

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.23282 and 23283 of 2013 and 19142 of 2012
and

M.P.Nos.2 and 2 of 2013 and
W.M.P.Nos.33375 and 33376 of 2016

W.P.No.23282 of 2013

M.Senthil Kumar ... Petitioner

Vs.

1. The Assistant Director of Town Panchayats,
Coimbatore Zone, Coimbatore.
2. The Executive Officer,
Karamadai Town Panchayat,
Karamadai - 641 104,
Coimbatore.
3. S.Vijayan ... Respondents

W.P.No.23283 of 2013

M.Senthil Kumar ... Petitioner

Vs.

1. The Assistant Director of Town Panchayats,
Coimbatore Zone, Coimbatore.
2. The Executive Officer,
Karamadai Town Panchayat,
Karamadai - 641 104,
Coimbatore.

3.S.Ramamorthy .. Respondents

W.P.No.19142 of 2012

M.Senthil Kumar

.. Petitioner

Vs.

1.The Assistant Director of Town Panchayats,
Coimbatore Zone, Coimbatore.

2.The Executive Officer,
Karamadai Town Panchayat,
Karamadai - 641 104,
Coimbatore.

.. Respondents

W.P.Nos.23282 and 23283 of 2013: Petitions filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the proceedings of the second respondent in Na.Ka.No.01/2012/A dated 02.05.2013 and quash the same and consequently direct the first and second respondents herein to appoint the petitioner as sanitary worker in Karamadai Town Panchayat.

W.P.No.19142 of 2012: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the proceedings of the second respondent in Na.Ka.No.21/07 dated 11.06.2007 and quash the same and consequently direct the respondents to reinstate the petitioner as sanitary worker with continuity of service.

For Petitioner .. Mr.N.Balamuralikrishnan
in all the W.Ps

For Respondents .. Mr.T.M.Pappiah,
Spl. Govt. Pleader for R1
in all the petition
Mr.V.Jayaprakash Narayanan for R2
in W.P.Nos.23282 and 23283 of 2013
Mr.K.Karthikeyan for R2
in W.P.No.19142 of 2012
Mr.S.Kadarkarai for R3
in W.P.Nos.23282 and 23283 of 2013

COMMON ORDER

These three writ petitions raise common grounds and issues and therefore, the same are dealt with together and disposed of by way of this common order.

2.The petitioner has approached this Court seeking the following reliefs:

to issue a writ of certiorarified mandamus to call for the proceedings of the second respondent in Na.Ka.No.01/2012/A dated 02.05.2013 and quash the same and consequently direct the first and second respondents herein to appoint the petitioner as sanitary worker in Karamadai Town Panchayat.

and

to issue a writ of certiorarified mandamus to call for the proceedings of the second respondent in Na.Ka.No.21/07 dated 11.06.2007 and quash the same and consequently direct the respondents to reinstate the petitioner as sanitary worker with continuity of service.

2.In W.P.Nos.23282 and 23283 of 2013, the petitioner is challenging the appointment of the third respondent(s) as sanitary worker in town panchayat. According to the petitioner, he was originally appointed as sanitary worker at Karamadai Town Panchayat on 16.05.2007. However, within a matter of one month, his appointment was cancelled for administrative reasons. Except stating administrative reasons, nothing specific has been spelt out in the cancellation order. After being terminated from service, he has been approaching the authorities concerned for his appointment and according to the petitioner, he was assured that he would be given due consideration of appointment in due course. Therefore, he was awaiting favourable orders from the authorities.

3.In the meanwhile, some four persons were appointed, being sponsored by the employment exchange, as sanitary workers in 2007. Whenever the petitioner approached respondents 1 and 2, he was told that he would have to await his turn. The petitioner belongs to Scheduled Caste community. Since no positive action was forthcoming, the petitioner submitted a representation on 13.01.2011 to the second respondent and he in turn had recommended the name of the petitioner for his appointment whenever any future vacancy arises. The petitioner was also sponsored by employment exchange.

4.In spite of the fact that the petitioner was second senior most person having been sponsored by the employment exchange not given employment since the date of cancellation of his original appointment in 2007, the petitioner was constrained to approach this Court in W.P.No.19142 of 2012 seeking to quash

the proceedings of the second respondent dated 11.06.2007 the date on which his original appointment came to be cancelled with the consequential prayer for his reinstatement. The writ petition is admitted and it is still pending before this Court.

5.While matter stood thus, the second respondent was attempting to fill five more vacancies of sanitary worker in 2013 by proceedings dated 10.04.2013. The petitioner was called to attend the interview. In the list sponsored by the employment exchange, the petitioner's name was found second in the position in respect of the Scheduled Caste candidates. Person at Sl. No.1 in the list one T.Thiyagarajan did not attend the interview and as a result of which, the petitioner became the sole eligible candidate for being appointed as sanitary worker in the Scheduled Caste category.

6.As he was awaiting posting order from the second respondent, the petitioner was shocked to find that the impugned order was issued on 02.05.2013 by appointing the third respondent as sanitary worker in respect of each of two writ petitions herein overlooking the claim of the petitioner herein. In the said circumstances, the petitioner has filed two writ petitions in W.P.Nos.23282 and 23283 of 2013, challenging the appointment of two private persons, who are arrayed as third respondent, as sanitary workers.

