

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.08.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.15468 of 2008

and

M.P.No. 1 of 2008

M. Dhanalakshmi

..

Petitioner

Vs

1. State Government of Tamil Nadu,
Municipal Administration and
Water supply,
Represented by its Secretary,
Chepauk, Chennai-5.

2. The Commissioner,
Municipal Administration,
Ezhilagam, Chennai-600 005.

3. The Commissioner,
Udumalpet Municipality,
Coimbatore District.

Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent impugned order dated 10.12.2007 bearing Na.Ka.No.4035/2007/C1 and quash the same and further direct the Third Respondent to absorb the petitioner as an employee in the entry level post in conformity with the provisions of G.O.Ms.No.125 dated 27.05.1999 and G.O.Ms.21 dated 23.02.2006 in the Third Respondent Municipality.

For Petitioner : Mr.P.Haribabu

For Respondents : M/S. Thangavadhana Baladrishnan
Additional Government Pleader
for R1 and R2
Mr.P.Srinivas for R3

ORDER

This Writ Petition is filed by the petitioner, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent impugned order dated

10.12.2007 bearing Na.Ka.No.4035/2007/C1 and quash the same and further direct the Third Respondent to absorb the petitioner as an employee in the entry level post in conformity with the provisions of G.O.Ms.No.125 dated 27.05.1999 and G.O.Ms.21 dated 23.02.2006 in the Third Respondent Municipality.

2. The case of the petitioner is that from 15.01.1995 to 31.03.1997, she was worked as an NMR in the third respondent Municipality as Section Writer cum ICS Bill Collector on daily wages basis and received salary up to March 1997. On 01.04.1997, the petitioner was relieved from the service as ICS Bill Collector without issuing any order of termination and assigning any reasons. The petitioner came to know about the G.O.No.125 passed by the Tamil Nadu State Government and approached the third respondent Municipality on several occasions to absorb her in the entry level post under the third respondent Municipality.

3. The petitioner would submit that, as per the said G.O. No.125 the NMR employees worked under various Municipalities and Town Panchayats and Chennai Corporation were to be regularized in the services and the first respondent has given direction to the various Municipalities and Town Panchayats to regularize the services of the persons, who were employed as NMR in respect of the Village Panchayats on or before 31.12.1996 and in respect of the Municipalities, persons who were employed on or before 01.10.1996 and as per the said G.O., the petitioner is entitled to be regularized in the vacant post available in the concerned Municipality at entry level post. In spite of the G.O. being issued by the Government, and the petitioner is entitled to be regularized, the second and third respondents have not chosen to regularize the petitioner's service as NMR from 15.01.1995 till 31.03.1997.

4. The petitioner would also submit that as there was a ban on recruitment on entry level post, the G.O. No.125 was kept in abeyance and by G.O.Ms.No.14 dated 07.02.2006, the above ban on entry level appointment was lifted. Hence, there is no impediment to absorb the petitioner by the Municipality as permanent employee at the entry level post on the basis of the G.O.Ms.No.125.

5. The learned counsel would further contend that the first respondent had issued G.O.Ms.No.12 dated 23.02.2006 directing the Municipal commissioner to appoint the employees on consolidated pay, whose names were found in the daily wages register as on 01.10.1996 - subject to the following conditions.

- (i) availability of sanctioned post
- (ii) persons fulfilling all educational and other qualification.

From the said G.O, it is also clear that the first respondent

has strictly advised the appointing authorities not to appoint any person on daily wages or on consolidated pay in the Municipalities and in Municipal Corporation in future.

6. The petitioner would further contend that as per the said G.O.Ms.No.21 dated 23.03.2006 he sent several representations and the final representation on 21.03.2007 to the third respondent seeking regularization of her service in conformity with G.O.Ms.No 125 and G.O.Ms.No.21. Even though, the respondents have received the said representations and duly acknowledged the same, have not issued any favorable order, in spite of there being vacancy in the third respondent Municipality and petitioner being qualified and possessed the required qualification in conformity with the above said G.O's.

