

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1483 of 2013 &
M.P.No.1 of 2013

1.The District Collector
Kanniyakumari District
at Nagercoil

2.The Commissioner
Melpuram Panchayat Union
Kanyakumari District.

... Appellants/Respondnts 1 & 2

Vs.

1.C.Ashok Kumar

... Respondent/Petitioner

2.The President
Maruthencode Panchayat
Mauthencode P.O.
Kanyakumari District.

...2nd Respondent/3rd Respondet

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 26.11.2009 made in W.P.No.12332 of 2000, under Artic 226 of the Constitution of India praying to issue a Writ of mandamus direction the response to regularise the services of the petitioner as water supply assistant in Maruthangode Panchayat with all other attendant benefits.

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader
For Respondents : No appearance

J U D G M E N T

[Order of the Court was made by K.K.SASIDHARAN, J.]

The writ petition filed by the first respondent for regularisation of his service was allowed by the learned Single

Judge. The order is under challenge at the instance of the State.

2. We have heard the learned Additional Government Pleader on behalf of the appellants. None appeared on behalf of the respondents.

3. The first respondent filed the writ petition in W.P.No.12332 of 2000 with a contention that he was appointed as a Water Supply Assistant by the Board of Maruthancode Panchayat with effect from 01 October, 1999 and he has been working continuously without any break. According to the first respondent, he is entitled to be regularised in the post of Water Supply Assistant.

4. Before the writ court, the appellants 1 and 2 filed separate affidavits contending that there was no sanctioned post of Water Supply Assistant. According to the appellants, the first respondent was engaged on daily wages as a Water Supply Assistant, without there being any recruitment rule. It was contended that as there was no post of Water Supply Assistant sanctioned for Maruthancode Village Panchayat, the first respondent is not entitled for regularisation.

5. The learned Single Judge, taking into account the contention taken by the first respondent, issued a mandamus directing the appellants to regularise his services.

6. There is nothing on record to show that the first respondent was appointed against a sanctioned post. Even according to the first respondent, his father donated land to the local body, subject to the condition that he should be given appointment. The then President of Maruthancode Village Panchayat appears to have appointed the first respondent on daily wages. The question of regularisation would arise only in case the appointment was against a sanctioned post. The first respondent has no case that there was a sanctioned post of Water Supply Assistant and he has been working ever since his appointment against such sanctioned post. The fact that the first respondent was working from 30 September, 1999 would not give him a right for regularisation unless there is a Government Order directing the regularisation of such employees. There was no order quoted by the learned Single Judge in the matter of regularisation of Water Supply Assistants who were appointed without there being a substantive post. We are, therefore, of the view that the learned Single Judge was not correct in regularising the services of the first respondent.

7. The order dated 26 November, 2009 is set aside. The writ petition in W.P.No.12332 of 2000 is dismissed.

8. We make it clear that this order would not prevent the first respondent from taking advantage of any other Government Order directing regularisation of similarly situated employees.

The intra court appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

gms

To

1.The District Collector
Kanniyakumari District
at Nagercoil

2.The Commissioner
Melpuram Panchayat Union
Kanyakumari District.

+1cc to Government Pleader SR.No.13227

GJII (CO)
GN (14/03/2018)

W.A.No.1483 of 2013

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