



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.01.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.3254 of 2011
and
M.P(MD) Nos.2 of 2011

P.Shantha

... Petitioner

-vs-

1. The Secretary to the Government,
Personal and Administrative Reforms Department,
Fort St.George, Secretariat,
Chennai-9.
2. The Secretary to the Government,
Highways Department,
Fort St.George, Secretariat,
Chennai-9.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-6.
4. The Director General,
Office of the Director General,
Highways Department,
chennai-5.
5. The Divisional Engineer,
Highways, Madurai.
6. The District Collector,
Salem District, Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order passed by the fourth respondent in proceedings No.NIR.3(2)/25427/2009, dated 07.03.2009 and to quash the same.

For Petitioner : Mr.V.Subramanian
For Respondents : Mr.R.Sethuraman
1, 2, 4, 5 and 6 : Special Govt.Pleader
For Respondent-3 : Mr.K.K.Senthil

**ORDER**

The order issued by the fourth respondent in proceeding, dated 7.3.2009, is under challenge in this Writ Petition.

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2.The learned counsel for the Writ Petitioner states that the Petitioner was working as Junior Assistant in the Highways Department and she was initially appointed on temporary basis and subsequently, through the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission, the Writ Petitioner was appointed on permanent basis and allotted to the Salem Town Panchayat in Salem District. After the orders of allotment granted in favour of the Writ Petitioner posting her as Junior Assistant in Salem Town Panchayat in proceeding, dated 7.3.2009, the Petitioner filed W.P.No.5010 of 2009 and this Court passed an order on 5.11.2009, allowed the Writ Petitioner to continue in the Highways Department. The learned counsel for the Writ Petitioner states that the order passed in W.P(MD)No.5010 of 2009 was not initially implemented and a Contempt Application was filed and thereafter the Writ Petitioner was allowed to continue in the office of the fifth respondent. However, the learned counsel for the Writ Petitioner states that a Writ Appeal was filed in W.A.No.242 of 2010 and the Writ Appeal was allowed on 27.7.2010 and the Writ Petitioner was not a party in the Writ Appeal. Thus the order passed by the Division Bench in W.A.No.242 of 2010 cannot be implemented in respect of the Writ Petitioner.

3.The learned counsel appearing on behalf of the third respondent/Tamil Nadu Public Service Commission brought to the notice of this Court that against the order passed in W.P.No.5101 of 2009, the Secretary, Tamil Nadu Public Service Commission filed W.A(MD)No.482 of 2012 before the Honourable Division Bench of this Court allowed the Writ Appeal on 3.11.2016. The Honourable Division Bench passed the following orders:

'10.It is brought to the notice of this Court, the Inspector General of Registration has sent a proposal in Lr.No.25408/K2/2010, dated 6.2.2014 with a positive recommendation to the Principal Secretary to the Administrative Department to accommodate the respective private respondents as a special case in the very same Departments. Therefore, Administrative Department of the Government of Tamil Nadu is directed to consider the said proposal on merits and in accordance with Law and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order and communicate the decision taken to the respective private parties/counsels.

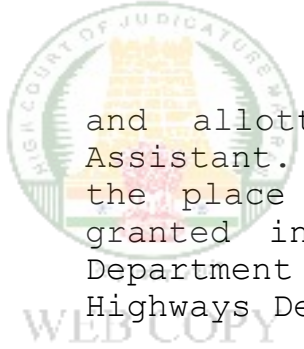
11.This Writ Appeals are allowed subject to the above direction. No costs. Consequently connected Miscellaneous Petitions are closed.'



