

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

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

W.A.No.2310 of 2018

L.Saravanan

..Appellant/Petitioner

-vs-

- 1.The State of Tamil Nadu
rep.by its Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort 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.
- ..Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court dated 30.08.2018 in W.P.No.2635 of 2018 dated 30.08.2018 filed under Article 226 of the constitution of India to issue a writ of Mandamus, or any other order or direction in the nature of writ, 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 petitioner in the panel of Junior Assistant for the year 2011-12 with all consequential notional benefits;

For Appellant :: Mr.V.Suthakar

For Respondents:: Mr.R.Govindasamy,
Special Government Pleader

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant herein filed a writ petition before this Court in W.P.No.2635 of 2018 praying for a direction to the respondents to promote him as Junior Assistant by appointment by transfer as against 10% vacancy reserved for Panchayat Secretary/Office Assistant, by including his name in the panel

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

2.It was put forth on behalf of the appellant before the Writ Court that the post of Office Assistant is an Ex-cadre post in Village Panchayat Establishment; the appellant was initially appointed as Office Assistant on 06.09.1996 at Naduvattam Town Panchayat, Nilgiris District through Employment Exchange and thereafter, on 30.01.1997, he was transferred to Jekkanarai Town Panchayat and now he is working as Office Assistant in the Village Panchayat. It was submitted that as per G.O.Ms.No.75, Municipal Administration and Water Supply Department, dated 10.03.1999, 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. In this connection, G.O.Ms.No.29, Personnel and Administrative Reforms (B) Department, dated 10.04.2015, was also relied upon.

3.It was further put forth on behalf of the appellant before the Writ Court that the appellant 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 appellant has already completed seven years of service as Panchayat Assistant. However, the claim of the appellant for promoting him to the post of Junior Assistant has not been considered at all. It was also submitted that a junior to the appellant has already been promoted as Junior Assistant and now he is further promoted to the post of Assistant and serving in the very same District. It was also submitted that 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.

4.Per contra, it was submitted on behalf of the State that the appellant is not eligible for promotion to the post of Junior Assistant and that the Government Orders cited in the writ petition, are not applicable to the case of the appellant.

5.Considering the facts and circumstances of the case, the learned single Judge held that the Government Orders cited by the appellant are not applicable to the case of the appellant. However, since it has been submitted that juniors to the appellant have already been promoted as Junior Assistant, the learned single Judge directed that the representation submitted by the appellant shall be considered in the light of the Government Orders and as per the Rules in force, in case his juniors were promoted as Junior Assistant.

6.Challenging the order passed in the writ petition, the present appeal has been filed.

7.The learned counsel for the appellant has submitted that it is clearly stated in G.O.Ms.No.75, Municipal Administration and Water Supply Department, dated 10.03.1999 that as per Section 4(1)(b) of the Tamil Nadu Panchayat Act, 1994, all the employees other than provincialised employees of Town Panchayat immediately before its constitution as Village Panchayat shall be the employees of such Village Panchayat, and because of the same, the appellant has automatically become the employee of the Village Panchayat, viz., Jekkanarai Village Panchayat.

8.The learned Special Government Pleader appearing for the respondents has submitted that the learned single Judge has considered the matter in proper perspective and has held that the Government Orders cited by the appellant are not applicable to him and that if the contention of the appellant that his junior has been promoted as Junior Assistant is true, the representation submitted by the appellant shall be considered by the authorities in the light of the Government Orders cited by the appellant. Stating so, the learned Special Government Pleader prayed for dismissal of this appeal.

9.Heard the learned counsel on either side and perused the materials available on record.

10.Even though the learned counsel for the appellant states that the juniors of the appellant were promoted as Junior Assistant, they have not been impleaded in the appeal. Even before the writ Court, they have not been impleaded as party respondents. When we posed this question to the learned counsel for the appellant, he submitted that the names of such juniors have been mentioned in the affidavit filed in support of the writ petition. Even though the learned single Judge has observed that the Government Orders cited by the appellant are not applicable to the case of the appellant, the representation submitted by the appellant was directed to be considered by the authorities in the light of the Government Orders and as per the Rules in force, in case his juniors have been promoted as Junior Assistant. In these circumstances, we are of the considered view that it is for the respondents to consider the case of the appellant in the light of the Government Orders and as per the Rules in force, and to take a decision as to the applicability of the Government Orders, in accordance with law, in case the appellant's juniors are found to have been promoted as Junior Assistant.

11.With the above observation, the writ appeal is disposed of. Consequently the connected miscellaneous petition is closed.

KM

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Fort 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.

+ 1 cc to MR. V. Suthakar, Advocate SR.72063
+ 1 cc to Mr. the Government Pleader Sr.72038

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W.A.No.2310 of 2018

SJ(CO)
EU(03/12/2018)

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