1/8942/07, dated 23.03.2007 issued orders on the petitioner's representations and posted the petitioner as Night Watchman in the office of the Adi Dravidar Welfare, Erode on a monthly remuneration of Rs.850/- and the petitioner joined duty on 28.03.2007.

3. Since no such post existed in the office of the Adi-Dravidar Welfare Department at Erode, the 3rd respondent vide his proceedings in Rc.No.8942/2007, dated 17.05.2007 posted the petitioner as Night Watchman at the Boarding School, Kinathadi Chozhaga. Subsequently, the petitioner was on foreign service and repatriated to Kinathadi Chozhaga Boarding School on 01.08.2008.

4. It is the further case of the petitioner that he was under treatment for jaundice and had applied for leave on Medical Certificate from 01.08.2008 to 08.10.2009. As the place of posting was about 80 kms, the petitioner submitted a representation to the 1st respondent on 10.07.2012 requesting to consider the transfer to Erode in the vacancy caused by the retirement of Rajeshkannan and to post him in the regular vacancy instead of payment of consolidated pay of Rs.850/-. The petitioner has sent a similar representation dated 10.07.2012 to the 2nd respondent and a further representation dated 17.12.2012 to the District Collector, Erode, i.e. the 4th respondent herein requesting them to consider his posting in the place of Thiru.Rajeshkannan, who retired as Night Watchman in the office of the Erode District Adi Dravidar Welfare Officer, Erode. On 07.01.2013, the petitioner sent a representation once again to

the 4th respondent/Deputy Collector, Erode.

5. Thereafter, the 3rd respondent called for the service particulars of the petitioner from the 5th respondent by letter Rc.No.33491/2012/T1, dated 04.02.2013 and the 5th respondent, in turn, by his letter in Rc.97/2013/8, dated 22.02.2013 sent the details called for. Likewise, the 3rd respondent sought for details of the criminal cases, if any, filed against the petitioner, from the District Superintendent of Police, Erode, who, in turn, sent a 'Nil' Report.

6. The 3rd respondent, by his letter Rc.No.33491/2012 T1, dated 25.04.2013, addressed the 2nd respondent giving all his service details and sought for advice for considering the appointment to be given to him. While so, the petitioner made representations to the National Commission for Schedule Caste, Government of India. Once gain, the petitioner submitted representations to the 1st respondent on 10.07.2014 and to the 2nd respondent on 17.12.2014 and the matter is still pending with them. Hence, having no other efficacious alternative remedy, the petitioner has approached this Court.

7. When the matter is taken up for consideration, learned counsel for the petitioner submitted that the petitioner's grievance will be redressed if his representation is directed to be considered by the respondents.

8. In reply, learned Government Advocate, by filing a detailed counter, submitted that the reposting order made on 23.03.2007 has been cancelled, as there is no consolidated pay vacancy available in the office of the District Adi Dravidar and Tribal Welfare Office, Erode and reposted as Watchman in the Government Adi Dravidar and Tribal Welfare Residential School at Kinathadi Solaga, vide proceedings dated 17.05.2007. He contended that the writ petitioner stayed away from duty from 14.08.2008 and the residential school at Kinathadi Solaga. No application for leave or Medical Certificate has been received from him. After obtaining representation from the petitioner, necessary particulars have been collected from various offices for sending proposal to the Commissioner of Adi Dravidar Welfare, Chennai, in a good manner to help him.

