

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

W.P.No.24928 of 2013

M.Kamaraj

.. Petitioner

Vs.

1.The Tahsildar,
Chengam Taluk Office,
Tiruvannamalai District.

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Tiruvannamalai.

3.The District Employment Officer,
Tiruvannamalai.

4.The District Collector,
Tiruvannamalai.

5.R.Indira
Village Assistant

6.Poove
Village Assistant

7.A.Baby
Village Assistant

8.A.Jamseth
Village Assistant

9.Vani
Village Assistant

10.R.Kamakkanan
Village Assistant

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.A3/3103/2012 dated 24.08.2012 quash the same

and consequently direct the 1st respondent to appoint the petitioner as village assistant forthwith.

For Petitioner :Mr.P.Krishnan

For Respondents:Mrs.P.Rajalakshmi
Government Advocate

O R D E R

This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.A3/3103/2012 dated 24.08.2012 quash the same and consequently direct the 1st respondent to appoint the petitioner as village assistant forthwith.

2.The case of the petitioner is that the writ petitioner belongs to Scheduled Caste and he passed 7th standard. Thereafter, he was registered his name in the Employment Office on 27.10.1999 in Registration No.10970 of 1999.

3.It is the further case of the petitioner is that his father viz. Late.Munusamy was employed as Village Servant in the Revenue Department for a period of 30 years. During his service, the petitioner's father was suspended from service from the month of May 1991. The petitioner being the son of the said late.Munusamy has appointed in his place as the Village Menial at Periyakolapadi for a temporary period of three months under the Tamilnadu Village Menials Rules 1980. He was issued with a certificate by the authority concerned of work for a period of one month, though he worked for three months. But, he has not received salary for the remaining period of two months of service. The petitioner's father was died on 09.01.2007, thereafter on 10.04.2007, the 1st respondent Tahsildar, Chengam Taluk, Tiruvannamalai District has sent an interview letter directing the petitioner to attend the interview on 25.04.2007 along with all necessary documents.

4.Though, the petitioner was appeared in the interview before the 1st respondent Tahsildar, but, thereafter he has not received any intimation about the result, whether he selected or not? Since the appointment to be made as per Tamil Nadu Village Servants Rules 1998.

5.Thereafter, after a long period, the petitioner has sent a representation on 30.04.2012, requesting to treat the petitioner's temporary service of three months as village assistant during the year 1991 as the eligibility for appointment of the said post. Since there was no reply from the 1st respondent, after visiting the offices of the respondents on several occasions, this petitioner was forced to approach this

Court and file a writ petition in W.P.No.18181 of 2012 seeking a writ of Mandamus. While pendency of the writ petition in W.P.No.18181 of 2012, the 1st respondent/Tahsildar has considered the petitioner's representation dated 30.04.2012 and passed an order on 24.08.2012 and rejecting the petitioner's request by stating that the 1st respondent / Tahsildar has carefully considered his claim made in the representation dated 30.04.2012.

6.It is further case of the writ petitioner is that when the writ petition in W.P.No.18181 of 2012 is pending, the 1st respondent Tahsildar is expected to wait for the final verdict in the writ petition based on the final action could have been taken. Therefore, in order to make the claim of the writ petitioner has infructuous. The 1st respondent Tahsildar has issued the rejection order dated 24.08.2012.

7.The writ petitioner states that the 1st respondent Tahsildar is fully aware of the list sponsored by the said employment officer and from that he could have been seen whether this petitioner is senior or not? they are the candidates to appear along with the petition, but instead of verifying the same, the 1st respondent has passed arbitrary order by way of rejecting his representation, which is totally arbitrary and not in accordance with law. The writ petitioner also states that the juniors were appointed by the 1st respondent, whereas the petitioner's case was rejected. Therefore, it is made clear that the employment registration live register list will clearly proved the petitioner is the senior and his juniors are appointed as Village Assistant.

8.The writ petitioner also states that the order of the 1st respondent is totally against the natural justice since without giving any personal opportunity to this writ petitioner, the 1st respondent Tahsildar has rejected the claim of the petitioner on 24.08.2012. If the 1st respondent Tahsildar has directing the petitioner to furnish the particulars, the writ petitioner would furnish the same without any delay. Therefore, without avoiding the multiplicity of the proceedings and avoid technical plea, the petitioner sought for relief for the amendment of the petition. While pendency of the writ petition, the 1st respondent Tahsildar has passed the rejection order on 24.08.2012. However, the said writ petition in W.P.No.18181 of 2012 was disposed on 10.07.2013 by giving liberty to the petitioner to challenge the said order dated 24.08.2012 passed by the 1st respondent. Therefore, the petitioner has filed the present writ petition by challenging the order dated 24.08.2012.

9.In the writ petition, this petitioner has raising various grounds particularly as per the Village Assistant Service Rules, the appointment of Village Menial must be belongs to village or nearby village, but this was not followed by the 1st respondent

at the time of conducting the interview on 25.04.2007, since all the persons, who are belongs to other remote villages.

