



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.253 of 2017
and
C.M.P (MD) .No.2559 & 2560 of 2017

A.Ponnusamy

... Appellant

vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Municipal Administration & Water
Supply Department,
St. George Fort, Chennai - 600 009.
2. The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.
3. The District Collector,
Nagercoil, Kanyakumari District.
4. The Secretary,
Tamil Nadu Public Service Commission,
V.O.C.Nagar, Park Town,
Chennai - 600 003.
5. The Secretary,
Equivalence Committee,
Tamil Nadu Public Service Commission,
V.O.C. Nagar, Park Town,
Chennai - 600 003.
6. The Joint Director of Town Panchayats
Nagercoil Division, Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Writ Appeal is filed under Clause 15 of Letters Patent to call for the records of the order dated 15 December 2016 passed by the learned Judge in W.P(MD).No.22071 of 2015 and set aside the same and allow the writ appeal.



Prayer in WP(MD). 22071/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 4th & 5th respondents to issue equivalency certificate to the petitioner forthwith, in the light of the G.O.Ms.No.528 personnel and Administrative Reforms (PER.R.) Department dt.18.05.1985 and consequently direct the 1st respondent to give promotion by transfer to the petitioner for the post of Junior Assistant, in Town Panchayat, by fixing the petitioners seniority on par with those 5 persons who were promoted by transfer as per G.O.Ms.No.70 Municipal Administration and Water Supply (Town Panchayats) Department, dated 17.06.2014, by considering the representation of the petitioner dated 17/10/2015.

For Appellant : Mr.C.Kishore
For Respondents : Mr.T.S.Mohamed Mohideen,
AGP for R1 to R3
Mr.K.K.Senthil for R4
No appearance for R5 & R6.

J U D G M E N T

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

The unsuccessful writ petitioner is on appeal questioning the order dated 15 December 2016 made in W.P(MD).No.22071 of 2015.

2.The appellant herein is working as Watchman in Attoor Town Panchayat of Kanyakumari District from 03 October 1988. He had completed open university pre foundation course from Madurai Kamaraj University. When vacancies arose in the post of Junior Assistant in Town Panchayats in Kanyakumari District for the year 2005-06 and 2007-08, a list of 7 persons was prepared to fill up the 7 reserved vacancies. The writ petitioner was shown as seventh person in the list. But, ultimately, the promotional transfer for the writ petitioner was withheld on the ground that his qualification of open university pre foundation course of Madurai Kamaraj University was not a qualification equal to 10th standard pass and therefore he was ineligible to be promoted. Aggrieved by the same, he filed the said writ petition.

3.The sixth respondent filed his counter affidavit pointing out that as per G.O.Ms.No.150, Municipal Administration and Water Supply Department, dated 19 August 1998, the lower category staffs working in Town Panchayats such as Record Clerk, Office Assistant, Watchman etc., can be promoted as Junior Assistant / Bill Collector in 20% of the vacancies in Junior Assistant / Bill



Collector cadre in Town Panchayats provided they fulfill the eligibility requirement. One such eligibility requirement was that they should possess minimum qualification ie., 10th standard pass. The writ petitioner could not be considered, because the equivalence committee was yet to finalise the equivalence ie., whether pre foundation course is equivalent to 10th standard pass. Therefore, since the equivalence issue was yet to be decided in favour of the writ petitioner, he could not be considered for the promotion.

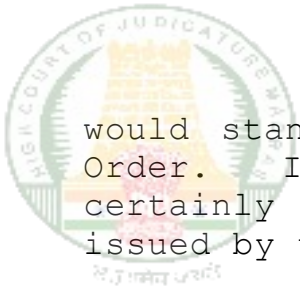
4. Before the learned Judge, the writ petitioner relied on G.O.Ms.No.528, Personnel and Administrative Reforms (P&AR) Department, dated 18 May 1985, in which it has been ordered as follows :

"3. The Government, after careful consideration, direct that the Pre-Foundation Course of the Madurai Kamaraj University - Open University be recognised as equivalent to the 10 years S.S.L.C of the Tamilnadu Government for purpose of entry into Public Services in this State. The Government also direct that the Two years Foundation Course of the Madurai Kamaraj University - Open University be recognized as equivalent to Higher Secondary (+2) course of the Tamil Nadu Government for purpose of entry into Public Services in this State".

5. The learned Judge observed that the contention raised by the writ petitioner appeared to be sound. But, then he proceeded to hold that completion of 10th standard through regular schooling system is a must for promotion. The writ petition came to be dismissed. Aggrieved by the same, this intra Court appeal has been filed.

6. Before us, the learned counsel for the appellant placed reliance on the very same G.O.Ms.No.528, dated 18 May 1985. We find that the said Government Order was issued by order of the Governor by the Government of Tamil Nadu.

7. The learned Special Government Pleader appearing for the respondents placed reliance on the communication of the Principal Secretary to Government, P & AR Department issued vide letter No.23105/M2/2013-1, dated 08 August 2013 and addressed to the Secretary, Tamil Nadu Public Service Commission. It is a well settled principle of law that a communication of the Government issued through a letter cannot over ride the Government Order issued under Article 162 of the Constitution of India. There is something called hierarchy of laws. The constitution is the supreme law. Next would come Acts. That would be followed by Rules. Similarly, a governmental communication or instruction



would stand at a level lower than a formally issued Government Order. In this case, G.O.Ms.No.528, dated 18 May 1985 would certainly prevail over the communication dated 08 August 2013 issued by the Secretary to Government, P & AR Department.

8. We therefore set aside the order dated 15 December 2016 made in W.P.(MD) No.22071 of 2015 and allow this writ appeal and remit the matter to the file of the second respondent. The second respondent shall consider the representation dated 17 October 2015 submitted by the writ petitioner / appellant herein seeking promotion to the post of Junior Assistant. We have already held that the appellant / writ petitioner cannot be said to be not possessing the minimum educational qualification in view of the G.O.Ms.No.528, dated 18 May 1985. The second respondent shall consider the representation dated 17 October 2015 submitted by the writ petitioner and pass order in accordance with law within a period of six weeks from the date receipt of a copy of this order.

9. This writ appeal is allowed as indicated above. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Municipal Administration & Water Supply Department,
St. George Fort, Chennai - 600 009.
2. The Director of Town Panchayat,
Kuralagam, Chennai - 600 108.
3. The District Collector,
Nagercoil, Kanyakumari District.
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V.O.C. Nagar, Park Town,
Chennai - 600 003.



6. The Joint Director of Town Panchayats
Nagercoil Division, Nagercoil,
Kanyakumari District.

+1cc to Spl.Government Pleader Sr.No.65917
+1cc to Mr.K.K.Senthil, Advocate Sr.No.65812
+1cc to Mr.C.Kishore, Advocate Sr.No.66107

SKM/ARUL

VB/MR-KKR/SAR1/27.07.2017/5P/10C

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