7. The learned counsel for the petitioner would also contend that since, the petitioners representations were not considered on merits in the light of the G.O.Ms.No.125 and G.O.Ms.No.21 dated 27.05.1999 and 23.02.2006 respectively, the petitioner has filed a Writ Petition in W.P.NO.24573 OF 2007 and this Court by order dated: 20.07.2007 has directed the third respondent to consider the representations of the petitioner in the light of the above stated G.O's. In pursuance to the said order, the third respondent has passed an order dated 10.12.2007, which is impugned herein holding that the petitioner is not entitled for the employment on the basis of the above said G.O's.

8. The petitioner would further contend that she being employed as a daily wages from 15.01.1995 to 31.03.1997, the respondents ought to have considered the same and appoint her in the entry level post. The directions were issued by the first respondent to the second and third respondents to consider the cases of the persons who were appointed on consolidated pay and are working and their names were found in the daily wages register as on 01.10.1996. The communication was also sent wherein the second and third respondent are directed to appoint the persons on entry level post in conformity with the above G.O's subject to availability of any sanction post and the persons possessing all educational and other qualifications. The third respondent without even considering the right of the petitioner in conformity with the above G.O's, has rejected the case of the petitioner. Hence, the petitioner is before this Court.

9. The second respondent has filed a counter wherein it has been contended that the petitioner was originally appointed as Section Writer for the collection of Low Cost Sanitation Scheme and Nehru Rozgar Yojana Scheme loans on daily wage basis and she continued upto 31.03.1997 and after that, she was stopped from the above work as the regular Revenue Assistants have been entrusted with the above collection work and she was never

employed after that period.

10. The second respondent would also contend that as per the directions from this Honorable Court, petitioner's case was considered and on 10.12.2007, the Municipal Commissioner, Udumalpet, third respondent herein in his notice Roc.No.4035/2007/C1, has informed the petitioner that her request could not be considered as per the order issued by the Government in the above stated G.O.Ms.No.125 and G.O.Ms.No.21. The prayer in this Writ Petition is to absorb her as an employee in the entry level post in conformity with the provisions of the above G.O's, but the same cannot be complied with, since the Government order issued was to the effect that the NMRs who were appointed prior to 1.10.1996 and those who were continuing in service alone should be brought into regular appointments based on their qualifications. The petitioner was not appointed as NMR and she was only engaged as Section Writer and it was not an appointment, but it was a mere engagement of a person for a particular work and since she was a Section Writer, and stopped from service on 31.03.1997, she was not in service on the date of issue of the above said G.O.

11. The second respondent would also submit that G.O.Ms.No.21 MA&WS (ME3) Department, dated 23.02.2006 relates to the lifting of ban orders for making entry level appointments and permitting the Municipal Commissioners, Corporation Commissioners to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 1.10.1996.

12. The vacancies in the Municipalities have to be filled up by the Direct Recruitment as per the Tamil Nadu Municipal Service Rules, 1970 and the petitioner has no right to claim a post in the third respondent office and she is not qualified. The petitioner is not entitled to concessions given by the government in the above said G.Os as she is not an NMR in the above said Municipality. As the expenditure on salary and pension exceeds 49% of the total income of the Municipality, as per the orders of the Government, the vacant post at entry level could not be filled up by the third respondent and the petitioner is not eligible for the said appointment at entry level, since the petitioner was not in service on the date of issue of the above said G.O. The petitioner's claim could not be accepted.

13. The learned counsel for respondents would also contend that the petitioner was relieved from the year 1997. She has approached the respondents only in the year 2007, that too after ten years of her relieving from service. The petitioner has filed Writ Petition in the year 2008 after the impugned order has been passed. At the time of filing this Writ Petition, she was 35 years of age and now she herself has crossed 45 years of

age and the upper age limit for the Government Employment has been crossed and hence this petitioner is not entitled to be granted the prayer.

14. The third respondent has filed a counter, wherein it is contended that the petitioner is not entitled for any remedy as prayed for as the petitioner has no right to invoke the Extraordinary Jurisdiction under Article 226 of the Constitution of India since the impugned order is valid in law. The third respondent would further contend that the respondent denies the averment that the petitioner was appointed in Udumalpet Municipality as a Section Writer for collection of Low Cost Sanitation Scheme loans and NRY loan scheme. The third respondent would also contend that the petitioner was engaged only on temporary basis and she was paid from the general fund of the said Municipality. There were frequent breaks in her service and she has worked only for a short period. The petitioner has not been appointed through the employment exchange.

