

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.5203 of 2016
W.M.P.Nos.4575 to 4578 of 2016

1. A.Rangaraj
2. V.Sri Balaji
3. A.Murugesan
4. A.Mohammed Ali Jinna
5. M.S.Sakthivel
6. S.Masilamani
7. G.Vijayaraj
8. N.Isaivanan
9. B.Anandakumar
10. M.Shanmugam
11. Muthukumaravel
12. K.Vinothkumar
13. K.Damodaran
14. T.Sivakumar
15. A.Thiyagu

... Petitioner

Vs.

1. The Principal Secretary,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Director of Town Panchayat,
Kuralagam, Chennai 600 018.

3. N.Sajikumar
4. C.Reggi Jebakumar
5. P.Anbazzahan
6. C.Sambanthamoorthy
7. P.Sadhasivam

... Respondents

(Respondents 3 to 7 are impleaded, as per
order of this Court, made in W.M.P.Nos.5354
& 5959 of 2016, dated 03.03.2016)

Writ Petition is filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records, pertaining to the Government Order in G.O.Ms.No.75, dated 05.02.2016, on the file of the 1st respondent, quash the same and consequently, direct the respondents to appoint the petitioners in the post of Overseer/Draughtsman in the light of the proposal sent by the 2nd respondent in his proceedings in Roc.No.21950/2008/A1, dated 14.08.2012 and by considering the representation of the petitioners, dated 05.02.2016.

For Petitioner : Mr.R.Singaravelan
for Mr.G.Thalaimutharasu

For Respondents 1 & 2 : Mr.P.H.Aravind Pandian,
Additional Advocate General
Assisted by Mrs.P.Kavitha,
Government Advocate

For Respondents 3 to 5 : Mr.G.Sankaran

For Respondents 6 & 7 : Mr.V.Selvaraj

O R D E R

Challenging the impugned G.O.Ms.No.75, Municipal Administration and Water Supply (TP.1) Department, dated 05.02.2016, issued by the 1st respondent, the present writ petition has been filed.

2. Mr.R.Singaravelan, learned counsel appearing for the petitioners would submit that all the petitioners 1 to 15 have been working as Technical Assistant, temporarily, for a long time. In the course of their continuous service as NMR, they have made repeated representations to the 2nd respondent - Director of Town Panchayat, Chennai, to regularise their services and considering their plight, the 2nd respondent, vide proceedings in Roc.No.21950/2008/A1, dated 14.08.2012, has also made a proposal to the then Additional Chief Secretary to the Government, 1st respondent herein, requesting him to regularise the services of 54 Technical Assistants, in the category of Work Inspector, as there were 72 vacancies in the post of Work Inspectors, in Town Panchayat. However, the proposal made by the 2nd respondent has been revised, vide Letter No.19954/TPI/2012-14, dated 13.04.2015, making it clear that the existing post of Work Inspectors should be treated as vanishing category, since the post of Overseers are created now at the bottom of the

administrative structure of engineering wing. On that basis, the 1st respondent has come to the conclusion that the post of Work Inspectors should not be filled up, whenever they fall vacant, either by way of promotion of incumbents to higher category or retirement or for other reasons, because those posts are all going to lapse as a vanishing category and till such time, the post of Work Inspector will exist. This has been communicated by another letter, dated 08.02.2016, by the Principal Secretary to Government, to the individuals, who have filed W.P.(MD)Nos.3086 to 3087 of 2015, through the Director of Town Panchayat and subsequently, the same has been communicated to all the petitioners, vide letter, dated 12.02.2016.

3. In this background, the further case of the learned counsel for the petitioners is that when W.P.(MD)No.4191 of 2013, has been filed, challenging G.O.Ms.No.25, Municipal Administration and Water Supply (TP.1) Department, dated 04.02.2013, of the 1st respondent and consequently, directing the respondents to interchange the petitioner therein, as per G.O.Ms.No.24, dated 12.02.2007, this Court, vide order, dated 08.10.2013, dismissed the said writ petition and after dismissal of the same, the petitioner therein went on appeal in W.A.(MD) No.1137 of 2013 and this Court, by order, dated 13.03.2014, while disposing of the same, modified the order of the learned single Judge, directing the 1st respondent to consider the draft rules sent by the Director of Town Panchayats, in his proceedings, R.C.No.24565/2007/A6, dated 15.03.2013, taking into account the recommendations of One Man Commission, issued in G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 and issue a new set of rules, for governing the terms and conditions of services of all the persons, who were employed in the Town Panchayats Engineering and Subordinate Services. This Court further made it clear that exercise of issue of a new set of Rules, should be completed by the Secretary to Government, Municipal Administration and Water Supply Department, Chennai, within a period of eight weeks from the date of passing of the said order.

