

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30-08-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.2635 of 2018

L.Saravanan

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
For St. George,
Chennai-600 009.
2. The Commissioner/Director of Rural
Development and Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai-600 015.
3. The District Collector,
Nilgiris District,
Tamil Nadu.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to promote the petitioner as Junior Assistant by appointment by transfer as against 10% vacancy reserved for Panchayat Secretary/Office Assistant by including the name of the writ petitioner in the panel of Junior Assistant for the year 2011-2012 with all consequential notional benefits.

For Petitioner : Mr.V.Suthakar

For Respondents : Mrs.A.Sri Jayanthi,
Special Government Pleader.

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to promote the writ petitioner as Junior Assistant by appointment by transfer as against 10% vacancy reserved for Panchayat Secretary/Office Assistant, by including the name of the writ petitioner in the

panel of Junior Assistant for the year 2011-2012 with all consequential notional benefits.

2. The learned counsel for the writ petitioner states that the post of Office Assistant is an Ex-cadre post in Village Panchayat Establishment and the writ petitioner is working as Office Assistant in Village Panchayat. The writ petitioner was initially appointed as Office Assistant on 6.9.1996 at Naduvattam Town Panchayat, Nilgiris District through Employment Exchange and thereafter, on 30.1.1997, the writ petitioner was transferred to Jekkanarai Town Panchayat.

3. The learned counsel for the writ petitioner states that as per G.O.Ms.No.75, Municipal Administration and Water Supply Department, dated 10.3.1999, the Government took a policy decision to convert and downgrade twenty three Town Panchayats in the State of Tamil Nadu as Village Panchayat and one such Panchayat was Jekkanarai Town Panchayat, Nilgiris District.

4. The grievance of the writ petitioner is that he is possessing S.S.L.C. qualification and as per the Special Rules for Tamil Nadu Ministerial Service governing the Panchayat Department 10% of vacancy of Junior Assistants are reserved for Record Clerk, Office Assistant, Night Watchmen, who have put in not less than seven years of regular service. Similarly, 10% of the vacancies are reserved for Full Time / Part Time Panchayat Assistants. The writ petitioner has already completed seven years of service as Panchayat Assistant. However, the claim of the writ petitioner for promoting him to the post of Junior Assistant has not been considered at all.

5. The learned counsel for the writ petitioner states that the junior to the writ petitioner has already been promoted as Junior Assistant and now he is further promoted to the post of Assistant and served in the very same District.

6. It is stated as per G.O.Ms.No.75, Municipal Administration and Water Supply Department, dated 10.3.1999, the employees of Town Panchayat will become employees of Village Panchayat, by virtue of down gradation. As per G.O.Ms.No.29, Personnel and Administrative Reforms (B) Department, dated 10.4.2015, including a proviso viz., Group Clkerk-cum-Bill Collector, who were initially working in Town Panchayat in Kanniyakumari District and subsequently, working in Village Panchayats in Kanniyakumari District due to down gradation and discharging the duties of Part Time / Full Time Panchayat Clerk shall be treated on par with Regular Part Time / Full Time Panchayat Clerk and considered for appointment as Junior Assistant as against 10% of vacancy reserved for Part Time / Full Time Panchayat Clerk. This being the Government Orders in the South, the case of the writ petitioner has to be considered.

7. The learned Special Government Pleader, appearing on behalf of the respondents, opposed the said contentions of the learned counsel for the writ petitioner, by stating that when the writ petitioner is not eligible for promotion to the post of Junior Assistant and the Government Orders cited in the writ petition, are not applicable. The District Collector, Nilgiris District, in his counter affidavit categorically enumerated the scope of the Government Orders, as follows:

"4. The averments made in paras 8 to 10 of the affidavit with regard to the educational qualification of the petitioner, proposal sent to the Government for appointing him as Junior Assistant against 10% vacancy reserved in the Panel of Junior Assistants for the year 2011-2012 and for concurrence to the Tamil Nadu Public Service Commissioner are all admitted. But, the proposal was rejected by the second respondent vide his Letter R.C.No.87140/2012/B23 dated 21.04.2015 on the premise that the G.O.(Ms.) No.240, Rural Development and Panchayat Raj Department (E5), dated 7.9.2000 is not applicable to the Office Assistants working in Village Panchayats."