4. Even the very same Writ Petitioner filed another Writ Petition in W.P.No.14025 of 2009 along with other candidates. The said Writ Petition was also dismissed by this Court on 30.09.2010 and Para 3 of the judgement is extracted hereunder:

''3. Today when the matter was called, Mr.S.C.Herold singh learned Government Advocate appearing for the respondents brought to the notice of this Court that the judgement relied by the Petitioners have been taken on appeal by the Tamil Nadu Public Service Commission in W.A (MD)No.242 of 2010. In that Writ Appeal, a Division Bench of this Court, by judgement dated 27.7.2010 in The Secretary, Tamil Nadu Public Service Commission . vs.M.Kannan and others, reversed the order of the learned Judge and held that the Petitioners have no vested right and cannot claim a particular place of posting and they should be accommodated in a particular department. The Division Bench also accepted the contentions of the Tamil Nadu Public Service Commission that the issuance of allotment orders depends upon various factors such as marks, vacancy, position and application of rule of reservation. In that view of the matter, the order was set aside .Even otherwise, this Court, in the Principal Bench had dismissed several cases on the ground that the Petitioner, as an appointee under Rule 1(A)(1) of the General Rules, has no right for appointee in any Government service. As a matter of right, it was only due to policy decision taken by the State Government, a special competitive examination was held and so long as the petitioners belong to a State level service, they cannot choose a place of posting or the service, as they had no vested right to get such regularisation. The State Government, on considering the grievances of such employees, had also made an elaborate arrangement to accommodate them as far as possible in the nearby districts or in the nearby places adjacent to metropolitan town. The Petitioners, even before entering a regular service, cannot dictate as to their place of posting and have to thank the policy of the State Government, as the appointments were extended to them. This Court does not find any reason to countenance the prayer made by the Petitioners. Hence, all the Writ Petitions stand dismissed. Consequently, the connected miscellaneous petitions are closed. However, there will be no order as to costs.''

5. Under these circumstances, this Court has to consider that the Writ Petitioner was initially appointed on temporary basis under Rule 10(A)(1) of the Tamil Nadu State and Subordinate Service Rules and thereafter, she had participated in the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission



and allotted to the Salem Town Panchayat Office, as Junior Assistant. However, the Writ Petitioner was not willing to join in the place where she was posted and by virtue of interim order granted in W.P.No.5010 of 2009, she continued in the Highways Department till 17.3.2011 and thereafter, relieved even from the Highways Department.

6.It is brought to the notice of this Court that the Writ Petitioner has not joined in the Salem Town Panchayat Office as per the order, dated 7.3.2009. However, the Writ Petitioner has not made any representation after relieving from the Highways Department with a request to permit her to join in Salem Town Panchayat Office. Contrarily, the Writ Petitioner was adamant in continuing only in the Highways Department and at no point of time, the Writ Petitioner has shown any interest to join as Junior Assistant in Salem Town Panchayat Office.

7.The learned counsel for the Writ Petitioner states that the petitioner has made a oral request to the authorities permitting her to join duty in Salem Town Panchayat Office. However, not even a representation or joining report has been enclosed as document in the typed-set of papers filed along with this Writ petition. In the absence of any such document, this Court cannot consider the oral statement made by the learned counsel for the Writ Petitioner across the bar in respect of the oral request made by the Petitioner.

8.Under these circumstances, the relief to quash the order cannot be granted in view of the fact that the Honourable Division Bench has considered the claim of the Writ Petitioner and negatived the same. Even during the earlier occasion, this Court has dismissed the Writ Petition in W.P.No.14025 of 2009 in respect of the claim of the Writ Petitioner. This being the factum, no further consideration is required in this Writ Petition.

9.Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Personal and Administrative Reforms Department,
Fort St.George,
Chennai-9.



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Fort St.George,
Secretariat,
Chennai-9.

3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-6.

4. The Director General,
Office of the Director General,
Highways Department,
chennai-5.

5. The Divisional Engineer,
Highways, Madurai.

6. The District Collector,
Salem District, Salem.

+ 1 CC TO Mr.K.K.SENTHIL, ADVOCATE IN SR No. 45418
+ 1 CC TO Mr.P.S.BAGHATH SINGH, ADVOCATE IN SR No. 45138
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 45514

VSN

TE/KKR/SAR-2 : 15/02/2018 : 5P/10C

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