

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.13495 of 2013

K.R.Sudhakar

...Petitioner

Versus

- 1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai 600 009.
- 2.The State of Tamil Nadu
Rep. by the Secretary of Government,
P & AR (P) Department, Fort. St. George,
Chennai 600 009.
- 3.The Special Commissioner &
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai 600 005.
- 4.The District Collector,
Vellore District,
Vellore.

.. Respondents

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Writ of Certiorarified Mandamus to call for the records of the 4th respondent in ref. No.Na.Ka.pa A2/8537/2012, dated 04.10.2012 and quash the same and consequently direct the respondents to fill up the existing and future vacancies according to the petitioners qualification, as per the benefit given in G.O.Ms.No.246, P&AR (P), Department dated 29.08.2004 on par with the similarly placed candidates.

For Petitioner : Mr.K.Mohanamurali
For Respondents : Mr.A.Zakkir Hussain, Govt. Advocate

O R D E R

The petitioner has approached this Court seeking the following relief:

2. The case of the petitioner is as follows:

i) The petitioner was originally appointed to post of Compiler for a fixed period from 06.11.1991 to 30.12.1992 in the office of Regional Deputy Director of Census Operation, Chennai. Thereafter, his service came to be discharged.

ii) It appears that similarly placed persons, who were discharged, approached the Tamil Nadu Administrative Tribunal, Chennai seeking regularisation of their services put in by them. The application filed by those candidates were allowed and as against the same, a special leave petition was filed before the Supreme Court of India. The Supreme Court of India, vide its order dated 28.09.1999 in Civil Appeal No.810 of 1998, was pleased to pass a final order holding that relaxation has to be given to the candidates who were originally appointed for some time in the Census Department. In pursuance of the direction of the Supreme Court of India, the Government has passed an order vide G.O.Ms.No.246, P & AR Department, dated 29.08.2003, in and by which, about 481 retrenched employees of 1991 were absorbed. Similarly placed persons who were left out of any appointment, approached this Court in W.P.No.24771 of 2006 seeking for appointment in any suitable posts in a Department under the State Government. This Court while disposing of the writ petition, has ordered consideration of absorption of those candidates with reference to the qualification, etc. In pursuance of the order passed by this Court, similar orders were issued by the Government in implementing its earlier claim, which was formulated under the Government order G.O.Ms.No.209, P&AR(P) Department, dated 23.11.2001.

iii) While matters stood thus, as far as the petitioner is concerned, he was appointed as Driver by an order dated 29.08.2006 and now working in technical cadre. According to the petitioner, he should have been appointed in Group IV service.

3. In the said circumstances, he submitted a representation for consideration of the appointment in the Ministerial Staff. However, since no action was forthcoming, he approached this Court in W.P.No.20445 of 2010. This Court, vide order dated 14.09.2010, has disposed of the writ petition based on similar matters at para 21, it is stated as follows:

"21. Consequently, if any of the petitioners were not absorbed in the Group IV post, their claim can be considered with reference to their qualification for absorption in the posts which are coming under Group IV,

but, which are not coming under the purview of the Tamil Nadu Public Service Commission. Such exercise should be done within a period of three months from the date of receipt of a copy of this order."

4. Pursuant to the disposal of the writ petition by proceedings dated 04.10.2012, 4th respondent rejected the claim of the petitioner saying that there is no Government Order available for transfer of service from the post of Driver to the post of Junior Assistant etc., The said order is impugned in the present writ petition.

5. Upon notice, Mr.A.Zakkir Hussain has entered appearance for the respondents and filed counter.

6. Mr.K.Mohanmurali, the learned counsel appearing for the petitioner, after adverting to various averments contained in the affidavit filed in support of the writ petition, would specifically draw attention of this Court to the Government Order in G.O.Ms.No.43, Personnel and Administrative Records (Per.B), Department, dated 15.02.1994, in which, it is clearly sated in Para 4 (3) that appointment to the Tamil Nadu Ministerial Service, i.e., the Junior Assistant or Typists, etc. where recruitment can be made from the category of service (Driver in the present case) to the extent of 20%, and the relevant contents of the Government Order is extracted below:

"(3) While making such appointment, it should be ensured that the recruitment by transfer from the lower categories should not exceed 20 percent of the vacancies in each of the categories of Junior Assistants or Junior Assistant-cum-Typists or Typists"

7. The learned counsel would submit that the competent authority failed to consider the claim of the petitioner, in the light of the said G.O. in terms of the above extracted paragraph. Since, the learned counsel appearing for the petitioner would submit that the authorities had not considered the claim of the petitioner in the light of the above said G.O. i.e., above paragraph extracted, there may not be valid objections to issue such direction by this Court.

8. In view of the above, without going into the merits and demerits of the claim of the petitioner, the respondents are directed to consider the claim of the petitioner, in the light of G.O.Ms.No.43, Personnel and Administrative Records (Per.B), Department, dated 15.02.1994 and pass reasoned order within a period of two months from the date of receipt of a copy of this order. While considering the claim of the petitioner, the respondents shall also take into consideration the averments made in support of the writ petition.

With these observations, the writ petition stands disposed of. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

pvs

To

- 1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai 600 009.
- 2.The Secretary to Government
The State of Tamil Nadu
P & AR (P) Department, Fort. St. George,
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- 3.The Special Commissioner &
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai 600 005.
- 4.The District Collector,
Vellore District,
Vellore.

+1cc to Mr.K.Mohanamurali, Advocate Sr. 54194

+1cc to the Government Pleader, Sr. 55054

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GJII(CO)
VR(22/8/2017)