



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.496 of 2018

and

C.M.P. (MD) No. 2955 of 2018

- 1.Agricultural Production Commissioner and
Secretary to Government,
Secretariat, Chennai - 600 009.
- 2.The Commissioner and Agricultural
Management and Agri Business,
Chennai - 032.
- 3.The Secretary,
Ramnad Agricultural Marketing Committee,
105-A, Madurai Road, Virudhunagar. ... Appellants/Respondents

Vs.

- 1.P.Meenakshi Sundaram ... Respondent/Writ Petitioner
- 2.R.Gurusamy ... 4th Respondent/2nd Respondent

PRAYER:This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 25.10.2016 and passed in W.P.(MD) No.740 of 2010.

Prayer in WP(MD). 740/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records on the file of the First Respondent in connection with the order passed by him in G.O.(Ms) No.116, Agriculture (AM1) Department, dated 08-07-2009 and quash the same to the extent of the recruitment to the post of Watchman and to direct the respondents to regularize the service of the petitioner in the post of Watchman in the Ramnad Marketing Committee, Virudhunagar or in any one of the 11 vacancies in the Virudhunagar District considering the long experience and Community Status of the petitioner with effect from his initial date of appointment with monetary and service benefits.

For Appellants : Mr.V.R.Shanmuganathan, Spl.G.P.

<https://hcservices.ecourts.gov.in/hcsservices/>
For Respondent : Mr.S.Govindan for R1



JUDGMENT

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.S.Govindan, learned counsel appearing for the first respondent.

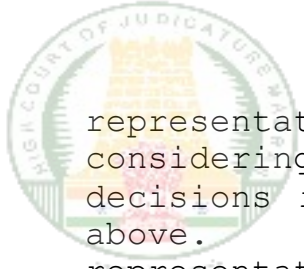
2.This appeal is directed against the order in W.P.(MD) No.740 of 2010 dated 25.10.2016.

3.The respondent/writ petitioner challenged G.O.Ms.No.116, Agriculture Department dated 08.07.2009 and sought for a consequential direction to direct the appellants to regularise his service in the post of Watchman in Ramnad Marketing Committee, Virudhunagar in any one of the 11 vacancies considering the long service put up by him and his communal status. The Writ Court, by the impugned order after noting the facts of the case directed the appellants to consider the representation dated 26.10.2009 in the light of the decisions in the case of *G.Ashokan Vs. District Collector, Thiruvannamalai District - 2014(1) CWC 877* and the decision in the case of *D.Roseline Joyee Vs. Tamil Nadu Civil Supplies Corporation Limited and others - 2016 (III) LLJ 345 (Madras)*. The appellants were directed to consider the representation within a period of 8 weeks.

4.The appellants are before this Court contending that there is no provision under the rules to consider the candidates from the post of Sweeper to the post of Office Assistant or Watchman or Driver. Further, it is submitted that the Government Order in G.O.Ms.No.116 dated 08.07.2009, which had been impugned in this writ petition was issued to fill up the posts only through employment exchange and there is no other mode to fill up the vacancies of Watchman that too from the candidates holding the post of Sweeper. Further, it is submitted that the second appellant has issued written instructions dated 24.07.2009 to all marketing committees to strictly adhere to the service rules.

5.Apart from the above contentions, the learned Special Government Pleader referred to the various government orders on the said aspect and submitted that representation made by the respondent/writ petitioner is not feasible of consideration. In this regard, the learned Special Government Pleader has also produced a written instructions, which has been given by the appellants on the said issue.

6.The learned counsel appearing for the respondent/writ petitioner challenged that several such similar cases were considered by the Government and orders have been passed and in one such government order in G.O.(2D) No.249 dated 22.09.2016 reference was made to G.O.Ms.No.385 dated 01.10.2010 and taking note of the facts, relief was granted to the candidates therein. In any event, the Writ Court has directed the appellants to consider the



representation. Of course, there is an observation that while considering the representation, they should take note of the decisions in the case of *G.Ashokan Vs D.Roseline Joyee* referred to above. It goes without saying that while considering the representation on merits and in accordance with law, the appellants will be entitled to take note of the government orders on which they place reliance. At the same time, the appellants are also bound to consider the effect of the government orders, which have been relied on and referred to by the respondent/writ petitioner in the writ petition as well as in the representation and in the submissions made before us.

7. Therefore, we dispose of this appeal with a slight modification to the order passed in the writ petition. Accordingly, this writ appeal stand disposed of and the operative portion of the order passed in the writ petition dated 25.10.2016, more particularly, in paragraph No.14(a) is modified by directing the appellants to consider the respondent/writ petitioner's representation take note of the decisions in the case of *G.Ashokan and D.Roseline Joyee* and the government orders relied on by the respondent/writ petitioner in G.O.(2D) No.249 dated 22.09.2016 and other government order in G.O.(2D), 31 Highways and Minor Ports (HM2) Department dated 01.07.2016. Likewise, the appellants are also entitled to take note of the relevant government orders, which in their opinion would be relevant to the facts and circumstances of the case. For an effective consideration of the representation, the respondent/writ petitioner is directed to submit a fresh representation to the second appellant enclosing all the government orders and other document on which the respondent/writ petitioner places reliance and such representation should be forwarded through the proper channel viz., through the third appellant. On receipt of representation, the second respondent shall consider the same in terms of observations made above and submit appropriate proposal to the first appellant to enable the first appellant to consider the matter and pass appropriate orders. The second appellant is directed to forward the appropriate proposal to the first appellant, within a period of three weeks from the date of receipt of representation through the third appellant. On receipt of the proposal, the first appellant is directed to pass orders in accordance with law, within a period of six weeks from the date on which proposal is received. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

TO

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