9. He further submitted that after collecting details, a detailed narrative report has been sent to the Commissioner of Adi Dravidar Welfare, Chennai vide proceedings dated 26.04.2013. In this connection, it is stated by the respondents that a reply has already been sent to the National Commission for SC & ST vide 3rd respondent's Office Letter No.Na.Ka.T2/16879/2012, dated 26.09.2013 stating that the petitioner was absent from duty for four years 7 months and 7 days without intimation to

the authorities and hence, there is no provision in the Rules for considering the petitioner's grievances and the said information has already been sent to the petitioner. He further stated that the individual has been appointed only on the basis of Temporary/Consolidated pay. The individual stayed away from duty from his post without obtaining any prior permission from his superiors; he stayed away from duty on 14.08.2008, but, he has applied for posting only on 17.09.2012. According to the respondents, as per rules, he has no right to claim postings at this stage, as his appointment is purely temporary/consolidated basis. Hence, learned Government Advocate seeks dismissal of the Writ Petition.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. The only allegation against the petitioner is that he stayed away from duty from his post from 14.08.2008 without obtaining any prior permission from his superiors and without representation. He has also not assigned any valid reasons in the affidavit for his absence. In cases of unauthorized absence, the petitioner's representation can at best be considered only if valid reasons are assigned by him in his affidavit. Hence, this Court finds no merit to consider the case of the petitioner herein.

12. For the abovesaid reason, the Writ Petition fails and stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To:

1. The Secretary to Government,
Adi Dravidar Welfare Department,
Fort St. George,
Chennai 600 009.

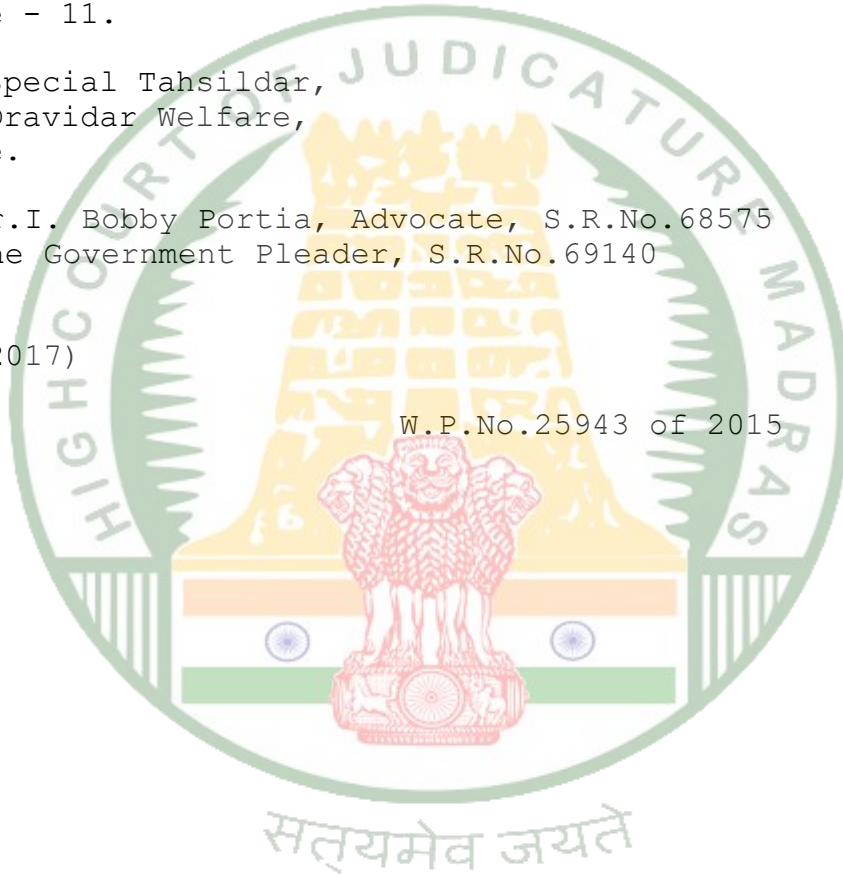
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3. The Commissioner,
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5. The Special Tahsildar,
Adi-Dravidar Welfare,
Erode.

+lcc to Mr.I. Bobby Portia, Advocate, S.R.No.68575
+lcc to the Government Pleader, S.R.No.69140

nri(CO)
md(18/01/2017)

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