



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 28.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.13007 of 2014

and

M.P(MD)Nos.1 and 2 of 2014

V.Sasikumar,
Junior Assistant,
Veterinary Polyclinic,
Animal Husbandry Department,
Madurai-20.

..Petitioner

Vs

1.The Secretary,
Animal Husbandry, Dairying and
Fisheries(AH&) Department,
Fort St.George,
Chennai - 600 009.

2.The Director,
Animal Husbandry and Veterinary Services Department,
Central Office Building Part-II,
Tenampet,
Chennai-6.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 3.

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to first consider the Petitioner and similarly placed Junior Assistants/Typists working under the second respondent for promotion to the post of Assistants and only thereafter to resort to appointment by direct recruitment made through the third respondent to the post of Assistants in the second respondent/Department.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.S.Dhayalan
1 and 2 Government Advocate

For Respondent-3 : Mr.K.K.Senthil.

**ORDER**

The petitioner has come forward with this Writ Petition seeking to direct the respondents to first consider the Petitioner and similarly placed Junior Assistants/Typists working under the second respondent for promotion to the post of Assistants and only thereafter to resort to appointment by direct recruitment made through the third respondent to the post of Assistants in the second respondent/Department.

2.The case of the Petitioner is that there was a G.O.15, dated 12.12.2012 issued by the first respondent for filling up of vacancies in the post of Assistant by direct recruitment through the third respondent. It was mentioned that there were 244 Assistant posts as on 1.2.2012 and there was a shortage of Junior Assistants for getting promotion as Assistants.

3.According to the Petitioner, there was 248 vacancies in the year 2012, who are all eligible departmental candidates to be promoted to the post of typists. They were working in feeder category of typists or steno-typists. According to the Petitioner, in terms of G.O., direct recruitment can be resorted to, if suitable departmental candidates are not available in the feeder category of Junior Assistants/Typists/Steno-typists. However, Assistants to be filled up through direct recruitment should not exceed 50% of the total number of vacancies arising in the post Assistants in a year. However, there is a categorical mention about the fact that the departmental candidates are entitled to be promoted. Without promoting the persons who are already working, the respondents shall not resort to direct recruitment. It has been stated that they have made representations in this regard. Since the action of the respondents was illegal and contrary to the guidelines and rules, departmental candidates have got to be entitled for promotion and only thereafter, the respondents should resort to direct recruitment.

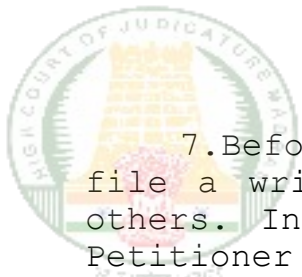
4.Even though separate counter has been filed, their contention is that the Petitioner was working as Assistant and the Writ Petition is not at all maintainable, as the Petitioner was appointed as Junior Assistant on 18.1.2007, probation was declared on 15.5.2013 and he has been qualified to be promoted to the post of Assistant, as he has qualified himself with regard to departmental test and completion of Bavani Sagar Training. The existing guidelines issued in Government Orders by taking into account of compassionate appointments made between the years 1981 to 2011 by considering the direct recruitments and also by way of promotion to the post of Junior Assistant, a combined seniority list has been prepared, and called for objections if any from the individuals who have likely to be affected. In that seniority list, the name of the Petitioner was found in S.NO.100. In G.O. (4D)No.15, Animal Husbandry, Dairying and Fisheries(AH7)



Department, dated 12.12.2012 referred to by the Petitioner, it was mentioned that there were 244 Assistant posts vacant as on 1.2.2012. Subsequently it was clarified that there are totally 369 vacancies as on 15.3.2012. Since there is shortage of Junior Assistants for getting promotion to the post of Assistant, out of the total vacancies, only 185 vacancies I.e., 50% of the total vacancies will be filled up by way of direct recruitment and others by way of promotion by amending the Special Rules for the Tamil Nadu Ministerial Service. The Petitioner has approached this Court with apprehension, which has got to be rejected at the threshold and all the appointments will be done within the guidelines issued by the Government. The respondents have rejected the objections on the temporary combined seniority list and subsequently clarification was sought for and only after getting clarification from the Government, the list will be finalized. Even before that, the Petitioner has approached this Court with apprehension. It has been clearly stated that there will not be any direct recruitment which should not exceed 50% of the total number of vacancies arising in the post of Assistant in a year and therefore, the Petitioner's apprehension is unwarranted.

5.Further, it is submitted by the third respondent that he is only a formal party and that the first phase of Certificate verification and counselling for the posts included in Group -II Services was held from 29.12.2014 to 23.1.2015. Subsequently, the second phase of counselling was held from 5.10.2015 to 13.10.2015 and the candidates selected in the first phase of counselling were 113 and in the second phase was 72., totally 185 candidates have been allotted to Animal Husbandry and Veterinary Services Department. The selection intimation memo to the candidates were given to them and the list of selected candidates have been forwarded to the Animal Husbandry and Veterinary Services Department and as such, the Writ petition has got to be dismissed.

6.The facts narrated supra are not in dispute with regard to the advertisements for direct recruitment to the post of Assistant by G.O.(4D)No.15, Animal Husbandry, Dairying and Fisheries(AH7) Department, dated 12.12.2012.The rule or guideline is very clear that 50% of the total vacancies should be offered to the employees languishing for promotion and 50% shall be filled up by way of direct recruitment. The Petitioner cannot contend that unless and until these persons are given promotion, direct recruitment shall not take place. Promotion is an inter departmental one and for the purpose of direct recruitment , the process is elaborate and that in any event when 50% of the vacancies are meant to be filled up from the open market, the said selection for appointment would no way affect the petitioner. Hence the relief sought for by the Petitioner cannot be granted and the same is rejected.



7. Before parting with the judgement, the Petitioner cannot file a writ petition on a representative capacity on behalf of others. In this case, by filing the present Writ Petition, the Petitioner intended to project that the entire staff members similar to him are backing him. He is not the spokesperson for the said persons, as there is no authorization. Further, the Writ Petition has not been filed by all the persons who are similarly placed like him. For the above said reasons, I find no merit in the Writ Petition.

8. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Secretary,

Animal Husbandry, Dairying and
Fisheries (AH&) Department,
Fort St. George,
Chennai - 600 009.

2. The Director,

Animal Husbandry and Veterinary Services Department,
Central Office Building Part-II,
Tenampet,
Chennai-6.

3. The Secretary,

Tamil Nadu Public Service Commission,
Chennai - 3.

+1 CC To MR.M.KANNAN, Advocate SR. NO.80547

+1 CC To MR.K.K.SENTHIL, Advocate SR. NO. 80805

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VSN

TR/SKN/SAR-III (14.11.2018) 5P 6C