

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.13132 of 2008

S.Periyasamy

.. Petitioner

Vs

1.The District Collector
Cuddalore District.

2.The Assistant Director of Town Panchayats
Cuddalore Zone Cuddalore.

3.The Executive Officer
Town Panchayat
Mangalampettai, Virudhachalam Taluk
Cuddalore District.

.. Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to grant time scale of pay in the scale of Rs.2550-55-2660-65-3200 and the arrears of salary with effect from November 2006 together with interest at the rate of 12% per annum, to the petitioner and to direct the 3rd respondent to permit the petitioner to work as a scavenger in the 3rd respondent Town Panchayat, peacefully in accordance with law.

For Petitioner : Mr.S.Saravanakumar
For Respondent R1 and R2 : Mr.R.S.Selvam
Government Advocate

For Respondent R3 : Mr.V.Manoharan

ORDER

The petitioner has prayed for Writ of Mandamus, to direct the respondents to grant time scale of pay in the scale of Rs.2550-55-2660-65-3200 and the arrears of salary with effect from November 2006 together with interest at the rate of 12% per annum, to the petitioner and to direct the 3rd respondent to permit the petitioner to work as a scavenger in the 3rd respondent Town Panchayat, peacefully in accordance with law.

2.The case of the petitioner is that he being an Hindu Adi Dravida Community and studied up to III standard and know to read and write in Tamil, he was appointed as a scavenger in Mangalampettai Town Panchayat in the year 1998 on daily wages basis and working there for 2 years and in the beginning of the year 2007, he was appointed as a scavenger in the same Town Panchayat again on daily wages basis and he was working there for two months. The petitioner also registered his name in the Employment Exchange on 15.12.1997 under registration No.12981 of 1997. As per the sponsorship of employment exchange, the petitioner was called for, for an interview by the 3rd respondent office vide proceedings in Na.Ka.No.A1/225/2006 dated 16.03.2007. The petitioner alleged that the 3rd respondent at the time of interview has forced him to sign in a blank paper, which was filled in later as if his employment will be regularized since he having experience in the field of scavenger. The petitioner would also submit that the signed blank paper was only a representation requesting to regularize his service. Hence, under the bonafide impression and the assurance given by the 3rd respondent that his service will be regularized he has signed in the blank paper but to his shock and surprise, the 3rd respondent utilized the blank paper and filled up the same as if due to his illness, he cannot work further and he did not want to continue the job. For the reasons best known to the 3rd respondent, he has appointed other persons, who are juniors to the petitioner in the employment exchange seniority and also some new persons in the said post of Scavenger, thereby depriving him the right to get an appointment on the ground of seniority.

3.The petitioner would also submit that the vacancy aroused due to retirement of staff, the 3rd respondent was taking steps to hold General body meeting of the Council to pass a resolution on 31.05.2007 and the petitioner immediately made a representation on 11.05.2007 to the 2nd respondent seeking to consider his grievances taking into consideration of his previous services in the said Panchayat but there was no response. In the General Body Meeting held on 31.05.2007, the 3rd respondent passed a resolution that the names of suitable persons will be invited from the employment exchange to fill up the post of Scavenger arouse due to retirement.

4.The petitioner would further submit that he was under the bonafide belief that he would be regularized in the said job, but his juniors were appointed in the said post, hence he filed W.P.No.25734 of 2007 praying to consider his representation by the District Collector and this Hon'ble Court by order dated 31.07.2007 directed the District Collector, Cuddalore District to consider his representation dated 12.05.2007 and pass appropriate orders on merits within six weeks.

5. Further the petitioner would submit that since there was no response from the respondents, the petitioner had sent a Legal Notice to the 2nd respondent on 28.03.2008 calling upon him to pass the orders as per the Court orders. The 2nd respondent in his letter no. ROC. NO.275/2008/TP2 dated 21.04.2008 has passed the following order: "With reference to the notice 1st cited, I am to state that one Thiru S.Periyasamy who was working as sanitary worker on consolidated pay was brought into time scale of pay of Rs.2550-55-2660-65-3200 in Mangalampettai Town Panchayat vide reference 2nd cited (Copy enclosed). This is for your information". Based on the said letter, he came to know that his services has already been regularized with effect from the month of November 2006. Hence, as per the said order the 3rd respondent ought to have given him the time scale of pay from the month of November 2006 and allowed him to work in a permanent post of Scavenger. But to his dismay the 3rd respondent did not allow him to work and did not even pay his salary. Hence, the petitioner filed this Writ Petition as he has no other remedy.

