

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.9.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.Nos.1846 to 1849 of 2018  
and

C.M.P.Nos.14781 to 14787 of 2018

1. The State of Tamil Nadu,  
rep. By its Secretary,  
Rural Development and Panchayat  
Raj Department,  
Fort St. George, Chennai-9.
  2. The Commissioner/Director of  
Rural Development,  
Panagal Building, Saidapet,  
Chennai-600 015.
  3. The District Collector,  
Kanchipuram District at  
Kanchipuram. .... Appellants in all the  
four appeals
- Versus
- R.Vasumathi .... Respondent in WA 1846/2018
- G.Radhika .... Respondent in WA 1847/2018
- P.Jayachitra .... Respondent in WA 1848/2018
- C.Suthakaran .... Respondent in WA 1849/2018

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 27.6.2017 passed in W.P.Nos.16074 to 16077 of 2017 on the file of this court.

Prayer in W.P.No.16074 of 2017:

Writ Petition presented under Article 226 of the Constitution of India seeking a Writ of Mandamus to direct the respondents to forthwith consider the claim of the petitioner

for absorption as Junior Assistants / Computer Assistants in any of the existing vacancies with all consequential service benefits thereto by allowing them to take part in the ab+ suing Special Qualifying Test to be held pursuant to G.O.Ms. No. 37 Rural Development and Panchayat Raj (E5) Department dt 22.3.2017 and by publication of the results thereto.

For appellants : Mr.P.S.Sivashanmugasundaram,  
Special Government Pleader

For respondents : Mr.L.Chandrakumar

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for the appellants and Mr.L.Chandrakumar, learned counsel, who takes notice on behalf of the respondents.

2. The writ appeals have been filed by the State challenging the order passed by the learned Single Judge directing the appellants to consider the representations of the writ petitioners for allowing them to take part in the ensuing special qualifying test for the post of Junior Assistant as notified in G.O.(Ms.) No.37, Rural Development and Panchayat Raj Department dated 22.3.2017, taking note of their continuous employment and pass appropriate orders positively within a period of four weeks from the date of receipt of copy of that order.

3. It appears that the respondents herein, having been sponsored by District Employment Exchange, were appointed as Computer Assistant in Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREG Scheme) on contract basis under consolidated pay vide proceedings Rc.No.10178/2008/PA3 dated 22.7.2008 of the District Collector, Kancheepuram. It further appears that the respondents herein possess the qualification of Diploma in Computer Applications apart from other qualification of graduation. Whiles, by issuance of G.O.(Ms.) No.37, Rural Development and Panchayat Raj (E5) Department, dated 22.3.2017, the Government had decided to absorb 906 Computer Assistance out of 1791 post sanctioned, by way of Special Qualifying Test to be conducted by the Tamil Nadu Public Service Commission. Overlooking and non-inclusion of the names of the respondents

herein by the authorities, in the list of candidates, who would be allowed to participate in the Special Qualifying Test to be conducted is the grievance of the respondents herein.

4. The stand taken by the appellants in the cases on hand is two fold, one being that the respondents, though sponsored by the employment exchange, were appointed as Computer Assistants under the MGNREG Scheme only on contract basis and by outsourcing method, under consolidated pay, considering the exigencies prevailing by then and therefore, they cannot be treated equivalent to the regular employees and the other being they do not possess the requisite qualification of Degree in Computer Application as prescribed in G.O.(Ms) No.153, Rural Development and Panchayat Raj (CGS-I) Department, dated 20.10.2006.

5. In this regard, the learned counsel appearing for the respondents has brought to the notice of this court the decision of a Division Bench in Writ Appeal No.1594 of 2017 dated 28.11.2017 in a similar circumstance, wherein it has been observed in para 18 of the judgment as under:-

"18. Going through the G.Os extracted supra, and having regard to the method of selection, and continuation of the respondents, as computer assistants, for ten years, we are of the view that the directions of the writ court, to consider the representations of the respondents, for allowing them to take part in the ensuing special question post (sic. test) for the post of Junior Assistant, as notified in G.O.(MS) No.37, Rural Development and Panchayat Raj Department dated 22.3.2017, cannot be said to be manifestly illegal. Having worked for ten years as computer assistants on consolidated pay, under the ten Government Orders, which permitted outsourcing, they cannot be allowed to stand apart from those who were appointed through employment exchange. Expectation of a person who had worked for long number of years on consolidated basis, in the case on hand, for ten years, to get absorbed, after competing with others, cannot be said to be illegitimate. In fact at paragraph No.3 of G.O.Ms.No.37, Government have considered the request of one time relaxation of reservation."

