

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No. 21648 of 2013

and

M.P.No.2 of 2013

K.Kalyanasundar

... Petitioner

vs.

1. The secretary to Government,
The State of Tamil Nadu,
Municipal Administration and Water
Supply Department (MAWS),
Secretariat, Fort St. George,
Chennai 600 009.
2. The Director of Town Panchayats,
Kuralagam,
Chennai - 600 108.
3. The District Collector,
Nagapattinam District,
Nagapattinam.
4. The Secretary,
Tamil Nadu Public Service
Commission (TNPSC),
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003

... Respondents

Prayer :- Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records in respect of the proceedings of the first respondent in letter No.30900/TP1/2007-19 dated 02.11.2010 and the consequential order passed by the 2nd respondent in Na.Ka.No.047/2011/A2 dated 25.03.2011 and to quash the same. Consequently direct the respondents to appoint the petitioner by extending the benefit of G.O.Ms.No.206 Municipal Administration & Water Supply Department dated 02.11.1995 by making suitable amendment to the Government Order, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.A.Zakir Hussain,
Govt. Advocate,
for R1 to R3
: Mr.M.Devendran, for R4

O R D E R

With the consent of both sides, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a certiorarified mandamus, to call for the records in respect of the proceedings of the first respondent in Letter No.30900/TP1/2007-19, dt:02.11.2010 and the consequential order passed by the second respondent in Na.Ka.No.047/2011/A2, dated 25.03.2011 and to quash the same and consequently direct the respondents to appoint the petitioner by extending the benefit of G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 02.11.1995 by making suitable amendment to the Government Order, within a time frame to be fixed by this Court.

3. It is the case of the petitioner that the petitioner's father was employed as Oil Mazdoor in Kuttalam Town Panchayat, which is a regular post. He expired on 25.09.2007 when he was in service. Since, the entire family was driven into indigent circumstances due to sudden demise of the petitioner's father, the petitioner made application for appointment on compassionate grounds to the third respondent. At the time of making application, the petitioner has passed X standard and qualified with Diploma in Electrical and Electronics Engineering (DEEE). Though the petitioner was eligible for appointment to the post of Junior Assistant, he was appointed as Office Assistant by the proceedings of the 3rd respondent dated 12.06.2008 for the reason that his father was employed in the Town Panchayat as Oil Mazdoor, which is a non provincialized post and still he continues in the post of Office Assistant. The petitioner also possess decree in B.C.A. (Bachelor of Computer Applications) through correspondence course.

4. Several orders have been passed by the department giving appointment on compassionate grounds to the post of Junior Assistant/Bill Collector for the qualified persons by referring to G.O.Ms.No.206 MAWS department dated 02.11.1995. As per the said G.O., the legal heirs of deceased employee employed as Record Clerk, Office Assistant and Night Watchman would be considered for appointment to provincialized posts, like, Junior

Assistant or Bill Collector. Whereas, the other posts within the Town Panchayat, which are non provincialized, viz., Oil Mazdoor and Sanitary Worker are not considered for giving appointment on compassionate grounds to the post of Junior Assistant by stating that the said posts are not included in the Government Order.

5. The petitioner made representation seeking to consider his claim for appointment to the post of Junior Assistant based on the G.O.Ms.No.206 dated 02.11.1995. Since the said representation was not considered, the petitioner has filed W.P.No.22686 of 2010 before this Court, in which, final order was passed on 08.11.2010 directing the 2nd respondent to consider the representation in the light of G.O.Ms.No.206 dated 02.11.1995. The 2nd respondent by proceedings dated 25.03.2011 rejected the claim of the petitioner by referring to the proceedings of the first respondent dated 02.11.2010.

6. It is the contention of the petitioner that similarly placed person has already filed a Writ Petition in W.P.No.19932 of 2008 before this Court, seeking a direction to the first respondent to consider his appointment for the post of Junior Assistant on compassionate grounds in accordance with the guidelines issued in G.O.Ms.No.206 Municipal Administration & Water Supply (Town Panchayats) Department dated 02.11.1995 after getting necessary concurrence from the fourth respondent with all consequential benefits.

7. In the said order, the learned Single Judge of this Court, observed that if it is necessary, the Government is bound to modify or amend the G.O. to include such of those categories of employees as already recommended by the fourth respondent therein. Pursuant to the same, G.O.No.28 was issued on 18.03.2014. Hence, the petitioner has come forward with the present writ petition.

8. The learned counsel for the petitioner submitted that by quashing the proceedings passed by the 2nd respondent dated 25.03.2011, direction may be given in the light of the order passed in W.P.No.19932 of 2008 dated 15.06.2011 and G.O.No.28 dated 18.03.2014. The learned counsel for the petitioner also submitted that he is seeking only the prospective benefit.

9. Heard the learned Government Advocate appearing for the respondents.

10. Instead of giving any positive direction, this court remits the matter back to the second respondent to consider the representation of the petitioner in the light of the dictum laid down in W.P.No.19932 of 2008 dated 15.06.2011,

filed by the similarly identically placed person and G.O.No.28 dated 18.03.2014 and pass a fresh order within a period of four weeks, from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The secretary to Government,
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Nagapattinam.
4. The Secretary,
Tamil Nadu Public Service Commission (TNPSC),
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003

- + 1 cc to M/s.G. Snkaran, Advocate Sr.53702
+ 1 cc to Mr.M. Devendran, Advocate SR.54125
+ 1 cc to Government Pleader Sr.54125

W.P.No.21648 of 2013

SSK(CO)
EU 28.09.16