

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.07.2018
CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.778 and 779 of 2017
and
C.M.P.Nos.10815 & 10816 of 2017

- 1.The Secretary to the Government of Tamil Nadu,
The Municipal Administration and Water Supply Department,
Fort St. George, Chennai.
- 2.The Director of Town Panchayat,
Chepauk, Chennai - 5.
- 3.The District Collector,
Dharmapuri District, Dharmapuri.
- 4.The Assistant Director of Town Panchayats,
Office of the Assistant Director of Town Panchayats,
Dharmapuri, Dharmapuri District.
- 5.The Executive Officer,
B-Mallapuram Town Panchayat,
Boomidi Post,
Pappireddipatti Taluk,
Dharmapuri District - 635 301.

... Appellants in both the Appeals

versus

M.Jayabal

...Respondent in W.A.No.778 of 2017

1.S.Veeramani

2.P.Santhosh Kumar

...Respondents in W.A.No.779 of 2017

PRAYER in W.A.No.778 of 2017:

Appeal filed against the order passed by this Court dated
07.10.2016 made in W.P.No.16759 of 2015.

W.P.No.16759 of 2015:-

Writ Petition filed under Article 226 of the Constitution of
India, to issue a Writ of Mandamus directing the respondents to
appoint the petitioner who was appointed on compassionate

grounds as sweeper in the 5th respondent office; as a Junior Assistant from 6.9.2012 in accordance with G.O.Ms.No.1499 Labour and Employment (Q1) Department dated 3.8.1989 with consequential benefits.

PRAYER in W.A.No.779 of 2017:

Appeal filed against the order passed by this Court dated 07.10.2016 made in W.P.No.16758 of 2015.

W.P.No.16758 of 2015:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing Directing the respondents 1 to 5 to provide deemed appointment to the petitioner who is presently working as sweeper right from his appointment on compassionate grounds in the 5th respondent office; as a Junior Assistant from 28.2.2007 the date on which similarly qualified 6th respondent was subsequently appointed on compassionate ground as Bill Collector with consequential benefits.

For Appellant : Mr.V.Jayaprakash Narayanan,
Special Government Pleader
in both the Appeals.

For Respondents: Mr.M.Purushothaman
in both the Appeals.

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in these appeals is to the order of the learned Single Judge made in W.P.Nos.16758 and 16759 of 2015 dated 07.10.2016, in and by which, the Writ Petitions filed by the respondents were allowed directing the 1st appellant to appoint the respondents as Junior Assistants from the date of order i.e., 07.10.2016.

The facts that led to the filing of the Writ Petitions are as follows:-

2. The petitioner in W.P.No.16758 of 2015/ 1st respondent in W.A.No.779 of 2017 was appointed as a Sweeper on compassionate ground on 24.01.2007 in the Office of the Executive Officer, B-Mallapuram Town Panchayat. The said appointment on compassionate grounds was made taking into account the death of the father of the 1st respondent viz., R.Singaram while in service on 07.10.2006. Though the petitioner was qualified to be appointed as a Junior Assistant since he had passed XII Standard he was appointed only as a Sweeper.

3. The case of the 1st respondent in W.A.No.778 of 2017/ petitioner in W.P.No.16759 of 2015 is also similar, inasmuch as he was also appointed as a Sweeper on 06.09.2012 in the office of the Executive Officer, B-Mallapuram Town Panchayat on compassionate grounds since his father T.Madhu who was working as Sweeper in the office of the Executive Officer, B-Mallapuram Town Panchayat had died on 29.01.2011. He was also qualified to be appointed as a Junior Assistant on the date of his original appointment viz., 06.09.2012, since he had also passed XII Standard and has completed Diploma in Teacher Education.

4. Claiming that they are entitled to be appointed as Junior Assistants or any equivalent post since they were qualified for such higher posts, the petitioners/ 1st respondent in the respective appeals had come forward with the above Writ Petitions seeking issuance of a Writ of Mandamus directing the respondents to appoint the petitioners as Junior Assistants from the date of their original appointment viz., 24.01.2007 and 06.09.2012 respectively. In order to substantiate their claim, they had relied upon G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989.

5. The Writ Petitions were resisted by the respondents contending that in view of the G.O.Ms.No.206 Municipal Administration and Water Supply Department dated 02.11.1995, only the legal heirs of persons who have worked as Record Clerk, Office Assistant and Night Watchman can be considered for compassionate appointment as Junior Assistants, if they possess required educational qualification. Inasmuch as the deceased Government Servants were working as Sweepers which are non-provincialised posts, the legal heirs cannot claim compassionate appointment as Junior Assistants or any other equivalent posts. It is claimed that the legal heirs of persons who were working as Sweepers are not entitled for appointment as Junior Assistants/ Bill Collectors even though they are qualified for the said posts in view of the provisions of G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 02.11.1995. The learned Single Judge who heard the Writ Petitions concluded that the classification made has no reasonable basis and in fact this Court in W.P.No.19932 of 2008 had held that the provisions of G.O.Ms.No.206 dated 02.11.1995 can only be taken as a guidance and it cannot be restricted to the non-provincialised posts which are mentioned in the said G.O.

