

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos. 21905 and 21906 of 2016
and

W.M.P.Nos.18751, 18752, 18753 and 18754 of 2016

W.P.No.21905 of 2016

M.Velmurugan

.. Petitioner

Vs

1. The District Treasury Officer,
Vellore.

2. The Sub Treasury Officer,
Arakkonam,
Vellore District.

3. The Director of Treasuries and Accounts
Government of Tamil Nadu,
Chennai.

4. The District Employment Officer
Vellore.

.. Respondents

W.P.No.21906 of 2016

सत्यमेव जयते

V. Elumalai

.. Petitioner

Vs

1. The District Treasury Officer,
Vellore.

2. The Director of Treasuries and Accounts,
Government of Tamil Nadu,
Chennai.

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3. The District Employment Officer,
Vellore.

.. Respondents

Prayer in both W.Ps.:— Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order dated 09.06.2016 made in Na.Ka.350/2016/A2 passed by the 1st respondent, quash the same as ultra vires and consequentially direct the 1st respondent to reinstate the petitioner in the same post or some other similar post with all other attendant benefits.

In both W.Ps.

For Petitioners : Mr. K.Muruganantham

For Respondents : Mr. D.Suryanarayanan
Additional Government Pleader

COMMON ORDER

There are two Writ Petitions filed, one by Mr.M.Velmurugan and another by Mr.V.Elumalai, challenging the same and identical order dated 09.06.2016 passed by the first respondent/The District Treasury Officer, Vellore, removing the petitioners from service citing a single reason that they were all appointed contrary to G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department, dated 08.04.2010.

2.As per G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department, dated 08.04.2010, the first respondent was directed to follow the priority to women candidates while making appointments to the post of Office Assistant. Since the petitioners were wrongly appointed in the posts reserved for women candidates, their appointments were cancelled by the impugned orders dated 09.06.2016. Assailing the impugned orders, learned counsel appearing for the petitioners would submit that both Mr.M.Velmurugan and Mr.V.Elumalai have registered their names in the District Employment Exchange and waited for sponsorship for suitable employment. After the Registration, Mr.M.Velmurugan was issued with Registration No.VLD2012M00026646, on 28.06.2012 and Mr.Elumalai was issued with Registration No.VLD1995M00004930 on 27.06.1995 by the District Employment Officer, Vellore. Thereafter, the first respondent requested the District Employment Officer, Vellore, to sponsor suitable eligible candidates for the post of office assistant as they were all lying vacant in the office of the 1st respondent. In response to the request made, the District

Employment officer, Vellore, has sponsored the names of the petitioners and accepting the sponsorship, both petitioners were appointed for the post of Office Assistant. Mr. M.Velmurugan was appointed as Office Assistant along with Tmt.S.Asha and V.Elumalai vide proceedings in Na.Ka.23825/12/A2, dated 29.10.2013 and after sometime, Mr.M.Velmurugan was posted as Office Assistant in the office of the Sub Treasury Officer, Arakkonam, Vellore District, from 06.11.2013 onwards. Thereafter, they have also completed their probationary period and the post of Mr.M.Velmurugan was confirmed on 06.11.2014 and the post of Mr.V.Elumalai was confirmed on 18.11.2014 and the names were also entered in the Time Service Register and they were paid Time Scale of pay vide Na.Ka.1528/A1/2013, dated 26.11.2014 with a pay scale of Rs.4800 -10000. After completion of a period of more than three years, the District Treasury Officer, Vellore/1st respondent herein issued a letter dated 18.02.2016 questioning the correctness of their appointments stating that both the appointments were made in violation of G.O.Ms.No.55, Personnel and Administration Reforms (S) Department dated 08.04.2010. The said letter also informed the petitioners that the roster method was not followed and they were wrongly appointed in the posts reserved for women candidates. Therefore, both of them were issued with show cause notices as to why their appointments should not be cancelled within 7 days.

3. Learned counsel appearing for the petitioners submitted that both the petitioners have submitted a detailed representation on 12.04.2016 to the 1st respondent/District Treasury Officer, Vellore making it clear that they were no way connected to the wrong appointment proceedings and when they were all sponsored through the District Employment Officer, Vellore, the first respondent ought to have properly processed their sponsorship and they should have followed the Government Order in G.O.Ms.No. 55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 at the time of receiving the sponsorship letter from the District Employment Officer, Vellore. Without verification of the above said G.O.Ms.No.55 and the roster system, the first respondent appointed both the petitioners as Office Assistants and allowed them to complete probationary period and even after confirmation of the probationary period, they cannot be dismissed from service without conducting proper enquiry and only after issuance of the letter dated 18.02.2016, their services were terminated without following the principle of natural justice and the Rules in force. Therefore, the impugned orders terminating their services even after completing the probationary period without following any procedure is liable to be quashed.

4. Learned counsel appearing for the petitioners would further submit that the first respondent, at the time of considering the sponsorship from the District Employment Officer, Vellore, in the light of G.O.Ms.No.55, rightly appointed the candidates, following the roster system. Had the District Employment Officer, Vellore, sponsored their names to any other department or any establishment, the petitioners would not have lost their seniority in the Employment Exchange. Now, they lost their seniority position in the District Employment Office as they have been wrongly terminated from service. Therefore, the impugned orders are liable to be set aside.

