

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10340 of 2013

and

M.P.No.1 of 2013

S.Pouchepa

..Petitioner

vs

The Pondicherry Municipality,
Rep.by the Commissioner,
Puducherry.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent to absorb/appoint the petitioner as Data Entry Operator against the vacant post in which the petitioner has been working from the date of appointment on 26.07.2001 with all other consequential benefits.

For Petitioner : Mr.K.Goviganesan

For Respondents : Mr.Stalin Abhimanyu, GA
(Puducherry)

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondent to absorb/appoint the petitioner as Data Entry Operator against the vacant post in which the petitioner has been working from the date of appointment on 26.07.2001 with all other consequential benefits.

2.The grievance of the writ petitioner is that he was appointed to the Post of Office Assistant / Peon. However, he was made to work as Data Entry Operator as the petitioner was possessing the requisite qualifications for the post of Data Entry Operator.

3.The learned counsel for the writ petitioner states that the writ petitioner was appointed on compassionate grounds. The order of appointment issued to the writ petitioner in

proceedings dated 26th July 2001, states that the writ petitioner was appointed in a temporary post of Peon in the Pondicherry Municipality on compassionate ground on a pay of Rs.2,550/- per month in the scale of pay of Rs.2550-55-2660-60-3200.

4. On a perusal of the said appointment order, it is made clear that the writ petitioner was appointed as a Peon on compassionate grounds. This being the factum of the case, the authorities competent cannot extract the work attached to the post of Data Entry Operator, which is higher responsibility. A person, who was appointed in the post of Peon, cannot be allowed to perform the duties of Data Entry Operator, since the same involves higher responsibilities.

5. In the present case, this Court is of an opinion that the authorities competent have exceeded their powers in allowing the writ petitioner to work in the higher posts without paying the salary attached to the post. Certainly, such actions are to be construed as exploitations and it is for the authorities competent to fill up the post by following the recruitment rules in force. If the petitioner is qualified for the post of Data Entry Operator, she can participate in the process of selection and accordingly, her services can be regularized. However, appointing a person in the post of Peon and extracting the work attached to the post of Data Entry Operator is certainly undesirable.

6. It is not as if, the authorities can extract the work contrary to the rules of administration. The persons, who are appointed to a particular post, must be allowed to work in the said post. No doubt, public servants are duty bound to perform all the duties and responsibilities allotted by the higher officials. However, such situations would arise only on certain emergency circumstances and a person appointed as Peon, cannot be allowed to perform the duties of Data Entry Operator for long years continuously without even taking any attempt to fill up the regular post of Data Entry Operator by following the recruitment rules in force.

7. Thus, this Court is of an opinion that public servants are bound to do all the duties. Undoubtedly, the duties and responsibilities allotted by the higher officials are to be performed by the officials. However, the authorities must ensure that such employees are not exploited by allotting them to do the work, which is unconnected to them for a continuous period without filling up the post by following the selection process.

8. The Commissioner, Pondicherry Municipality should conduct an enquiry in respect of the actions of the officials in this regard and if there is any administrative excessiveness or

negligence are found, then suitable disciplinary actions are to be taken against all such officials. All the regular posts are to be filled up only by following the procedures as contemplated under the recruitment rules. Merely because, the petitioner is allowed to work in a particular post without any appointment order, the same will not confer any right for regularization or permanent absorption. If at all, the petitioner is qualified for a particular post, she is eligible to participate in the process of selection along with all other qualified and eligible persons and thereafter, if selected, can be appointed. However, mere continuance in the post of Data Entry Operator for a considerable length of time alone will not confer any right on the writ petitioner to seek regularization or permanent absorption. If such a relief is granted, the right of other eligible persons would be violated. Equal opportunity in public employment is the constitutional mandate. Thus, the process of selection must be conducted by providing opportunity to all the eligible persons as per the rules in force.

9. This being the principles to be followed, the relief of regularization cannot be granted in respect of the writ petitioner as she was already appointed on compassionate ground in the post of Peon and she may be allowed to continue in the said post as per the rules in force.

10. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
The Pondicherry Municipality,
Puducherry.

+1cc to Mr.K.Goviganesan, Advocate, S.R.No. 72767
+1cc to Mr.Stalin Abimanyu, Advocate, S.R.No. 72980
+1cc to the Government Pleader, S.R.No. 72695

W.P.No.10340 of 2013

SS (CO)
GN (02/11/2018)