

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal Nos.2191 and 2202 of 2011

S.Kuppusamy ... Appellant in both Writ Appeals/  
Petitioner in both WP's

vs. /

1. The Director of Town Panchayats  
Kuralagam, Chennai - 108
2. The Collector  
Vellore District
3. The Assistant Director of Town Panchayat  
Vellore Region, Vellore
4. The Executive Officer  
Vilapakkam Town Panchayat  
Vilapakkam ... Respondents in both Writ Appeals/  
Respondents in both Wps

Writ Appeal filed under clause 15 of the Letters Patent  
against the common order of the writ court dated 07.01.2011 made  
in W.P.Nos.17270/2007 and 212 of 2007.

Prayer in W.P.No.212 of 2007:- Petition under Article 226 of the  
Constitution of India praying for a Writ of Certiorarified  
Mandamus to call for the records in connection with the files  
related to the petitioner regarding the proceedings issued in  
Na.Ka.14407/-199/A3 dated 02.06.2001 by the Director of Town  
Panchayat, kuralagam, Chennai -108 and the proceedings issued  
in Na.ka.No. 1917/2001-B dated 07.06.2001 by the Assistant  
director of Town Panchayat, Vellore Range, Vellore and the  
proceedings issue in Na.ka.NO. 46/2001 dated 11.6.2001 by the  
Executive officer, villapakkam Town panchayat and set aside the  
same and consequently direct the respondents to promote the  
Petitioner as Junior Assistant in pursuant to the recommendation  
of the 1st respondent issued in Na.Ka.33431/90/A2 dated  
02.09.91.

Prayer in W.P.No.17270 of 2007: Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondents to promote the Petitioner as Junior Assistant in the existing vacancy available at Villapakkam Town Panchayet.

For Appellant in : Mr.V.Vijay Shankar  
both Writ Appeals  
For Respondents : Mr.Tm.Pappiah,  
Spl. Govt. Pleader for R1 to R3  
Mr.S.Gunasekaran for R4

COMMON JUDGMENT  
(Made by M.GOVINDARAJ, J)

Challenge in these writ appeals is to a common order dated 07.01.2011 made in W.P.Nos.212 and 17270 of 2007, by which, the writ court, declined to quash the proceedings of the Director of Town Panchayats, Kuralagam dated 02.06.2001 in Na.Ka.14407-199/A3 dated 02.06.2001, proceedings of the Assistant Director of Town Panchayat, Vellore dated 07.08.2001 in Na.Ka.1917/2001.B and proceedings of the Executive Officer, Vilapakkam Town Panchayat in Na.Ka.No.46/2001 dated 11.06.2001. Writ court declined to issue a direction to promote appellant/petitioner, to the post of Junior Assistant, pursuant to the recommendations of the first respondent in Na.Ka.No.3341/90/A2 dated 02.09.1991 in the existing vacancy available at Vilapakkam Town Panchayat.

2. In view of the common issue involved, both the writ appeals, are taken up together, heard and decided by this common judgment.

3. The appellant/writ petitioner, originally filed O.A.No.3734/2001, which was later-on, transferred to this court and re-numbered as W.P.No.212/2007. Case of the writ petitioner is that he was appointed as a Bill Collector on 31.05.1979, on full time basis with effect from 01.06.1979. Service Book was also issued to him and he was shown as full time Bill Collector, with effect from 01.06.1979 in the pay scale of Rs.90/-. Column No.3 of the service book shows that he was appointed at Vilapakkam Panchayat office in permanent capacity against a substantive vacancy, by the District Collector, Vellore.

4. Government of Tamil Nadu, issued orders in G.O.Ms.No.249 Rural Development Department dated 27.07.1984, converting 42 Village Panchayats as Town Panchayats. Thereafter, considering the fact that around 32 Village Panchayats, converted as Town Panchayats, were functioning without supporting staff, issued further orders in G.O.Ms.No.62, Rural Development Department dated 20.01.1999, sanctioning, the staff strength in the following pattern: For Town Panchayats with receipts upto 5

lakhs per annum, one Executive Officer and one Bill Collector/Junior Assistant was sanctioned. Insofar as Town Panchayats with receipts of more than Rs.5.00 Lakhs, one Executive Officer, one Bill Collector and one Junior Assistant posts were sanctioned. Apart from that, staff in water supply, public health, scavenging on daily wages, were sanctioned, on the basis of the financial position of the Town Panchayats.