10. Though the petitioner working for three months, but experience certificate has given for only one month and this is the additional qualification in favour of the writ petitioner, since he also working as Village Menial. Though, he worked three months and the same was not considered by the 1st respondent for the reason best known.

11. Though the petitioner is the senior, even in the employment exchange, but the juniors who are register their names after the registration of the petitioner and follows all the persons, who are the juniors of the petitioner are appointed as Village Assistant. The juniors list has stated as follows:

1) Tmt.R.Indira, Melkaviyampalayam, Chengam TK, has registered her name with the said employment office on 30.11.1999. She was appointed on 13.02.2008 and working.

2) Tmt.Poove, Aritharimangalam, got registered on 24.10.2001 with the employment office and appointed on 13.02.2008.

3) Tmt.A.Baby, Thanipadi, registration on 31.05.2001 and appointed on 13.02.2008.

4) A.Jamseth, Millneth Nagar, Chengam registered on 13.02.2007 and appointed on 13.02.2008.

5) Tmt.Vani, registered on 29.11.2000 and appointed on 01.07.2012.

6) R.Kamakkanan, registration on 06.02.2000 and appointed on 13.02.2008."

12. The petitioner also raising another ground by saying that there are vacancies were available in the nearby villages i.e. Kannakurukai and Perumbakkam, to accommodate the petitioner. The appointment made by the 1st respondent, who are all juniors of the petitioner and rejected his request is totally against the natural justice. The purpose and object of such preference was not taken into account, since the persons, who are appointed are belongs to remote village, but, in this case, the same was not taken into account.

13. The petitioner also raising grounds by saying that as per G.O.Ms.No.1156 P and A.R. Dept. dated 04.12.1982, the 1st respondent Tahsildar ought to have appointed the petitioner first, thereafter, only should consider other persons, who are juniors and belongs to other villages. Therefore, the petitioner prays this Court seeking prayer sought for the relief of set aside the impugned order and appoint the petitioner as Village Assistant by the respondent / Revenue Department.

14.No counter affidavit has been filed by the respondents.

15.I heard Mr.R.Krishnan, learned counsel appearing for the petitioner and Mrs.P.Rajalakshmi, learned Government Advocate appearing for the respondents.

16.It is the case of the petitioner is that when the petitioner's father was suspended from service, in his place , the writ petitioner was appointed for a period of three months, whereas the certificate of work has been issued for only one month. Though the petitioner registered his name in the employment exchange on 27.10.1999, having Registration No.10970 of 1999, the private respondents viz., respondents 5 to 10 are juniors of the petitioner were registered their names later, but, they were appointed by the 1st respondent.

17.The respondent has pointed out that as per G.O.Ms.No.1156 P and A.R. Dept. dated 04.12.1982, the petitioner not only the seniority of the private respondents 5 to 10, but the preference also to be given in the above G.O, since the petitioner has pointed out that the respondent should appoint the petitioner as Village Menial.

18.Though the petitioner belongs to Scheduled Caste and only completing VIIth standard, this is only qualification, he has approached this Court, challenging the rejection order by stating that the 1st respondent Tahsildar without following the Rules and also considering the G.O.Ms.No.1156 P and A.R. Dept. dated 04.12.1982, in an arbitrary manner. This is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is made clear that the Village Assistant Service Rules prescribe that the person belonged to the Village or the near by village alone to be appointed as per Rule 7 of the Special Rules for Tamil Nadu Village Servants Service 1998. The very appointment of the private respondents 5 to 10 are totally violating of the Village Assistant Service Rules. But, the appointment of the petitioner juniors were made long back and they are working from the year of 2000. Therefore, their services should not be disturbed. The very rejection of the 1st respondent by way of the impugned order dated 24.08.2012 is total non-application of mind. The 1st respondent Tahsildar Chengam without applying his mind had simply rejected the representation of the petitioner. Therefore, due to non furnishing of the juniors list, the petitioner's request was rejected. The action of the respondents is totally against the principles of natural justice.

19.In the result:

(a) this writ petition is allowed, by setting aside the order passed by the 1st respondent in Na.Ka.A3/3103/2012 dated 24.08.2012;

(b) the 1st respondent/Tahsildar, Chengam Taluk, is hereby directed to call for the name of the petitioner from the 3rd respondent/District Employment Officer, Tiruvannamalai, within a period of 15 days from the date of receipt of a copy of this order;

(c) on receipt of the petitioner's name from the 3rd respondent/District Employment Officer, Tiruvannamalai, the 1st respondent is further directed to consider the case of the petitioner and appoint him as Village Assistant in any one of the village, within a period of eight weeks thereafter. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

- 1.The Tahsildar,
Chengam Taluk Office,
Tiruvannamalai District.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Tiruvannamalai.
- 3.The District Employment Officer,
Tiruvannamalai.
- 4.The District Collector,
Tiruvannamalai.

+1cc to Mr.A.Sivaji, Advocate sr.13380

+1cc to Government Pleader sr.13588

order made in
W.P.No.24928 of 2013

mn (co)
ss (24/10/2017)