



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.6895 of 2017

and

W.M.P. (MD) .Nos.5442 & 5443 of 2017

M.Gopala Krishnan

... Petitioner

Vs.

1. The Executive Officer,
Special Grade Town Panchayat,
North Valliyoor,
Tirunelveli District.

2. The Executive Officer,
Town Panchayat,
Nanguneri,
Tirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 27.02.2017 in Na.Ka.No.230 of 2016 on the file of the 2nd respondent, and quash the same and consequently direct the 2nd respondent to permit the petitioner to engage an Advocate to defend the enquiry proceedings.

For Petitioner : Mr.K.Rajeshwaran

For Respondents : Mr.N.S.Karthikagan

Additional Government Pleader.

ORDER

This Writ Petition has been filed challenging the impugned order dated 27.02.2017 passed by the second respondent and consequential direction to the second respondent to permit the petitioner to engage an Advocate to defend the enquiry proceedings.

<https://hcservices.ecourts.gov.in/Hcservices/> 2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the



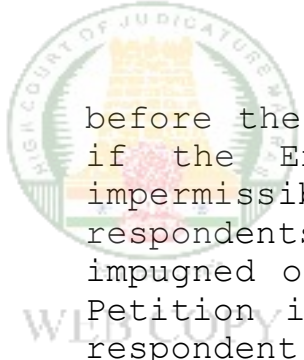
respondents.

3. The petitioner is working as Sweeper in the Town Panchayat of Nanguneri, North Valliyoor. It is the case of the petitioner that the first respondent advertised and called for the post of Sweeper to fill up vacancy. The petitioner was called for interview on 28.07.2011. He was appointed as Sweeper by the order of the first respondent on 28.07.2011 under general category. The petitioner also joined duty on production of certificates and other documents regarding his qualification. However, the petitioner was directed to appear before the Medical Board on 30.12.2015 so as to ascertain his physical disability. This communication indicates that the petitioner got appointment on the basis that he was appointed in the quota meant for handicapped persons. Thereafter, the first respondent initiated disciplinary proceedings and the petitioner was also suspended. A charge memo dated 11.04.2016 was issued and an Enquiry Officer was appointed pursuant to the charge memo. The grievance of the petitioner is that he being a Sweeper and not well-versed with the Enquiry Proceedings, assistance of an Advocate to face the enquiry proceedings should be considered by the respondents. When a request was made by the petitioner before the Enquiry Officer, the Enquiry Officer turned down the request on the ground that it is not permissible as per the Rules. The present Writ Petition is therefore filed challenging the order of Enquiry Officer refusing to permit the petitioner to engage an Advocate.

4. The learned Additional Government Pleader appearing for the respondents produced a copy of G.O.(Ms)No.78, Personal and Administration Reforms (N) Department, dated 06.02.1996. The above Government Order contains an amendment introduced to Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per the amendment to Rule 17 in Sub Rule (b), in Clause (I), after the proviso, the following proviso was introduced.

"Provided further that the Government Servant may take one assistance of any retired Government Servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits."

5. From the amended Rule, it is clear that the inquiring authority has been conferred with a discretionary power to permit the delinquent to engage a legal practitioner to present his case in a case where the inquiring authority is a legal practitioner or in case, the inquiring authority, having regard to the circumstances of the case so permits. Hence, it is the discretion of the Enquiry Officer to decide as to whether the petitioner can be permitted to engage legal practitioner to present his case



before the Enquiry Officer. However, the impugned order reads as if the Enquiry Officer has no such power and that it is impermissible as per Rules. In view of the stand taken by the respondents and the provisions of Rule 17, as amended, the impugned order is liable to be set aside. As a result, the Writ Petition is allowed and the impugned order passed by the second respondent dated 27.02.2017 is set aside. Having regard to the fact that the petitioner is only a Sweeper and other attending circumstances, the second respondent is directed to consider the request of the petitioner to engage a legal practitioner to assist him in the enquiry proceedings, in the manner as provided under the amended Rule 17 (i)(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. Till such time, the Enquiry Officer, namely, the second respondent pass an order on the representation of the petitioner to permit the petitioner to engage a legal practitioner afresh, the Enquiry Officer shall not proceed with the enquiry further. No costs. Consequently, the connected W.M.P.(MD). Nos.5442 & 5443 of 2017 are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Executive Officer,
Special Grade Town Panchayat,
North Valliyoor,
Tirunelveli District.
2. The Executive Officer,
Town Panchayat,
Nanguneri,
Tirunelveli District.

+ 1 CC TO Mr.K.RAJESHWARAN, ADVOCATE IN SR No. 53046

SRM/IA

TE/MMS/SAR-III : 25/05/2017 : 3P/4C

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