

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8110 of 2010
and
MP.Nos.1, 2 & 3 of 2015

R.Senthil

... Petitioner

-vs-

1.Block Development Officer,
Pudupalayam Union,
Pudupalayam,
Chengam Taluk,
Thiruvannamalai District.

2.The President,
Nayambadi Village Panchayat,
Nayambadi,
Chengam Taluk,
Tiruvannamalai District.

3.Selvam

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, direct the first and second respondents to allow petitioner to work as a temporary clerk in the second respondent panchayat and pay all back wages.

(Prayer amended as per order dated 26/04/2010 in MP NO.2/2010 in WP.8110/2010)

For Petitioner :: Mr.P.R.Balasubramanian

For Respondents :: Mrs.K.Bhuvaneswari
Government Advocate (For R1)

Mr.D.Sreenivasan (For R2)

No appearance (For R3)

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O R D E R

The relief sought for in this writ petition is for a direction to direct the first and second respondents to allow petitioner to work as a temporary clerk in the second respondent panchayat and pay all back wages and pass such further orders.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner was initially appointed as Assistant in Nayambadi Village Panchayat on 31.03.1997 for a consolidated pay of Rs.350/- per month. The appointment of the writ petitioner was temporary and his name was subsequently recommended by the second respondent for regularization. However, no regularization order has been issued.

3.The learned counsel for the petitioner further states that the writ petitioner had worked from 31.03.1997 to 07.05.2002 in the post of Assistant. On account of certain misunderstanding between the President and the then Vice President, the writ petitioner was not allowed to draw the salary and further he was prevented from working in the post of Assistant. Under these circumstances, the writ petitioner is constrained to move the present writ petition.

4.The learned counsel for the second respondent opposed the contention by stating that the initial appointment of the writ petitioner was irregular and the writ petitioner was not appointed in accordance with the recruitment rules in force. Further, the writ petitioner admitted the fact that he worked in the said post of Assistant from 31.03.1997 to 07.05.2002. Even as per the writ petitioner he has not continued in service after 07.05.2002. However, the writ petition was filed on 15.04.2010, after a lapse of about eight years, from the date of ousting of the service of the writ petitioner. Thus, there is a huge delay, even in filing the writ petition and the writ petition is to be rejected on the ground of laches.

5.May that it be, this Court is of the opinion that the writ petitioner was not appointed in accordance with the recruitment rules in force. Further, the initial appointment order issued to the writ petitioner on 31.03.1997 states that he was appointed as part time Assistant. Thus, the writ petitioner cannot claim any regularization, in view of the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi reported in 2006 4 SCC page No.1 the Hon'ble Supreme Court of India has held that the regularization or permanent absorption cannot be granted if the initial appointment was not in accordance with the recruitment rules in force. In other words, irregular appointment cannot be regularized only on the ground of length

of service.

6.The above said principle was followed and reiterated by the Hon'ble Supreme Court of India in the case of Secretary to Government Vs. R.Govindasamy and others reported in [(2014) 4 SCC 769]. The Hon'ble Apex Court of India emphasized that the High Courts, in exercising the power under Article 226 of the Constitution of India will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant post.

7.Equality class contained under Articles 14 and 16 should be scrupulously followed and Courts should not issue direction for the regularization of the employee, which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularized, back door entry appointment contrary to the constitutional scheme and appointment to the ineligible candidates cannot be regularized. When the legal principles in this regard are well settled by the Hon'ble Supreme Court of India, more specifically by the Constitutional Bench, this Court is not inclined to consider the claim as such sought for in this writ petition.

8.This apart, even as per the writ petitioner, he was working in the post of part time Assistant with effect from 31.03.1997 to 07.05.2002 and the writ petition was filed on 15.04.2010, after a lapse of about eight years from the date of ousting. This being the factum of the case, the writ petition is liable to be dismissed on the ground of laches also. In this view of the matter no further adjudication needs to be undertaken in respect of the grounds raised in this writ petition.

9.Accordingly, the writ petition is dismissed both on the ground of merits as well as on the ground of laches. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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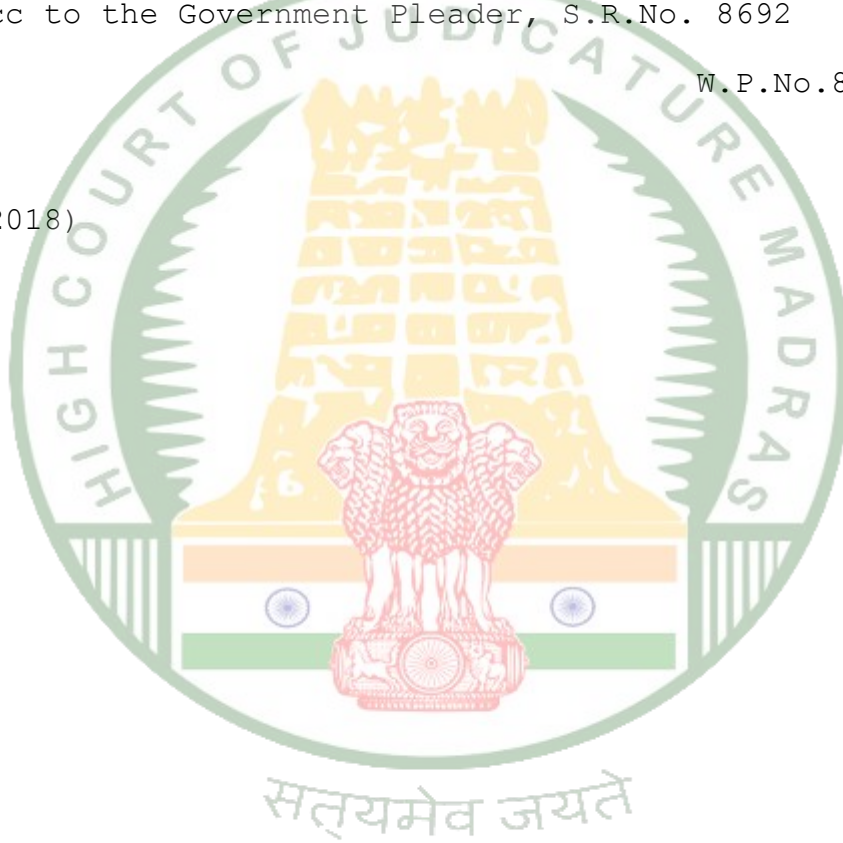
1. Block Development Officer,
Pudupalayam Union,
Pudupalayam,
Chengam Taluk,
Thiruvannamalai District.

+1cc to Mr.P.R.BALASUBRAMANIAN Advocate, S.R.No. 86453

+1cc to the Government Pleader, S.R.No. 8692

W.P.No.8110 of 2010

NRI (CO)
TR(02/01/2018)



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