7.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the first respondent and Mr.V.Jayaprakash Naraynan, learned counsel entered appearance on behalf of the second respondent and filed counter affidavit. In the counter affidavit, it is stated that when the appointment committee had duly selected the third respondent in both the writ petitions under O.C. Non-priority General Category and therefore, they have not selected the petitioner, who belongs to Scheduled Caste category. According to them, those persons have been appointed and are still working.

8.Mr.N.Balamuralikrishnan, learned counsel appearing for the petitioner would submit that the third respondent in both the writ petitions (W.P.Nos.23282 and 23283 of 2013) are brothers and sons of the panchayat employee and they have managed to get themselves appointed by adopting illegitimate means and in exclusion of the right of the petitioner for the said appointment. Since both of them are brothers and happened to be the sons of the employee of the panchayat, the appointment committee was influenced and the appointment orders were issued to them.

9.When the writ petitions were taken up for hearing today, it is submitted by the learned counsel for the petitioner that

there are several vacancies in the same Karamadai Town Panchayat in the post of sanitary workers and since the petitioner belongs to Scheduled Caste category, he can be considered for appointment. This fact of availability of vacancies has not been disputed by the official, who is present in Court to assist the learned Special Government Pleader. Since the petitioner has been unjustly denied his employment since 2007 though he was originally came to be appointed vide order dated 16.05.2007, in the fitness of things, this Court is of the view that respondents 1 and 2 should be directed to appoint the petitioner as sanitary worker in any one of the existing vacancies at Karamadai Town Panchayat. This order is passed in view of the fact that the third respondent in both the writ petitions are appointed and have been working since 2013.

10.Although the petitioner has made out a case for interference in the impugned orders passed by the second respondent in appointing the third respondent in both the writ petitions, however, for reasons stated above, without disturbing their appointment, respondents 1 and 2 are directed to appoint the petitioner as sanitary workers within a period of four weeks from the date of receipt of a copy of this order.

11.With these directions, W.P.Nos.23282 and 23283 of 2013 are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.In view of the order passed in these writ petitions, the other writ petition filed by the petitioner in W.P.No.19142 of 2012, challenging the order of cancellation dated 11.06.2007 is closed as no orders are necessary. No costs.

सत्यमेव जयते
Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

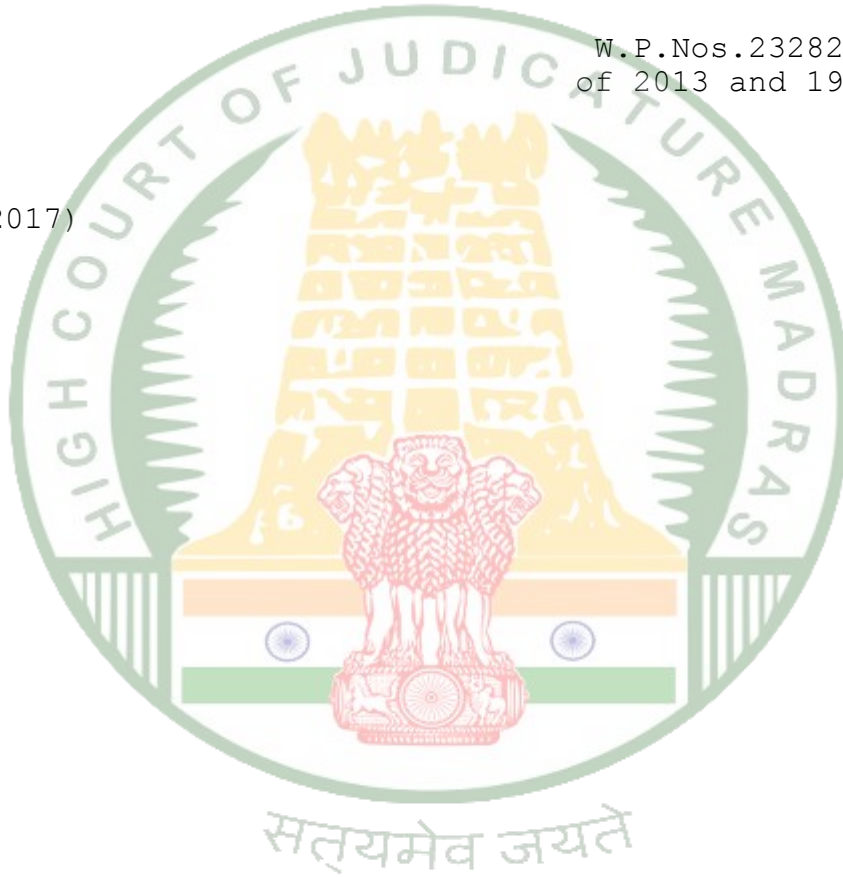
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2. The Executive Officer,
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Coimbatore.

+2cc to Mr.V.Vijayashankar, Advocate Sr. 69793
+1cc to Mr.S.Kadarkarai, Advocate Sr. 70253
+1cc to the Government Pleader, Sr. 70707
+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr. 71006

W.P.Nos.23282 and 23283
of 2013 and 19142 of 2012

AR(V)
VR(10/10/2017)



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