

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.34115 of 2016

N.Manikandan

... Petitioner

vs.

1. The Assistant Director of Town Panchayat,
Salem Division, Salem.
 2. The Executive Officer,
Paundamangalam Selection Grade Town Panchayat,
Paundamangalam,
P.Velur (Tk),
Namakkal (Dt) - 637 208.
 3. The Chairman,
Paundamangalam Selection Grade Town Panchayat,
Paundamangalam,
P.Velur (Tk),
Namakkal (Dt) - 637 208.
- Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the respondents to consider the representation made by the petitioner dated 23.09.2016 for appointing him to the post of Electrician, Grade - II as the petitioner being the most qualified and experienced person among the persons who attended the interview held on 14.09.2016 within a time frame.

For Petitioner : Ms.L.Parvin Banu

For R1 : Mr.K.Dhananjayan,
Special Government Pleader

For R2 & R3 : Mr.P.V.Selvakumar,
Additional Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondents to consider his representation dated 23.09.2016 for appointing him to the post of Electrician, Grade - II.

2. According to the petitioner, he completed 10th Standard in 2001 and 12th Standard in 2003. He obtained I class Diploma in Electrical and Electronics Engineering in P.G.P. Polytechnic College in 2005. He underwent apprenticeship in Bharat Heavy Electricals Limited, Trichy from 08.12.2005 to 07.12.2006 and was issued with a Certificate of Proficiency by the Ministry of Human Resource Development, Government of India for the successful completion of Apprenticeship on 31.01.2007. He registered himself with the Employment Exchange, Namakkal in 2005 and thereafter, periodically renewed the same. After completing apprenticeship, he joined in Visaka Industries Limited as an Assistant Engineer Electricals in 2007 and till date, he has been working in the very same private concern. Meanwhile, he received a letter dated 30.08.2016 from the 2nd respondent referring a letter dated 18.08.2016 from the District Employment Exchange, Namakkal calling upon the petitioner for the interview to be held on 14.09.2016 for the post of Electrician Grade-II in the 2nd respondent Town Panchayat.

3. On 03.09.2016, the 2nd and 3rd respondents also issued a paper publication vide Na.Ka.No.165/2016, dated 30.08.2016 in the Tamil Daily "Thina Sudar" inviting applications to the post of Electrician Grade-II from the residents of Paundamangalam Town Panchayat on or before 12.09.2016 at 3.00 p.m. As per the advertisement, interview will be held on 14.09.2016, the number of vacancy is one and the post is meant for non-priority category with 5200-20,200 + 2400 pay scale. As per the publication, the required qualification for the post is I.T.I. Electrical or Diploma in Electrical.

4. The petitioner along with four others attended the interview on 14.09.2016 and performed well. On verification, he came to know that five members were sponsored by the Employment Exchange as per seniority and the petitioner was second in the list and that the first person in the list has not attended the interview. The other three juniors as per the list participated in the interview. It is further stated by the petitioner that as per the Tamil Nadu Town Panchayat Establishment Rules, 1988, the post of Electrician Grade - II is a direct recruitment post and the qualification required is:

(i) L.E.E., or equivalent qualification as approved by the Chief Engineer, Tamil Nadu Electricity Board; or

(ii) Certificate in Electrical wiring issued by the Polytechnic or equivalent qualification as approved by the Chief Engineer, Tamil Nadu Electricity Board with one year practical experience in the type of work concerned; or

(iii) Completed S.S.L.C. with practical experience in electrical operation and maintenance for a period not less than 5 years in the type of work concerned"

5. It is the case of the petitioner that he is a Diploma holder in Electrical and Electronics Engineering and has also undergone one year apprenticeship training in Bharat Heavy Electricals Limited, Trichy and has been issued with a Certificate of Proficiency. He has got nearly eight years experience in the said field and that he is the only person with "C" licence issued by the Tamil Nadu Electrical Licensing Board among the persons, who participated in the interview. Hence, seeking appointment to the post of Electrician Grade - II, the petitioner made a representation to the 2nd respondent on 23.09.2016. Since no positive reply is forthcoming, the petitioner has approached this Court.

6. When the matter is taken up for consideration, learned counsel for the petitioner submitted that the petitioner is only seeking a direction to the respondents to pass orders on his representation dated 23.09.2016 and it is for the respondents to consider the claim of the petitioner on merits.

7. In this context, it will be useful to refer to the decision of this Court in the case of M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District reported in 2010, 2 Law Weekly 785, wherein, a Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to

regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

8. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the respondents will be forced to discharge their statutory duty, which they are not bound to do at the instance of the petitioner.

9. For all the above reasons, the Writ Petition fails and therefore it is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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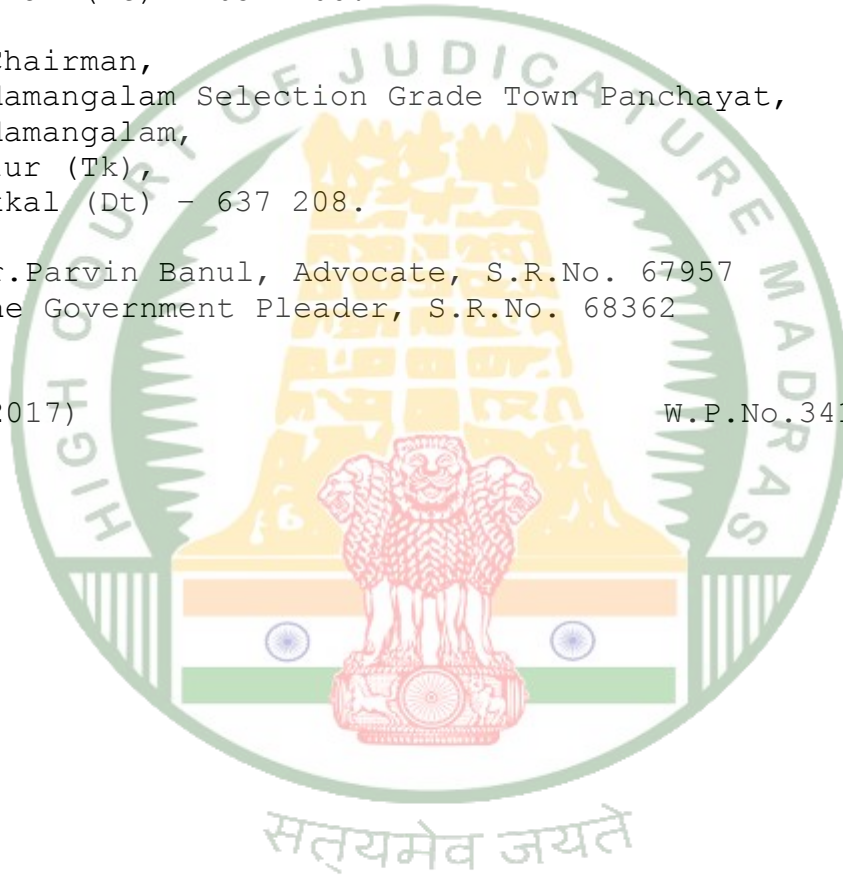
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+1cc to Mr.Parvin Banul, Advocate, S.R.No. 67957

+1cc to the Government Pleader, S.R.No. 68362

KS(CO)
RS(12/01/2017)

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