5. Pursuant to G.O.Ms.No.62 Rural Development Department dated 20.01.1989, the first respondent, recommended the name of the appellant/petitioner to the post of Junior Assistant for the consideration of the Secretary to the Government, Rural Development Department. Another person by name, Shanmugam, working as a Bill Collector, was recommended to be posted, in some other Town Panchayat, as Bill collector. A separate proposal was directed to be sent by the District Collector. Pursuant to the proposal, on 20.09.1991, the District Collector, Vellore promoted the appellant to the post of Junior Assistant. Orders dated 2.9.1991 and promotion order dated 20.09.1991 were challenged by the said Shanmugam in O.A.Nos.3210 and 3455/1991 respectively. The Tamil Nadu Administrative Tribunal granted stay of promotion. Therefore, the appellant/petitioner could not join the post of Junior Assistant.

6. While matter stood thus, recruitment rules for the personnel in Panchayat Township viz. Head Clerk, Junior Assistant, Revenue Inspectors, Bill Collector, Typist etc. came to be notified in G.O.Ms.No.300 Personnel & Administrative Reforms (Personnel-B) Department dated 28.08.1992. As per the amendments issued in the Notification, a Bill Collector in Town Panchayat shall be eligible for appointment as Junior Assistant, if he is suitable. In the meanwhile, Government issued Orders in G.O.Ms.No.223 Municipal Administration and Water Supply Department dated 11.09.1997, wherein, persons, in employment for 10 years and more, on contingent basis have been directed to be regularized in the pay scale of 750 - 945, with a condition that the concerned Town Panchayat should bear the expenses and no further proposals shall be permitted in future. Accordingly, proceedings were also issued regularizing such contingent workers. Thereafter, another order in G.O.Ms.No.125 Municipal Administration and Water Supply (MS) Department dated 27.05.1999 came to be issued by which, the daily rated employees, who have put in 10 years of service, as on 01.10.1979, should be regularized and appointed on a consolidated pay of Rs.2,000/- per month. After a period of one year, it was proposed that the regularised personnel, would be brought in regular time scale of pay. In the meanwhile, the said Shanmugam had withdrawn the original application No.3210/1991 filed by him before the Tamil Nadu Administrative Tribunal challenging the order of promotion to the appellant. The Tribunal, by order dated 05.12.1997 has dismissed the original application, as withdrawn.

7. It is the case of the appellant that pursuant to the withdrawal of the abovesaid original application, he should have been given appointment as Junior Assistant. But he was posted at the entry level post, on a consolidated pay of Rs.2,000/- for a period of one year, vide proceedings of the first respondent in Na.Ka.No.14407-1/99/A3 dated 02.06.2001. He was posted in Vilapakkam Town Panchayat. The third respondent, vide proceedings in Na.Ka. No.1917/2001-B dated 07.06.2001 transferred the appellant from Vilapakkam to Kariamangalam Town Panchayat, Dharmapuri District. Thereafter, the fourth respondent, in Na.Ka.No.46/2001 dated 11.06.2001 posted the appellant, in the category of record clerk on consolidated basis at Kariamangalam.

8. The appellant has challenged all the three proceedings before the Tamil Nadu Administrative Tribunal, Madras in O.A.No.3734/2001. The same has been transferred to this court and renumbered as WP No.212/2007. While considering the case of the petitioner/appellant, the writ court, treated him as one among the 174 employees, whose names were shortlisted pursuant to G.O.Ms.No.125 Municipal Administration and Water Supplies (MS) Department dated 27.05.1999 under the scheme framed by the Government.

9. Contention of the petitioner that he should have been appointed on full time basis, as Bill Collector has not been accepted by the writ court, as it was considered that the post does not fall within the purview of the scheme framed by the Government. Appointment of the writ petitioner has been considered, as a stop gap arrangement. Writ court held that there was no material to show that he was given appointment as Bill Collector and to be promoted as Junior Assistant, as claimed by him. Thus, the writ petitions have been dismissed. Aggrieved by the common order passed by the writ court, he has filed the instant writ appeal Nos.2191 and 2202 of 2011. The appellant has filed another O.A.No.453/2003 seeking promotion to the post of Junior Assistant, which has been transferred and re-numbered as Writ Petition No.17270/2007.