4. Before complying with the directions of this Court made in the above Writ Appeals, the 1st respondent has issued the impugned G.O.Ms.No.75, Municipal Administration and Water Supply (TP.1) Department, dated 05.02.2016, which, according to the learned counsel appearing for the petitioners, is against Rule 39 of the Tamil Nadu State and Subordinate Service Rules. Adding further, he would submit that when Rule 39 says that only in the case of emergency, one post alone can be filled up, by way of promotion, the 1st respondent, in the impugned G.O.Ms.No.75, Municipal Administration and Water Supply (TP.1) Department, dated 05.02.2016, had decided to fill up of 171 vacancies.

Continuing his argument, he would submit that the action of the 1st respondent, in issuing G.O.Ms.No.75, to temporarily promote the existing Work Inspectors, as Overseers/Draughtsmen, cannot be accepted and the same is liable to be interfered with. On the other hand, it would amount to violation of the directions issued by the Hon'ble Division Bench in W.A.(MD)Nos.1137 of 2013 etc., batch, dated 13.03.2014.

5. In reply, Mr.P.H.Aravind Pandian, learned Additional Advocate General, appearing for respondents 1 and 2, would submit that neither Rule 39 of the Tamil Nadu State and Subordinate Service Rules, will apply, as contended by the learned counsel appearing for the petitioners, nor the prayer of the petitioners can be entertained, for two reasons. Firstly, the petitioners are all working only as NMRs and before their services are regularised, they cannot aspire to become Overseers/Draughtsmen, which are the promotional posts. When their prayer for regularisation has been turned down, not only by the learned single Judge in W.P.(MD)Nos.26695 of 2008, etc., batch, dated 28.04.2009, but also the Hon'ble Division Bench in W.A.(MD)Nos.1160 of 2009, etc., dated 10.03.2010, approving the finding that the appointments of the petitioners were made subsequent to the cut off date, ie., on 29.11.2001, admittedly, when the petitioners had withdrawn their writ appeal, filed against the order passed by the learned single Judge in W.P.(MD) Nos.26695 of 2008, etc., batch, dated 28.04.2009, the prayer for regularisation, wrongly renewed by the petitioners, in this writ petition, cannot be considered legally.

6. Continuing his argument, learned Additional Advocate General would further submit that secondly, when the prayer of the petitioners to regularise their services, had already been turned down and it has reached finality, it is unnecessary on the part of the petitioners, to ask for promotion to the post of Overseers/Draughtsmen. But unless and otherwise the services of the petitioners in the post of Technical Assistant, are regularised, it is not open to them to ask for any promotion. Adding further, he would submit that since the post of Work Inspector, has already been decided as Vanishing Category, with the qualifications possessed by the petitioner, they cannot be put in the same category, viz., Work Inspector category.

Heard the learned counsel for the parties and perused the materials available on record.

7. Although this Court fully agrees with the submission of the learned Additional Advocate General that since out of 250 vacant Work Inspectors, 171 are going to be promoted and therefore, 79 vacancies are available, which will be no doubt,

treated as Vanishing Category, further since the petitioners are longing for promotion, for more than 10 years, in the post of Technical Assistant, since their earlier prayer to promote them to the post of Work Inspector, has been turned down, as this post has been considered as Vanishing Category, this Court, in the interest of the parties to the petition, is of the considered view that out of 79 vacancies, available in the posts of Work Inspector, the respondents are directed to consider, not only the petitioners, 15 in number, all the 54 persons, presently working as Technical Assistants, for the same and after their superannuation, it is left open to the respondents to treat the post of Work Inspector as a Vanishing Category. The above exercise shall be done within a period of three months, from the date of receipt of a copy of this order.

8. With these directions, the writ petition is disposed of. No costs. Interim order earlier granted will be vacated. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skm/mps

To

1. The Principal Secretary,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Director of Town Panchayat,
Kuralagam, Chennai 600 018.

+1cc to Mr.G.Thalaimutharasu, Advocate, S.R.No.13949
+1cc to Mr.G.Sankaran, Advocate, S.R.No.14204
+1cc to Mr.V.Selvaraj, Advocate, S.R.No.13893
+1cc to the Government Pleader, S.R.No.14337

W.P.No.5203 of 2016

EV(CO)
CA(06/04/2016)