

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.8.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.880 of 2017,
C.M.P.Nos.12265 and 12266 of 2017

1. The Director of Town Panchayats,
Chennai 600 108.
2. The Assistant Director of Town Panchayats,
Tiruppur (Erode Region),
Tiruppur District. Appellants

Versus

1. K.Marimuthu
2. The Executive Officer,
Madathukulam Town Panchayat,
Tiruppur District. Respondents

Prayer: Writ Appeals filed filed under Clause 15 of the Letters Patent against the order dated 25.5.2016 passed in W.P.No.18406 of 2016 on the file of this court.

W.P.No.18406 of 2016 : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, directing the 1st Respondent to consider and pass appropriate orders on the representation dated 31.03.2016 regarding to provide the petitioner suitable alternative appointment as Junior Assistant/Bill collector based on the proposal recommendation of the 3rd respondent in his Pro.Na.Ka.No. 626/2010 dated 27.12.2012 and employment with pay protection continuity of service in light of the orders of this Court in W.P.No.17347 of 2009, dated 26.2.2010.

For appellant : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

For R1 : Mr.A.Baskaran

For R2 : No appearance

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the first respondent.

2. The writ appeal is filed challenging the order passed by the learned Single Judge granting the relief of alternative employment with pay protection.

3. It appears that the writ petitioner was working as a Tractor Driver under the Madathukulam Town Panchayat since 1997. According to him, he suffered an illness and hence, made a representation seeking alternative employment and thereupon, he was referred to Medical Board on 27.11.2012 and 11.12.2012. Subsequently, based on the medical report to the effect that he suffers from Acute Bronchitis Chronic Obstructive Pulmonary Lung Disease (COPLD), he submitted another representation seeking alternative employment and it appears that the same was not considered and hence, the writ petition was filed.

4. The order passed by the learned Single Judge granting the relief of alternative employment with pay protection is challenged by the appellants mainly on the ground that the request of the writ petitioner could not be considered since the post of Junior Assistant claimed by him is a provincialized post whereas the post held by him viz., Driver being a non-provincialized one with a pay of Rs.9300-34800+G.P.4200 while the post of Junior Assistant and Bill Collector carries a pay scale of Rs.5200-22000+G.P.2400 and therefore, they cannot be equated as there would be a huge difference in the scale of pay. It is further contended that the present pay earned by the writ petitioner is equivalent to the scale of pay fixed for the post of Executive Officer Grade I, which is a much higher post in the hierarchy of the Department and he cannot be posted directly as Executive Officer Grade I by overlooking the already existing seniors and bypassing various other posts in the hierarchy in the Department. The decision rendered in the case relied upon by the writ petitioner viz., W.P.No.17347 of 2009 cannot be followed since the said case deals with a Conductor in the Transport Department.

5. Having considered the facts and circumstances of the case, we find that the claim of the writ petitioner does not merit any consideration since it is a voluntary one and the post which he claims is a provincial one whereas the post which he presently holds is a non-provincial one, but, with higher pay and further, claim of equity on the basis of the decision in W.P.No.17347 of 2009 does not arise for consideration since that case dealt with an employee of the Transport Department unlike the present one. The writ petitioner cannot claim both the

benefits viz., alternative employment and pay protection simultaneous.

6. In view of the above, the writ appeal is allowed in part to the extent of setting aside the order passed by the learned Single Judge granting pay protection. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk

To:

1. The Director of Town Panchayats,
Chennai 600 108.
2. The Assistant Director of Town Panchayats,
Tiruppur (Erode Region),
Tiruppur District.
3. The Executive Officer,
Madathukulam Town Panchayat,
Tiruppur District.

+lcc to Mr.A.Baskaran, Advocate, S.R.No.62791
+lcc to the Government Pleader, S.R.No.62859

W.A.No.880 of 2017

PA(CO)
CA(24/10/2017)

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