10. Per contra, respondents have filed a counter stating that the appellant was appointed as a Bill Collector on daily wages, at the rate of Rs.90/- per day, in Vilapakkam Town Panchayat and not as a regular employee, in the time scale of pay. The contention that the appellant was promoted as Junior Assistant on 20.09.1991, has been denied. According to them, proposal, as stated in Na.Ka.No.3343/90/A2 dated 02.09.1991, was sent to the Government, but no orders were passed, as claimed by the writ petitioner. Further submission has been made that since the writ petitioner/appellant was appointed only as a part time Bill collector on daily wage at Rs.90/- per day, G.O.Ms.No.300

Personnel & Administrative Reforms (Personnel-B) Department dated 28.08.1992, will not apply to him.

11. The respondents have further contended that as per G.O.Ms.No.125 Municipal Administration and Water Supply (MS) Department dated 27.05.1999, case of 174 persons has been approved and the first respondent, in his proceedings in Na.Ka. No.14407-1/99/A3 dated 02.06.2001, issued orders to appoint them at the entry level post of Record Clerk. Among 174 persons, the appellant is at Sl.No.3. The appellant has been appointed as Record Clerk, by the third respondent, in his proceedings in Na.Ka. No.1917/2001-B dated 07.06.2001 at Kariamangalam Town Panchayat, Dharmapuri District. He has been relieved by the fourth respondent by proceedings dated 11.06.2001. According to the respondents, the claim of the appellant to promote him as Junior Assistant, cannot be granted, and that there is no difficulty in regularising his service as Record Clerk. G.O. Ms. No.878 Rural Development and Local Administration dated 15.05.1981 is not applicable to the appellant.

12. The respondents would further state that as per G.O.Ms. No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006, those who have completed 10 years of service as daily wages before 01.01.2006, would be regularised in the time scale of pay. The appellant has completed 10 years of service as on 31.12.1994. Therefore, he was appointed as Record Clerk (Entry level post), as per G.O.Ms. No.125 Municipal Administration and Water Supply (M.S.) Department dated 27.05.1999 on consolidated pay of Rs.2000/- per month and after completion of one year period, he would be brought to regular time scale of pay. For the above said reasons, respondents have contended that the appellant is not entitled to be regularised as Junior Assistant and hence sought for dismissal of the writ appeals, as devoid of merits.

13. Heard the arguments advanced by both sides and perused the materials available on record.

14. From the perusal of the proceedings issued by the Village Panchayat of Vilappakkam, it is seen that the petitioner/appellant has been appointed as full time clerk/bill collector with effect from 01.06.1979. Entries in the Service Book also reveal that the petitioner/appellant has been appointed as a Bill Collector (full time) in permanent capacity against a substantive vacancy, in the pay scale of Rs.90/-. The said appointment order, has been issued by the Village President. Pursuant to the order of the District Collector, and it is with effect from 01.06.1979. Pursuant to G.O.Ms.No.249 Rural Development Department dated 27.07.1984 upgrading 42 village panchayats, Government have issued orders in

G.O.Ms.No.62 Rural Development Department dated 20.01.1989, sanctioning one post each of Executive Officer, Bill Collector and Junior Assistant to Town Panchayats with receipts of more than Rs.5,00,000/- per annum. Pursuant to this order, the first respondent, in his proceedings Na.Ka. No.33431/90 A2 dated 02.09.1991, had recommended the name of the petitioner/appellant, to the post of Junior Assistant-cum-Bill Collector. From the perusal of the proposal, we could infer that the petitioner/appellant was appointed on a permanent basis in Vilapakkam Town Panchayat as Bill Collector. He is also qualified to the post of Junior Assistant, as he had passed SSLC. He had joined on 01.06.1979. When compared to Shanmugam who had joined on 01.09.1989, the appellant is Senior. Therefore, recommendations in favour of the petitioner/appellant, have been sent, to post him as Junior Assistant.

15. We have perused the files produced by the respondents. From the letter dated 31.07.2000, in proceedings Na.Ka. No.610/2000/B, it is observed that as per the directions issued, the petitioner has been treated as part time Assistant. Pursuant to G.O.Ms.No.125 Municipal Administration and Water Supply (MS) Department dated 27.05.1999, the petitioner has been treated as a part time clerk, regularised from the category of daily wages on consolidated pay for one year and thereafter, as a Record Clerk in regular capacity.

