

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 04.10.2016)

DATED :18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.28841 of 2015

and

M.P.No.1 of 2015

Sivaraman

... Petitioner

Vs.

1.Union of India,  
by Government of Puducherry,  
Rep. By its Chief Secretary,  
Chief Secretariat, Goubert Avenue,  
Puducherry-605 007.

2.The Secretary to Government,  
Local Administration,  
Government of Puducherry,  
Puducherry-605 001.

3.The Director,  
Local Administration Department,  
Govt of Puducherry,  
Puducherry-605 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to fill up only 25% of the 183 vacancies available both in Municipalities and Commune Panchayats, by way of absorption from persons in the list drawn pursuant to and as per 2011 Regulation Scheme in G.O.No.2/LAS/2011, dated 27.05.2011.

For Petitioner : Mr.J.Srinivasa Mohan

For respondents : MrR.Syed Mustafa, AGP

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ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondents to fill up only 25% of the 183 vacancies available both in Municipalities and Commune Panchayats, by way of absorption from persons in the list drawn pursuant to the proposed Scheme under G.O.No.2/LAS/2011, dated 27.05.2011.

2-1.It is stated that the petitioner is presently engaged as a Tank Operator on regular basis in Ariyankuppam Commune Panchayat. Initially, he was appointed on part time basis in the year 1999 and thereafter, he was appointed on daily rated basis from the year 2003, pursuant to the Government Orders. The petitioner's appointment was made regular in the year 2001 and probation was declared in the year 2014. The petitioner was confirmed in his post in the year 2015 with effect from 03.11.2011. The next avenue of promotion to the petitioner is LDC/Junior Assistant. The recruitment is 80% by Direct Recruitment and 20% by promotion.

2-2.In the year 2009, the respondents framed a Scheme to regularise the casual labourers under the Government. Two years later, in the year 2011, the Government came up with another regularization scheme for casual labourers engaged by Municipalities and Commune Panchayat. As per the said Schemes, a list of part time and full time casual labourers shall be prepared and published. Where ever RR provides for absorption as a mode of recruitment, 25% of vacancies may be filled up by absorption of casual labourers from the list in appropriate Group D posts. Due to the 6<sup>th</sup> Pay Commission, erstwhile Group D category has become Group-C with grade pay of Rs.1,800/-. Erstwhile Group C, continues in Group C with higher grade pay of Rs.1,900/-. There are 183 vacancies in various Municipalities and Commune Panchayats, for the post of Junior Assistants, Plumber, Tank Operator, Sanitary Worker, Electrician etc., which are sought to be filled up now. The post of Junior Assistant and Plumber & Electrician are Group C posts (presently Group C with grade pay of Rs.1,900/-). The respondents intend to fill up all the above vacancies including erstwhile Group C posts, by daily rated employees with temporary status covered by the Scheme. The scheme only provides for 25% vacancies to be filled by absorption and the absorption can only be in the initial category namely Group D post (which is now Group C with grade pay of Rs.1,800/-) and not in Group C posts (presently Group C with grade pay of Rs.1,900/-). Challenging the said scheme, the petitioner has come forward with the present writ petition.

3.When the matter is taken up for consideration, the learned counsel for the petitioner submitted that earlier, 25% of the vacancies can be filled by absorption of casual labourers from the list of appropriate Group D posts. Due to the 6<sup>th</sup> Pay Commission, erstwhile Group D category has become Group C with grand pay of Rs.1,800/- and erstwhile Group C continues in Group C with higher grade pay of Rs.1,900/-. Now, the respondents have decided to fill up the entire vacancy by way of absorption and the absorption is not in the initial category, but in the higher category namely Group C with Grade Pay of Rs.1,900/-, which would be contrary to the recruitment Rules. Thus, the learned counsel for the petitioner sought for a direction to the respondents to fill up only 25% of the vacancies by way of absorption.

4. Countering the submission made by the learned counsel for the petitioner, the learned Additional Government Pleader by filing a detailed counter would contend that first of all, the petitioner has no locus standi to sought for a direction to the respondents because he himself was initially engaged on Part time Basis on 27.10.1999 and he was appointed as Daily Rated Rank Operator on 20.02.2003 vide Memorandum No.46843/LAS/A2/2002, dated 31.01.2003 and the petitioner was also absorbed as against the Direct Recruitment Quota vide G.O.Ms.No.11/LAS/2011, dated 13.10.2011. As the petitioner himself is a beneficiary of the Scheme of absorption, he does not have locus standi to object the proposed scheme. It is further contended by the learned Additional Government Pleader that the regularization is done by absorption by exercising the enabling provisions in the Recruitment Rules by way of relaxation of age and mode of Recruitment. Regularization is usually done by utilizing the vacant posts in the Direct Recruitment Quota in Group C category of posts. While doing regularization, relaxation is done as one time measure. The petitioner's contention that the vacancies in the promotion quota will be filled up by way of absorption is ill founded. The regular employees cannot be absorbed against existing vacancies of higher post and they can only be considered for promotions in the next higher post as per the Recruitment Rules. Further, the Government of Puducherry has recently enhanced the percentage of regularization from 25% to 75% vide G.O.Ms.No.83, dated 14.12.2015, Department of Personnel and Administrative Reforms (Personnel Wing) and the same was extended to the Local Bodies of the Local Administration Department vide G.O.Ms.No.58/LAS/A3/2016, dated 27.01.2016. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

5. Heard the submissions made on either side and perused the materials available on record.

6. It is main grievance of the petitioner that after the introduction of the 6<sup>th</sup> Pay Commission, erstwhile Group D category has become Group C with grade pay of Rs.1,800/- and erstwhile Group C continues in Group C with higher grade pay of Rs.1,900/-. Now, the respondents have decided to fill up the entire vacancy by way of absorption and the absorption is not in the initial category, but in the higher category namely Group C with Grade pay of Rs.1,900/-, which would be contrary to the recruitment Rules.

7. But, I am of the view that so far as the petitioner herein is concerned, he was already absorbed against the Direct Recruitment Quota vide G.O.Ms.No.11/LAS/2011, dated 13.10.2011. As the petitioner himself is a beneficiary of the Scheme of absorption, he does not have locus standi to oppose the proposed scheme in respect of other casual labourers. Further more, the petitioner has not explained as

to how he would be aggrieved by the proposed scheme. Hence, on the sole ground that the petitioner has no locus standi to oppose the proposed scheme, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

To

- 1.The Chief Secretary,  
Union of India,  
by Government of Puducherry,  
Chief Secretariat, Goubert Avenue,  
Puducherry-605 007.
- 2.The Secretary to Government,  
Local Administration,  
Government of Puducherry,  
Puducherry-605 001.
- 3.The Director,  
Local Administration Department,  
Govt of Puducherry,  
Puducherry-605 001.

+1 cc to Government Pleader, sr.69549.

ssi(co)  
krd 26/12

सत्यमेव जयते

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and  
M.P.No.1 of 2015

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