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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.699 of 2017
and
C.M.P(MD) .No.5431 of 2017

M.Suresh Kumar ... Appellant/Petitioner
vs.

1.The Asst. Director (Panchayats)
Municipal Administration and
Panchayat Raj Department,
Sivaganga Region, Sivaganga.

2.The Executive Officer,
Kamuthi Town Panchayat,
Kamuthi.

3.S.Vinodh Kumar,
Health Supervisor,
Kamuthi Town Panchayat,
Kamuthi.

... Respondents/Respondents

Prayer : Writ appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned Judge dated 28 January 2013 in W.P(MD).No.13343 of 2010 filed by the appellant and to allow the writ petition by directing the second respondent to promote the appellant to the post of Health Supervisor from 18.05.2010 and to pay him all consequential benefits.

Prayer in WP(MD) . 13343/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other Writ or Order or in the nature of a Writ calling for the records relating to the order dated 18.05.2010 in Na.Ka.No.215/2010 on the file of the Executive Officer, Kamuthi Town Panchayat, Kamuthi 2nd respondent herein and quash the same and consequently promote the petitioner to the post of Health Supervisor in Kamuthi Town Panchayat.

For Appellant : Mr.S.Arunachalam
For Respondents : Mr.T.S.Mohamed Mohideen
AGP for R1
Mr.N.Dilipkumar for R2.

**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 28 January 2013 in W.P(MD).No.13343 of 2010.

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2.The appellant herein joined Kamuthi Town Panchayat as a sweeper. He completed his probation on 03 May 2009. A vacancy arose in the post of Health Supervisor. The writ petitioner submitted a representation dated 31 May 2010 requesting that he be promoted as Health Supervisor as he completed the pre foundation course.

3.Even though, the writ petitioner joined service on 26 April 2007 and completed his probation on 03 May 2009, the second respondent herein promoted the third respondent Vinodh Kumar, who was admittedly junior to the writ petitioner. The writ petitioner was not even considered. The reason assigned by the second respondent for over looking the writ petitioner's seniority was that the third respondent had a higher educational qualification.

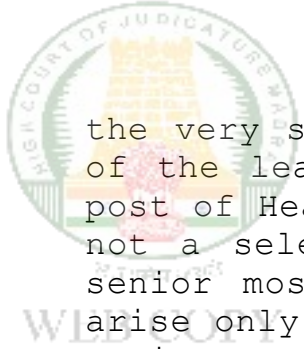
4.The learned Judge agreed with the writ petitioner's contention that the petitioner should be considered as eligible for the post of Health Supervisor in view of G.O.Ms.No.528,Personnel and Administrative Reforms (P&AR) Department dated 18. May 1985. But, the writ petition was dismissed on the ground that Rule 6 of Tamil Nadu Town Panchayat Establishment (Qualification and Recruitment of Office Assistant) Rules, 1988 contemplated that candidates who possess higher educational qualification shall be given preference while making selection to the post of Health Supervisor.

5.The learned Judge observed that the third respondent Vinodh Kumar possessed +2 qualification which is a higher one compared to the educational qualification of the writ petitioner. Aggrieved by the non grant of relief, the present intra Court appeal has been filed.

6.Heard the learned counsel for the appellant as well as the respondents 1 and 2.

7.Though the third respondent Vinodh Kumar was served both through Court as well as privately, he has not chosen to enter appearance. We note that even before the learned Judge, even though a learned counsel filed vakalat for third respondent, he did not appear at the time of hearing.

8.The learned counsel for the second respondent sought to sustain the order passed by the learned single Judge by citing



the very same Rule. We are unable to agree with the contention of the learned counsel for the second respondent. Because, the post of Health Supervisor is not a selection post. When a post is not a selection post, it has to be necessarily filled up by the senior most candidate. The question of giving preference would arise only when all other things are equal. When the appellant is senior to the third respondent, he could not have been overlooked. It is not the case of the second respondent herein that the appellant suffered from any disqualification. It is obvious that the actual reason for not promoting the writ petitioner was that he had completed only pre foundation course at Madurai Kamaraj University and did not possess a regular 10th standard pass.

9. We have seen in several other cases that on the very same ground, promotions were withhold. In the present case, the learned Judge rightly held that G.O.Ms.No.528, dated 18 May 985 would come to the rescue of the writ petitioner. Having rightly come to such conclusion, the learned Judge erred in holding that a person having higher qualification should be given preference for the post of Health Supervisor. Such non selection post will have to be necessarily filled up only by following seniority. It is admitted that the writ petitioner / appellant was senior to the third respondent in the post of sweeper.

10. Therefore, the order impugned in the writ petition is quashed and this writ appeal is allowed by setting aside the order dated 28 January 2013 in W.P.(MD) No.13343 of 2010 and consequently, the second respondent is directed to promote the appellant / writ petitioner to the post of Health Supervisor in Kamuthi Town Panchayat. He shall be placed above the third respondent. His seniority in the post of Health Supervisor shall be determined by the second respondent in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

+1cc to Mr.S.Arunachalam, Advocate, SR.65484

+1cc to Mr.N.Dilipkumar, Advocate, SR.65494

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