



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.02.2017

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 35 of 2017
and
C.M.P. (MD) No. 412 of 2017

The Executive Officer,
Udangudi Town Panchayat,
Tuticorin District.

.. Appellant
Respondent

Vs.

P. Jaisankar

... Respondent /
Petitioner

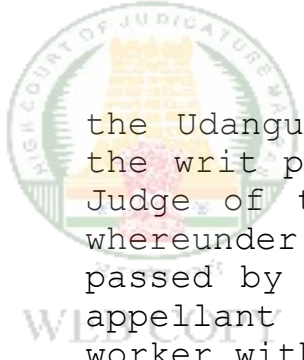
Writ Appeal has been filed under Clause 15 of the Letters Patent Act, against the order dated 27.09.2016, made in W.P.(MD). No.17755 of 2016 by a learned Single Judge of this Court.

Prayer in WP(MD). 17755/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the Respondent in Na.Ka.No.281/15 dated 04.08.2016 and to quash the same and consequently direct the respondent to reinstate the petitioner into service as sanitary worker with all consequential and other attendant benefits.

For appellant	: Mr.N.S.Karthikeyan, Additional Government Pleader
For respondent	: Mr.G.Sankaran

JUDGMENT



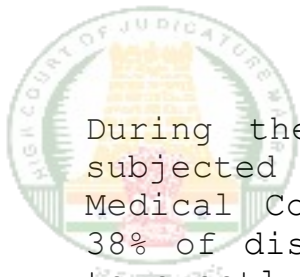
the Udangudi Town Panchayat, Tuticorin District / respondent in the writ petition against the order passed by the learned Single Judge of this Court in W.P.(MD).No.17755 of 2016, whereby and whereunder the learned Single Judge set aside the impugned order passed by the appellant herein dated 04.08.2016 and directed the appellant to reinstate the respondent into service as Sanitary worker with all consequential benefits.

2. The case of the respondent before the learned Single Judge is that he belongs to Backward Community and is a B.Sc. graduate. He is suffering from Physical Disability of hearing impairment, which has been duly certified by the District Medical Board, Tirunelveli. On 31.07.2007, he was appointed as Sanitary Worker under Disability Quota by the respondent and subsequently, his probation was also declared. While so, due to some appointments were made illegally under PH quota by various Town Panchayats in Tirunelveli, all the persons appointed under PH quota have been referred to the Regional Medical Board on 03.06.2016 for disability test. After verification, the Medical Board certified that the respondent is suffering only 9% of disability. Hence, the respondent was issued with a suspension order on 04.08.2015, as per Rule 5(b) of the Town Panchayat Employees (Discipline and Appeal) Rules, 1988. Challenging the suspension order, the petitioner has filed the writ petition.

3. During the pendency of the writ petition, the respondent was subjected to medical examination before the Dean, DNT Department, Government Medical College Hospital, Tuticorin and after examination, the Dean has submitted a report stating that the percentage of disability of the respondent is 38%. Though the mandatory requirement to get appointment under PH quota is 40%, considering the minor variation, the learned Single Judge has set aside the suspension order passed by the appellant and directed the appellant to reinstate the respondent into service with all benefits, including the attendant benefits. Aggrieved over the same, the present writ appeal has been filed.

3. Heard the learned counsel appearing for both sides and perused the materials available on record.

4. Admittedly, on 21.05.2007 the respondent has been issued with the Physical Disability Certificate by the District Medical Board, Tirunelveli, certifying that he has 40% disability of hearing impairment, based on which, he got employment in the respondent under PH quota. When he was again tested before the Regional Medical Board, Tirunelveli Medical College Hospital, Tirunelveli, the percentage of disability reported was 9%. Based on the same, he was suspended. In the meanwhile, the petitioner sent the respondent to a private hospital and also to Tuticorin Medical College Hospital for disability test, wherein it is assessed that he has disability of 55% and 65% respectively.



During the pendency of the writ petition, again, when he was subjected to disability test before the Dean, Tuticorin Government Medical College Hospital, Tuticorin, it is reported that he has 38% of disability. Thus, it is clear that there is no mechanism to exactly fix the disability of a person and there may be slight variance.

5. According to the appellant, the mandatory requirement to get appointment under PH quota is 40% of disability and the respondent has only 9% of disability and hence, he has been suspended. But, during the pendency of the writ petition, he was subjected to disability test before the Dean, Tuticorin Government Medical College Hospital, Tuticorin, where it is reported that he has 38% disability. Admittedly, the difference is only 2%. Considering the fact that the respondent is aged about 43 years and he has got about 9 years of service under the appellant, the same may not be taken serious note of. The learned Single Judge, considering the same, has set aside the suspension order and directed the appellant to reinstate the respondent with all benefits including the attendant benefits. We do not find any infirmity in the said finding rendered by the learned Single Judge. Thus, the writ appeal deserves dismissal.

6. In the result, this writ appeal dismissed. The appellant is directed to comply with the order passed by the learned Single Judge forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To
The Executive Officer,
Udangudi Town Panchayat,
Tuticorin District.

+1 cc to M/s.F.Deepak, Advocate in SR.No. 6669
+1 cc to M/s.M.Rajarajan, Advocate in SR.No. 6588

gcg
CSL/PM-PN/SAR-II/13.02.2017 : 3P/4C

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06.02.2017