5. A counter affidavit has been filed by the District Employment Officer, Vellore, supporting the stand taken by the petitioners. The District Employment Officer, Vellore, in his counter, stated that on receipt of a request letter from the District Treasury Officer, Vellore, both the petitioners' names viz., Mr.M.Velmurugan and Mr.V.Elumalai were sponsored on the basis of the seniority as Mr.M.Velmurugan having registered his name on 20.06.1991 comes under SC category whereas Mr.V.Elumalai got registered his name on 27.06.1995 comes under MBC category. Therefore, when there were three vacancies viz., 1) for OC Non-Priority-1, 2) for Scheduled Caste Priority-1 and 3) for Most Backward Class, Non-Priority-1, as per the Notification issued by the District Treasury Officer, Vellore, bearing R.C.No.23825/2012/A2, dated 03.10.2013, both Mr.M.Velmurugan and Mr.V.Elumalai ought not to have been disturbed because they could have been accommodated in the second vacancy viz., in the Scheduled Caste category and in the third vacancy viz., Most Backward Class category. Moreover, the appointment made by the first respondent shows that as per the vacancy Notification under OC Non-Priority category, the petitioners were appointed and not under the OC Non-Priority category and they could have been considered only under the Priority category. Therefore, there is no need for passing the impugned orders of removal.

6. The counter affidavit filed by the Director of Treasuries and Accounts, Chennai, shows that in the light of the G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010, the second respondent/Director of Treasuries and Accounts came to the conclusion that the 5th turn has been allotted for general turn non-priority Women and 7th turn has been allotted for MBC/DC priority women. Since the Treasury Officials have failed to see the correct turn as per the above said G.O.Ms.No.55 and after correcting the records, it was found that both petitioners were appointed in the place of women candidates. Therefore, after giving reasonable opportunity, the petitioners' appointment was terminated on 09.06.2016, and the officers, who were responsible for the erroneous appointment were also taken to task and charge memo

under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been issued against Thiru.R.Narayanan, former Treasury Officer, Vellore and now Chief Accounts Officer (Retd.,) Annamalai University. In addition to that, one Mr.S.Perumal Murthy, former Additional Treasury Officer/Treasury Officer (In-charge) (retd.), District Treasury, Vellore and Tmt.V.Pushpa, former Superintendent, District Treasury Office, Vellore, now Assistant Accounts Officer, Office of Adi Dravidar Welfare, Vellore, were also departmentally proceeded with. It shows that for the alleged wrong committed by various officials, actions have been taken. Therefore, the writ petitions challenging the impugned orders, on the ground that the petitioners were terminated with mala fide intention cannot be accepted.

7.This Court is unable to find any merit in the impugned orders nor in the counter affidavit filed by the second respondent/Director of Treasuries and Accounts. Firstly, it must be noted that Mr.M.Velmurugan, has registered his name in the Employment Exchange on 20.06.1991 as SC candidate and similarly Mr.V.Elumalai has registered his name on 27.06.1995 as MBC candidate and when the District Employment Officer, Vellore, was requested by the first respondent/District Treasury Officer, Vellore, to sponsor the names of eligible candidates for three posts of Office Assistant viz., 1) OC Non-Priority-1, 2) Scheduled Caste Priority-1 and 3) Most Backward Class, Non-Priority-1, Mr.M.Velmurugan, who was sponsored by the District Employment Office, Vellore, could have been appointed rightly in the second vacancy as a candidate coming under Schedule Caste Priority-1. Similarly, Mr.V.Elumalai, who was also sponsored by the District Employment Office, could have been appointed in the third vacancy as a candidate coming under Most Backward Class, Non-Priority-1. While so, it is not known as to why the District Treasury Officer, at the time of appointing the petitioners, failed to see these crucial factors.

8. Secondly, it is not known as to why the first respondent kept quiet for almost three long years from the date of appointment of both petitioners. After the completion of almost three long years, the first respondent/District Treasury Officer, has taken action against the petitioners which is wholly unjustified. The impugned orders also failed to assign any reason as to whether both the petitioners were appointed against the roster system. Moreover, there was no proper enquiry held. Had there been a fair enquiry held, the petitioners would have been able to establish the fact that Mr.M.Velmurugan was appointed in the Schedule Caste Priority vacancy and Mr.V.Elumalai was appointed in the Non-Priority vacancy meant for Most Backward Class. Therefore, this Court is not able to find any valid reasons to support the impugned orders.

Therefore, for all these reasons, both the impugned orders dated 09.06.2016 are set aside and both the writ petitions are allowed. The first respondent is directed to reinstate both the petitioners in service with all back wages, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

mrn

To

- 1.The District Treasury Officer,
Vellore.
2. The Sub Treasury Officer,
Arakkonam,
Vellore District.
3. The Director of Treasuries and Accounts,
Government of Tamil Nadu,
Chennai.
4. The District Employment Officer,
Vellore.

+1 cc to The Government Pleader, SR.No.87930,87931
+1 cc to Mr.K.Muruganantham, Advocate SR.No.88515

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