6. The said judgment of this Court in W.P.No.19932 of 2008 dated 15.06.2011 was relied upon and followed in W.P.No.29845 of 2011 dated 03.09.2013. Even in the said judgment this Court had held that the posts mentioned in the G.O. Viz., Night Watchman, Office Assistant, Record Clerk are only indicative in nature and it does not exclude the other lower posts. Following the

aforesaid judgment of this Court, the Writ Petitions filed by the 1st respondents in these appeals were allowed directing the appellants to appoint the 1st respondent in both the appeals as Junior Assistants from the date of the order in the Writ Petitions i.e., 07.10.2016. It was also made clear that the 1st respondent will not be entitled to any back wages except service benefits like continuity of service for the purpose of determination of retirement benefits. Aggrieved the Government has come forward with the above appeals.

7. We have heard Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the appellants in both the Writ Appeals and Mr.M.Purushothaman, learned counsel for the 1st respondent in both the Writ Appeals.

8. During the course of arguments in the Writ Appeals it was brought to our notice that the Government has not challenged the earlier orders of this Court made in W.P.Nos.29845 of 2011 and 19932 of 2008 and the said orders have been implemented. In view of such factual statement we had required the appellants to file an affidavit indicating the vacancies in the post on Junior Assistants in the office of the 5th respondent as on the date on which the respective respondents were given appointment on compassionate basis. In compliance with the aforesaid order passed by us on 11.06.2018, the Director of Town Panchayat viz., the 2nd appellant has filed a detailed affidavit. Paragraph 31 and 32 which are relevant, read as follows:

"31. It is submitted that as on 24.01.2007, the date of joining into service by S.Veeramani, S/o. Late R.Singaram, the 1st respondent in W.A.No.778 of 2015/ petitioner in W.P.No.16758 of 2015, there was one post of Junior Assistant and 2 posts of Bill Collector, vacant.

32. It is submitted that as on 11.09.2012, the date of joining into service by M.Jayabla, S/o. Late T.Madhu, the respondent in W.A.No.778 of 2017/ petitioner in W.P.No.16759 of 2015, there was one vacancy to the post of Bill Collector and there was no vacancy to the post of Junior Assistant."

9. The main contention of Mr.V.Jayaprakash Narayanan, learned Special Government Pleader is that as per G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 02.11.1995, the posts of Sweeper, Record Clerk, Office Assistant and Night Watchman are non-provincialised posts, therefore, as a special case the Government had directed appointment of

dependents of employees who were working as Record Clerks, Office Assistants, Night Watchmen who died in harness can be appointed as Junior Assistants or Typists depending on the qualification after obtaining consent from the Tamil Nadu Public Service Commission.

10. It is the further contention of the learned counsel that except the three categories mentioned in G.O.Ms.No.206 viz., Record Clerk, Office Assistant and Night Watchman, the children of employees working in other non-provincialised posts like Sweeper cannot be appointed in the provincialised posts of Junior Assistants, Bill Collectors or Typists which are required to be filled up through the Tamil Nadu Public Service Commission. He would further submit that the Tamil Nadu Public Service Commission has refused consent for appointment of children of non-provincialised employees working in the posts other than Record Clerks, Office Assistants and Night Watchmen to the provincialised posts like Junior Assistant, Bill Collector or Typist which are required to be filled up thorough the Tamil Nadu Public Service Commission.

11. Per contra Mr.M.Purushothaman, learned counsel appearing for the 1st respondent in both the Writ Appeals would contend that this Court had atleast in two cases viz., in W.P.Nos.19932 of 2008 and 29845 of 2011 held that the mentioning of the name of the posts in G.O.Ms.No.206 could only be taken as indicative and not exhaustive. If the dependents of non-provincialised employees holding the post of Office Assistant or Night Watchman could be appointed in the provincialised posts viz., Junior Assistant or typist or Bill Collector, we see no reason to deny such benefits to the dependent of other employees holding such non-provincialised posts like that of Sweeper, even though they are qualified, this would in fact amount to discrimination.

12. We are in agreement with the views of the learned Single Judge as expressed in Writ Petitions referred to supra to the effect that the mentioning of the names of the posts is only indicative and not exhaustive. We therefore, see no reason to interfere with the order of the learned Single Judges particularly when the appellants themselves have conceded the fact that there were vacancies in the posts of Junior Assistants and Bill Collectors on the dates when the 1st respondent in each of the appeals were appointed as Sweepers. Once the fact that the 1st respondent in each of the appeals is qualified to be appointed as Junior Assistant or as a Bill Collector, we don't see any reason as to why they should be denied the post that will commensurate with their qualification.

13. In fact, the learned Single Judge has directed that the 1st respondent in each of the Writ Appeals should be appointed to

the higher posts only from the date of the order in the Writ Petition. Therefore, we see no reason to interfere with the directions issued by the learned Single Judge. The Writ Appeals fail and they are accordingly dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

- 1.The Secretary to the Government of Tamil Nadu,
The Municipal Administration and Water Supply Department,
Fort St. George, Chennai.
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Boomidi Post,
Pappireddipatti Taluk,
Dharmapuri District - 635 301.

+1cc to Mr.M.Purushothaman, Advocate, S.R.No.43326

+1cc to the Government Pleader, S.R.No.43597

W.A.Nos.778 and 779 of 2017

BS(CO)
CS/23/07/18