

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.27319 of 2009
and
M.P.Nos.1 of 2009 & 1 of 2010

J.Umapathy
S/o.R.Jeyaraman

... Petitioner

-vs.-

1.The District Collector
Tiruvannamalai 606 604
Tiruvannamalai District

2.The Assistant Director (Audit)
Rural Development and Panchayat Department
Tiruvannamalai 606 604
Tiruvannamalai District

3.The Panchayat President
Vengikal Village Panchayat
Tiruvannamalai 606 604
Tiruvannamalai District

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorarified Mandamus to call for the records relating to the letter in Na.Ka.14367/2009/PE2 dated __.10.2009 on the file of the 1st respondent quash the same and directing the 1st respondent to approve the promotion of the petitioner for the post of Village Assistant in Vengikal Village Panchayat as per the resolution of the 3rd respondent dated 07.03.2008.

For Petitioner : Mr.S.Kumaradevan

For Respondents : Mr.P.Sanjay Gandhi, A.G.P.,

ORDER

The petitioner has come up with the present writ petition seeking to call for the impugned records on the file of the 1st respondent and quash the same and further direct the 1st respondent to approve the promotion of the petitioner for the post of Village Assistant in Vengikal Village Panchayat as per the resolution of the 3rd respondent dated 07.03.2008.

2.The petitioner was originally appointed as Tax Collector on 01.04.1999 and thereafter, he was promoted to the post of Village Assistant on 01.03.2008 vide resolution of the third respondent dated 07.03.2008. However, even without any notice, the petitioner was demoted as Tax Collector from the post of Village Assistant in Vengikal Village Panchayat. Further, the petitioner was directed to pay back the excess amount paid to him as Village Assistant by virtue of the impugned order and the same is under challenge in the present writ petition.

3.Heard Mr.S.Kumaradevan, learned counsel appearing for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondent.

4.Though the petitioner was originally appointed as Tax Collector and thereafter promoted to the post of Village Assistant by virtue of the resolution dated 07.03.2008 passed by the third respondent Panchayat, the petitioner was later demoted as Tax Collector on the ground that the promotion has been granted to the petitioner in violation of G.O.Ms.No.175, dated 05.12.2006. In the impugned order, it has been clearly stated that the petitioner do not possess the requisite qualification [+2] for getting promoted as Village Assistant. Furthermore, the petitioner should not have completed 28 years as on the date of promotion to the post of Village Assistant. However, a perusal of the G.O.Ms.No.175, dated 05.12.2006 would reveal that the age restriction is only applicable to direct appointees and not for the promotes and hence, the order of demotion passed on the ground of age restriction is not sustainable. However, admittedly the petitioner do not possess the requisite qualification [+2] for being promoted to the post of Village Assistant and he has only completed 10th standard. When the aforesaid G.O.Ms.No.175, dated 05.12.2006 clearly contemplates the basic qualification to be +2 for getting promoted as Village Assistant, the petitioner is not entitled to promotion. Therefore, the impugned order is valid on the ground of educational qualification.

5.It is pertinent to note that there was no

misrepresentation on the part of the petitioner while getting promotion as Village Assistant. But only by application of the wrong G.O, the third respondent had promoted the petitioner from the post of Tax Collector to Village Assistant. Therefore, for the mistake committed by the respondents in the absence of any misrepresentation or fraud played by the petitioner, the excess amount paid to the petitioner as Village Assistant cannot be collected from the petitioner. Therefore, the recovery portion in the impugned order is quashed and the demotion from the post of Village Assistant to Tax Collector is held to be valid.

6.Thus, the writ petition is partly allowed to the extent stated above. Consequently, connected miscellaneous petitions are closed. No costs.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

- 1.The District Collector
Tiruvannamalai 606 604
Tiruvannamalai District
- 2.The Assistant Director (Audit)
Rural Development and Panchayat Department
Tiruvannamalai 606 604
Tiruvannamalai District
- 3.The Panchayat President
Vengikal Village Panchayat
Tiruvannamalai 606 604
Tiruvannamalai District

C.C. to M/S.S.Kumara Devan Advocate SR.NO.18215

W.P.No.27319 of 2009

NRI (CO)
VS 24.04.2017