15. The learned counsel for the third respondent would also submit that there is no post of NMR in G.O.No.125 MA&WS Department dated 27.05.1999. It has been stated in the said G.O. that the NMR should have worked and should have been employed prior to 01.10.1996 and should be in service as on the date of the said Government order and they ought to have completed 10 years of service without break in service and only such persons should be brought into regular service and in first instance they should be appointed as consolidated pay and thereafter given the time scale of pay only on there being vacancies arises in the vacant sanctioned post of the municipality.

16. The third respondent would further contend that the petitioner's experience on her temporary status of employment is nowhere connected with the present job vacancies. The vacancies were filled up by the direct recruitment as per the Tamil Nadu Municipal Service Rules 1970 and back door entry is not available. The petitioner has got no right to claim any employment for the post which were filled up by the eligible NMR's who were the employees recruited directly and in service for many years and qualified for the same.

17. The third respondent would also contend that it is true that the Commissioner of Municipal Administration, Chennai has ordered and directed to collect the LCS and NRY loan amounts by Municipal employees that too, as much as possible by the Revenue Assistants and other permanent outdoor employees. Previously these loan amount was collected by this temporary Section Writers and after the said work was over, the said amount are now being collected by the permanent staff of the Municipality, namely, the Revenue Assistant. Hence the petitioner cannot claim

appointment as per the above said G.O.s. As on the date of appointment, the petitioner was not in service in any capacity. The petitioner was not appointed in any manner to any permanent post and no vacant post of permanent capacity was held by her at any point of time and she was temporarily engaged for a short term and her appointment is not regular and not by the reference from the Employment Exchange and she was only temporarily engaged for a period of 2 years with breaks when the work for collecting NRY and LCS loans was of huge workload, that too relieve some of the work pressure of the permanent employees. Even on her employment, it has been informed to the employee that her employment is purely on temporary basis and she has no right for permanent employment. Since the petitioner is not qualified as per G.O.MS.Nos.125 or 21, her contentions are to be rejected.

18. Heard, the learned counsel for the petitioner and learned counsel for the respondents and perused the available records.

19. On perusal of the above said G.O.Ms.No.21, it is seen that the Government has directed the appointing authorities viz. Municipal Commissioners, Grade-II Municipal Commissioners and Commissioners of Municipal Corporations (Except Chennai) to appoint the employees in respect of Municipalities and Municipal Corporations (Except Chennai) and as on 31.12.1996 in respect of Grade III Municipalities in the vacant posts and to regularize their services in the regular post, from the date of issue of that order, subject to the following conditions:

1. sanctioned post should be available
2. persons should fulfill all the educational qualification and other qualifications, and
3. establishment (pay and pension) expenditure of the Urban Local Body should not exceed 49% of revenue after filling up of posts

20. From the records it could be seen that the petitioner was not employed as NMR and she was working as Section Writer and the petitioner who was working on daily wages was working in the third respondent Municipality, only for the period from 1995 to 1997 (i.e.) 288 days in the year 1995, 305 days in 1996 , and 95 days in 1997 and the petitioner has not put in ten years of service as stated in the said G.O. The Petitioner was also not in service at the time of issuance of said G.O and the petitioner has approached the respondents belatedly. It could be also seen that the petitioner was not appointed through Employment Exchange. In the above facts and circumstances, as the petitioner has not fulfilled the requirements as per the G.O's, the petitioner's claim that she should be appointed as per the above said G.Os cannot be accepted and this court is not inclined to interfere with the orders passed by the respondents.

21. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

nsd/vji

To

1. The Secretary,
State Government of Tamil Nadu,
Municipal Administration and
Water supply,
Chepauk, Chennai-5.
2. The Commissioner,
Municipal Administration,
Ezhilagam,
Chennai-600 005.
3. The Commissioner,
Udumalpet Municipality,
Coimbatore District.

+1cc to Mr.P.Hari Babu, Advocate, S.R.No. 60215
+1cc to Mr.P.Srinivas, Advocate, S.R.No. 60345

सत्यमेव जयते

W.P.No.15468 of 2008

GN (24/09/2018)

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