16. Fact remains that the appellant has been promoted as Junior Assistant on 20.09.1991 by the appointing authority, namely, the District Collector. The said promotion was challenged before the Tamil Nadu Administrative Tribunal by Shanmugam in O.A. No.3210/1991 and later on, in the year 1999 the case has been withdrawn. In effect, promotion of the appellant on regular basis to the post of Junior Assistant remains unaffected. Therefore, the appellant is entitled to get further promotion. G.O.Ms. No.125 dated 27.05.1999 has been wrongly applied by the respondents, to the case of the appellant.

17. From the perusal of G.O. Ms. No.62 Rural Development Department dated 20.01.1989, it is seen that there are two patterns of staff, prescribed by the Government viz. daily wagers and regular employees. The daily wagers are from Water Supplies/Health scavenging department. Insofar as the posts of Executive Officer, Bill Collector and Junior Assistant are concerned, they are treated as regular employees. But the confusion has arisen after the letter dated 31.07.2000, wherein the posts of Bill Collector as well as Junior Assistant have been mentioned, as part time posts. To worsen the situation, after the issuance of G.O.Ms. No.125 Municipal Administration and Water Supply (MS) Department dated 27.05.1999, those working in regular posts of Bill Collector and Junior Assistant

sanctioned, have been treated as daily wagers, and brought within the said 174 persons, identified to be regularised, by virtue of the said Government Order. In this confusion, the writ petitioner/appellant, who has been appointed on regular basis, against a substantive vacancy has been brought under the category of daily wagers and thereafter, on consolidated pay, appointed as Record Clerk, which is inferior to the post of Bill Collector and Junior Assistant. From the materials placed before us, the unassailable fact is that the appellant/petitioner, has been appointed on permanent basis, against a substantive post, in the cadre of bill collector.

18. Contention of the respondents that he was appointed as part time worker, at the threshold is not substantiated. On the other hand, the fact that the writ petitioner was appointed on a regular basis is substantiated by the first appointment order issued in 1979 and, the proposal sent for promotion in favour of the appellant/writ petitioner. Promotion order, issued has been deferred, in view of the stay granted by the Tamil Nadu Administrative Tribunal in O.A.No.3210/1991. Therefore, it is clear that the appellant/petitioner has been appointed as a Bill Collector, on a regular basis against a substantive vacancy and that he is entitled for further promotion as Junior Assistant, on regular basis. Placing the appellant in the daily wagers list, thereafter, on consolidated wages, at the rate of Rs.2000/- per month, and after completion of one year, regulating him as Record Clerk, are erroneous. Without understanding the purport of the Government orders and Service Rules, the respondents have denied the legitimate rights of the appellant. Therefore, we have no hesitation to set aside the impugned orders of the Director of Town Panchayats, Kuralagam dated 02.06.2001 in Na.Ka.14407-199/A3 dated 02.06.2001, proceedings of the Assistant Director of Town Panchayat, Vellore dated 07.08.2001 in Na.Ka.1917/2001.B and proceedings of the Executive Officer, Vilapakkam Town Panchayat in Na.Ka.No.46/2001 dated 11.06.2001. Order of the writ court is set aside. Consequently, we direct the respondents to promote the appellant/petitioner to the post of Junior Assistant and grant the consequential benefits thereof.

19. The learned counsel appearing for the appellant/petitioner submitted that the appellant/petitioner had retired from service on attaining the age of superannuation. Therefore, the respondents are directed to grant notional promotion as Junior Assistant, with effect from 02.09.1991 and all attendant benefits flowing there from. Respondents are further directed to calculate the terminal and pensionary benefits appropriate to his notional promotion and disburse the same, within a period of three months from the date of receipt

of a copy of this common judgment. With the above observation and directions, the writ appeals are allowed. No cost.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

asr

To

1. The Director of Town Panchayats  
Kuralagam, Chennai - 108
2. The Collector  
Vellore District
3. The Assistant Director of Town Panchayat  
Vellore Region, Vellore
4. The Executive Officer  
Vilapakkam Town Panchayat  
Vilapakkam

+1cc to Mr.V.Vijay Shankar, Advocate Sr. 11308

+1cc to the Government Pleader, Sr. 11449

+1cc to S. Gunasekaran, Advocate Sr. 11945

सत्यमेव जयते

W.A. No.2191 of 2011  
and  
W.A.No.2202 of 2011

SKV(CO)  
VR(06/06/2017)

WEB COPY