6. What is noted in the above judgment is that expectation of a person who had worked for long number of years on consolidated basis, like in the case on hand for ten years, to get absorbed, after competing with others, cannot be said to be illegitimate. It is further seen from the judgment of the Division Bench that in para 8 the said G.O. the Government has stated that the Computer Assistants are to be absorbed as Junior Assistants by conducting a special qualifying test by TNPSC in the posts already sanctioned under MGNREGS only, to follow rule of reservation and hence, if the MGNREG Scheme stopped, the measures to be taken under MGNREGS will also be applicable to the Computer Assistant who are to be absorbed as Junior Assistants and that the vacancies arising out of absorbing the Computer Assistant as Junior Assistants should not be filled through outsourcing and the work may be continued to be discharged by the Junior Assistants as they are already trained in Computer.

7. In the case on hand, the stand of the appellants is that the respondents do not possess the requisite qualification of degree in Computer Applications. Whereas, it is an indisputable fact that the respondents do possess Diploma in Computer Applications and they had already put in ten long years of service as Computer Assistants on consolidated pay as against the requisite service experience of five years. In such circumstances, it is high time for the Government to re-consider the issue by treating the Diploma in Computer Applications equivalent to the Degree in Computer Applications as one time measure for permitting the respondents to take part in the special qualifying test so that they cannot be left in lurch, especially, when the Government had already decided that the vacancies arising out of absorption of the Computer Assistants as Junior Assistants should not be filled through outsourcing.

8. In such view of the matter, we do not find any error or illegality in the order passed by the learned Single Judge. Accordingly, the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

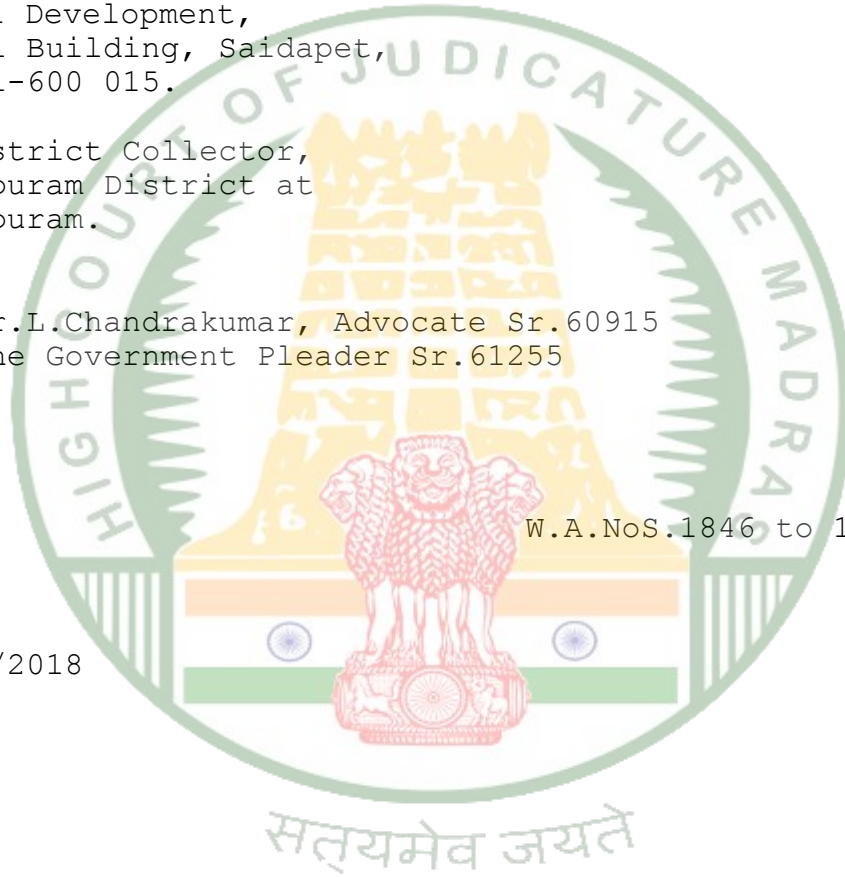
To:

1. The Secretary,  
The State of Tamil Nadu,  
Rural Development and Panchayat  
Raj Department,  
Fort St. George, Chennai-9.
2. The Commissioner/Director of  
Rural Development,  
Panagal Building, Saidapet,  
Chennai-600 015.
3. The District Collector,  
Kanchipuram District at  
Kanchipuram.

+4cc to Mr.L.Chandrakumar, Advocate Sr.60915  
+1cc to the Government Pleader Sr.61255

W.A.NoS.1846 to 1849 of 2018

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