8. The grounds narrated by the respondents are also extracted hereunder:-

"(a) In the Nilgiris Rural Development Unit, no incumbent, who was initially working as Record Clerk in any of the downgraded Town Panchayat has been appointed as Junior Assistant at any Village Panchayat.

(b) The contention of the petitioner that one of his junior K.Belliraj was not only appointed as Junior Assistant, but also further promoted as Assistant is fallacious and misconstrued.

(c) The G.O.(Ms.) No.75, Municipal Administration and Water Supply (Elect.) Department, dated 10.3.1999, has further been clarified by G.O.(Ms.) No.125, Municipal Administration and Water Supply (Elect.) Department, dated 27.5.1999 that the Service Benefits of all Non Provincialised Employees, who were transferred to Village Panchayats would be protected in all respects. But, the claim for promotion of these Non Provincialised Employees are governed by G.O. (Ms.)

No.240, Rural Development and Panchayat Raj (E5) Department, dated 7.9.2000.

(e) The G.O.(Ms.) No.29, Personnel and Administrative Reforms (B) Department, dated 10.4.2015, deals with the specific case of the "Group Clerks-cum-Bill Collectors of Village Panchayats in Kanniyakumari District". The said G.O. does not apply to the case of the petitioner.

(f) The petitioner is working in the cadre of Office Assistant and not as Panchayat Assistant at Melur Village Panchayat. He is only considered as Office Assistant.

(g) The Rules do not provide for appointment of the petitioner as Junior Assistant. Therefore, the contention of the petitioner that there is no impediment to consider his case for appointment as Junior Assistant is not sustainable.

(h) In the Rural Development Unit of the Nilgiris District, no Record Clerk worked in the downgraded Town Panchayat has been considered for appointment to the post of Junior Assistant to the exclusion of the petitioner. Therefore, the contention of the petitioner that he has been discriminated by rejecting his case for appointment as Junior Assistant cannot be countenanced.

(i) The petitioner has worked as Office Assistant at Melur Town Panchayat. After degrading Melur Town Panchayat, all the employees worked there were absorbed as employees of Melur Village Panchayat. For availing the benefit of G.O.(Ms.) No.240, dated 7.9.2000, an incumbent in the cadre of Office Assistant should have worked at Panchayat Union or Head Quarters such as Collectorate, District Rural Development Agency (DRDA) etc. Therefore, the contention of the petitioner is misconstrued."

9. Considering the facts and circumstances of the case, this Court is of an opinion that the Government Orders, cited by the writ petitioner, are not applicable to the case of the writ petitioner. However, the learned counsel for the writ petitioner states that the junior to the writ petitioner has already been promoted as Junior Assistant. If that is case, the representation submitted by the writ petitioner also shall be

considered in the light of the Government Orders and as per the Rules in force.

10. However, the writ petitioner has not impleaded all those juniors in the writ petition. This apart, the Government Orders referred to in the writ petition are inapplicable in respect of the facts and circumstances of the case of the writ petitioner is concerned. This being the factum of the case, the writ petitioner has not made out any acceptable ground for the purpose of grant of relief, as such, sought for, in the present writ petition.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
For St. George,
Chennai-600 009.
2. The Commissioner/Director of Rural
Development and Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai-600 015.
3. The District Collector,
Nilgiris District,
Tamil Nadu.

+1cc to Mr.V.Suthakar, Advocate, S.R.No.59740
+1cc to the Government Pleader, S.R.No.60104

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rrs 10/09/2018