6. Heard both sides and perused the available records and the copy of the order dated 26.11.2010 made in W.P.No.5627 of 2009 produced by the learned counsel for the 3rd respondent.

7. On perusal of the order made in W.P.No.5627 of 2009, it is seen that the petitioner has prayed for a similar relief as follows:

"Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records relating to the first respondent in Roc.No.275/2008/TP2 dated 17.10.2008 more particularly the minutes of the interview dated 28.03.2007 held for the appointment of Scavenger by the 2nd respondent with specific reference to the petitioner replies alleged to have been recorded with the petitioner's signature and marks purported to have been awarded and to quash the impugned order dated 17.10.2008 in Roc.No.275/2008/TP2 and also directing the 2nd respondent to appoint the petitioner as Scavenger/Sweeper in Mangalampet Town Panchayat."

The said Writ petition was dismissed by this Court.

8. On going through the above order produced by the learned counsel for the 3rd respondent, this Court finds that interview was conducted by the committee appointed for a selection for the post of Scavenger in the Panchayat. It is seen from the mark sheet assessed by the appointment committee that the petitioner had secured 8 marks out of 20 and the respondents

3 and 4 in W.P.No.5627 of 2009, namely, Manimegalai and Jayaprakash have secured 16 and 19 marks, out of 20, respectively. The petitioner has not given correct answers for many questions and for the right answers, marks were awarded and for incorrect answers no marks were given.

9. In the order passed by this Court in W.P.No.5627 of 2009, this Court observed as follows. "In the impugned order passed by 1st respondent, it was categorically stated that there was no record available to show that the petitioner was employed on daily wages basis in the 3rd respondent Municipality. The petitioner has also not produced any documentary evidence such as experience certificate before this Court to prove his employment. Since the interview was conducted in a fair and transparent manner, this Court is reluctant to grant any relief in favour of the petitioner. The petitioner had participated in the interview and could not be selected since he had secured lesser marks than the marks secured by the respondents 3 and 4 therein. Hence, the non-selection of the petitioner cannot be said to be arbitrary or illegal and the 1st respondent has also considered the above aspects and passed the detailed order rejecting the claim of the petitioner". Regarding the order issued by the 3rd respondent for regularization of the services of the petitioner, it is stated that the same has been inadvertently done by the said officer concerned and one Mr.N.Periyasamy, son of Nadesan who has been working in Mangalampettai Town Panchayat, has to be regularized, but instead of his name, it has been wrongly mentioned as S.Periyasamy, son of Chellamuthu. Regarding such mistake committed by the officer, the departmental proceedings have been initiated against the said officer for his negligence.

10. It could also be seen that the enquiry was conducted by the Collector on 17.10.2008, wherein the statement of the petitioner was also taken into account and he was also enquired personally. It could also be seen that the Collector had perused all the records pertaining to the interview conducted on 28.03.2007 and found that no evidence was available in the file to establish that the Executive Officer had obtained the signature of the individual in blank white sheet and turned it against the welfare of the individual, and convinced about the proceedings of the Appointment Committee. The Collector also observed that since, no adverse remarks have been produced by the petitioner against the Executive Officer, it was inferred that the individual has tried to black mail the Executive Officer. The Collector also came to the conclusion that the Appointment Committee minutes are in order and the claim of the petitioner has been rejected. Hence, the Collector has rejected the request made in the representation of the petitioner dated 11.05.2007.

11. Based on the above materials and the detailed dismissal order passed in W.P.No.5627 of 2009 regarding this issue, this Court come to the conclusion that the petitioner's claim does not deserve any consideration since no materials are produced that he has worked in Mangalampettai Town Panchayat and the prayer for appointment to the post of sweeper cannot be granted.

12. Accordingly, this Writ Petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector
Cuddalore District.
2. The Assistant Director of Town Panchayats
Cuddalore Zone Cuddalore.
3. The Executive Officer
Town Panchayat
Mangalampettai, Virudhachalam Taluk
Cuddalore District.
4. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.V.Manoharan, Advocate, S.R.No.74170

सत्यमेव जयते

W.P.No.13132 of 2008

KS (CO)
GSP (16/11/2018)

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