

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.5517 of 2012
and
WMP.No.16297 of 2017

K.Sabapathy

.. Petitioner

Vs.

1. The Director of School Education,
College Road,
Chennai.
2. The District Educational Officer,
Kancheepuram.
3. The Head Master,
Government Girls Higher Secondary School,
Uthiramerur,
Kancheepuram District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint the petitioner in the post of Office Assistant by way of transfer with all monetary and service benefits.

For Petitioner : Mr.M.Muthappan

For Respondents : Mrs.M.E.Raniselvam
Addl. Govt. Pleader

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to appoint the petitioner in the post of Office Assistant by way of transfer with all monetary and service benefits.

2. The case of the petitioner is that he was working as Night Watchman in Government Girls Higher Secondary School, Uthiramerur from 10.2.1988 and he is aged 51 years. He pleads that he finds it difficult to perform night duties and he is qualified for appointment to the post of Office Assistant by way of transfer. The Special Rules for the Tamil Nadu Basic Service also provides that the Night Watchman, Sweeper, Gardener can be appointed as Office Assistant by transfer and the petitioner was fully qualified to hold the post of Office Assistant under the said Rule.

3. The second respondent filed counter stating that G.O.Ms.No.745, Fin (Ze-BAG) Department, dated 22.9.1995 provides that Office Assistant posts can be filled only after getting exhaust orders from the Collector concerned. As per G.O.No.128 Fin (Ze-Bag) Department, dated 21.2.2006, the ratio of Office Assistant attached to the Officers/Ministerial Staff was revised as 12:1. Even by applying the said formula, no eligible vacancy has occurred. It is stated that even though the Service Rules permit transfer of persons in Class IV to Class III posts, it could not be implemented due to the fact of non-availability of eligible Office Assistants vacancies by applying the ratio of 12:1. The exhaust list of surplus Office Assistants was not yet received from the District Collector, Kancheepuram and no eligible vacancy has arisen by applying the ratio of 12:1. Therefore, the prayer of the petitioner could not be complied with at present.

4. It is further stated that as and when the exhaust list of surplus Office Assistants is received and eligible vacancies arise, the prayer of the petitioner will be considered as per

conditions laid down in the rules. It is also stated in the counter that earlier the petitioner himself permanently relinquished the promotional post of Record Clerk.

5. I heard Mr.M.Muthappan, learned counsel for the petitioner and Mrs.M.E.Raniselvam learned Additional Government Pleader for the respondents and also perused the materials available on record.

6. The grievance of the petitioner is that since he worked for 24 years as Night Watchman, now he finds difficult to perform night watchman work and therefore, he prayed that he should be appointed as Office Assistant by transfer of service. In support of the said grievance, the learned counsel for the petitioner relied upon the Special Rules for the Tamil Nadu Basic Service.

7. It appears that the Special Rules for the Tamil Nadu Basic Service provide for transfer of persons from Class IV as per the amendment issued in G.O.Ms.No.374, P & AR Department, dated 22.10.1993. Since the said Government Order has not

been implemented for the past several years, some individuals have filed W.P.No.15825 of 2007.

8. By an order dated 18.6.2007 in W.P.No.15825 of 2007, this Court directed the Director of School Education to consider the representation of the petitioners therein. Pursuant to the orders of this Court, the Director of School Education obtained orders from the Government and issued instructions to transfer 11 petitioners therein working in Vellore District as Office Assistants, provided they satisfy the following conditions:

"(1) As per provisions in the Tamilnadu Basic Service, they should have passed III Form or E.S.L.C.

(2) Services in class IV post should have been regularised.

(3) They should have served in Class IV post more than a year."

9. There cannot be a different yardstick, when the Rule itself provides for appointment by transfer from Class IV posts. In such circumstances, the case of the petitioner ought to have

been considered in the light of the statutory provisions without insisting for any specific orders from the Government, subject to availability of vacancy.

10. In W.P.No.6011 of 2010, dated 22.1.2011 (*G.Sankar v. The Secretary to Government, Education Department and others*), the request of the petitioner therein, who was working as Night Watchman, for appointment to the post of Office Assistant in Aringnar Anna Municipal Boys High School, Chengalpet was rejected by the respondent authorities. This Court, by an order dated 22.1.2011, while setting aside the order of rejection, directed the Director of School Education to consider the representation of the petitioner therein. The operative portion of the order reads thus:

"14. In view of the above the impugned order is liable to be set aside and accordingly set aside. The Director of School Education, Chennai, Second respondent is directed to consider the representation of the writ petitioner dated 16.11.2009 and pass appropriate orders, within a period of six weeks from the date of receipt of a

copy of this order. While considering the representation of the writ petitioner, the second respondent is directed to take note of the orders passed earlier in R.C.No.38063-A5-E1-2007-3, dated 22.1.2008, and orders of this Court in W.P.No.15825 of 2007, dated 18.6.2007. No costs. Consequently, connected Miscellaneous Petitions are also closed."

11. In the case on hand, the petitioner submitted a representation on 15.09.2011, followed by a reminder representation dated 02.03.2012 and the same were not considered by the respondent authorities. The petitioner is a similarly placed person in W.P.No.15825 of 2007, dated 18.06.2007 and W.P.No.6011 of 2010, dated 22.01.2011 and the benefits given therein should also be extended to him. As stated supra, there cannot be a different yardstick, when the Rule itself provides for appointment by transfer from Class IV posts. A sympathetic view may be taken considering the fact that he is at the verge of retirement and he has all along served as a Night Watchman with an unblemished service record.

12. In view of the above, the writ petition is disposed of by directing the respondent authorities to consider the representation of the petitioner dated 02.03.2012 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. While considering the representation of the petitioner, the respondent authorities are directed to take note of the orders passed by this Court in W.P.No.15825 of 2007, dated 18.06.2007 and W.P.No.6011 of 2010, dated 22.01.2011; the age of the petitioner, as also the services rendered by him as Night Watchman for nearly 30 years. No costs. Consequently, WMP.No.16297 of 2017 is closed.

08.06.2018

Note: Issue order copy on 12.06.2018

vs

Index : Yes

Internet : Yes

Speaking order

WEB COPY

To

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College Road,
Chennai.
2. The District Educational Officer,
Kancheepuram.
3. The Head Master,
Government Girls Higher Secondary School,
Uthiramerur,
Kancheepuram District.



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M.V.MURALIDARAN, J.

vs



Pre-delivery order made in
W.P.No.5517 of 2012
and
WMP.No.16297 of 2017

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