

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.12823 of 2009

R.Muthulakshmi

... Petitioner

Vs

1. The Commissioner of Town Panchayats,
Kuralagam, Chennai-108.
 2. The Assistant Director of Town Panchayats,
Salem Region, Salem.
 3. The Executive Officer,
Town Panchayat Office,
Sendarapatti, Salem District.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned rejection order passed by the 2nd respondent in and by Na.Ka.No.961/96/C dated 23.04.1996 and the order of first respondent in declaring the petitioner's ineligibility to the post of Record Clerk in Na.Ka.No.16530/2008 A3 dated 30.12.2008 and quash the same and further direct the respondents to promote the petitioner as Record Clerk retrospectively from the date of initial appointment of her junior with all consequential service and monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Ravikumar, AGP
1 and 2 Additional Government Pleader
For 3rd respondent : Mr.G.Sankaran

O R D E R

R.Muthulakshmi, who was initially appointed as Office Assistant in the Town Panchayat Office at Sendarapatti on 12.6.1989 and subsequently declared to have completed the period of probation on 10.12.1991 A.N., has come to this Court with the present Writ Petition, challenging the impugned order passed by

the 2nd respondent dated 23.04.1996 and also the order passed by the 1st respondent declaring the petitioner ineligible to the post of Record Clerk in Na.Ka.No.16530/2008 A3 dated 30.12.2008, to quash the same with a further direction, directing the respondents to promote her as Record Clerk retrospectively from the date of initial appointment of her junior with all consequential service and monetary benefits.

2. Learned Counsel appearing for the petitioner submitted that the petitioner was initially appointed as Office Assistant in the Town Panchayat Office at Sendarapatti on 12.6.1989 and after satisfactorily completion of the period of probation on 10.12.1991, her name was shown in the Seniority List of the Office Assistant working in the Town Panchayat Office in the Administrative Branch of the Salem District. The then Town Panchayat Officer in his Proceedings in Na.Ka.No.72264/89/P3 dated 01.4.1991 has issued the seniority list of the Office Assistants in Salem District Town Panchayat Union and in the said list the name of the petitioner has been placed at Sl.No.45. While so, the petitioner's next higher promotional post is Record Clerk which is the promotional post from the feeder category of Office Assistant. As per the qualifications mentioned in the Tamil Nadu Town Panchayat Establishment Rules 1988 issued vide G.O. (Ms.) No.205, Rural Development Department, dated 23.03.1989 under Annexure to Special Rule A of Rule 4, the petitioner is qualified and has become eligible for the post of Record Clerk. For Category II, namely, Record Clerk, an Office Assistant should have completed SSLC and must be an approved probationer in the category of Office Assistant. Therefore, when the petitioner has acquired the qualification for the promotional post of Record Clerk from the post of Office Assistant, the respondents without appreciating the qualification mentioned under the relevant rule cannot refuse to promote the petitioner as per the ranking given in the Seniority List prepared by the then Town Panchayat Officer, Salem, vide his Proceedings in Na.Ka.No.72264/89/P3 dated 01.4.1991.

3. The learned Counsel for the petitioner further submitted that at the time of preparing the promotional panel, the then Town Panchayat Officer, Salem, has found the petitioner eligible for the post of Record Clerk which shows that the then Town Panchayat Officer, Salem has rightly appreciated the qualification to be possessed for the promotional post of Record Clerk from the post of Office Assistant. But, at the time of giving promotion to the petitioner, the respondents 1 and 2 without even adverting to the qualification mentioned under Annexure to Special Rule A of Rule 4 referred to herein above, they have wrongly found the petitioner ineligible and passed the impugned orders. Therefore, the same is liable to be set aside.

4. Again referring to G.O.Ms.No.670, Municipal Administration and Water Supply Department dated 27.11.2000, it is further argued by the learned Counsel for the petitioner that one Mr.P.R.Nagarajan, who was also serving as Office Assistant, has not passed the SSLC Examination and completed the same, the Secretary of Municipal Administration Department, on appreciating the rule position has found that the said Nagarajan was eligible to be promoted to the post of Record Clerk since he has completed the SSLC, although he has not passed the same. Therefore, the impugned orders making the petitioner ineligible to the promotional post of Record Clerk on the ground that he has not passed SSLC and completed is wholly unsustainable and the same is liable to be set aside.

5. No counter affidavit has been filed by the respondents.

6. Learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that since in the seniority list prepared by the then Town Panchayat Officer, Salem in Na.Ka.No.72264/89/P3 dated 01.4.1991, the name of the petitioner was wrongly shown as Sl.No.45, that does not confer any right whatsoever to the petitioner to claim any promotion to the post of Record Clerk. When the petitioner has admittedly not passed the SSLC Examination, the impugned order has been rightly passed. Therefore, there is no merit in the present Writ Petition.

7. But this Court is unable to find any substance or merit in the submission of the learned Additional Government Pleader appearing for the respondents 1 and 2 nor the reason given in the impugned orders passed by the respondents 1 and 2. To answer the question raised by the petitioner in the present Writ Petition, it is very relevant to extract the qualification mentioned under the Annexure to Rule A of Rule 4 of the Tamil Nadu Town Panchayat Establishment Rules, 1988 here under:

ANNEXURE
THE TABLE

(See sub-rule (a) rule 4)

Name of the post	Method of recruitment	Qualification
(1)	(2)	(3)

Name of the post	Method of recruitment	Qualification
Class I Category I Bill Collector	By Direct Recruitment By transfer from Record Clerk	Must have completed Secondary School Leaving Certificate and (ii) must have completed period of probation in the category of Record Clerk
Category II Record Clerk	By promotion from Office Assistant By direct recruitment	(i) Must have completed S.S.L.C. and (ii) Must be an approved probationer in the category of Office Assistant. (ii) Must have completed S.S.L.C.

A cursory reading of the qualification mentioned above clearly shows that the post of Record Clerk is the promotional post to the feeder category of Office Assistant. The third column clearly mentions what are the qualifications for Office Assistant for promotion to the post of Record Clerk.

8. When the relevant rule extracted herein above says that Office Assistant must have completed SSLC and must be an approved probationer in the category of Office Assistant to be promoted to the post of Record Clerk, admittedly, in the present case, the petitioner was considered as eligible for promotion to the post of Record Clerk by the then Town Panchayat Officer, Salem vide his Proceedings in Na.Ka.No.72264/89/P3 dated 01.04.1991 showing the name of the petitioner at Sl.No.45 in the Seniority List and the impugned order also clearly shows that the petitioner has completed the SSLC. Further, the G.O.Ms.No.670, Municipal Administration and Water Supply Department, dated 27.11.2000, issued in favour of one Nagarathinam, who is also similarly placed like that of the petitioner shows that the said Nagarathinam has completed the SSLC but not passed the SSLC, therefore, the Secretary of Municipal Administration and Water Supply Department has clearly mentioned that the said Nagarathinam has not passed the SSLC, but he has completed the SSLC, that itself is a requisite qualification for the promotional post of Record Clerk and accordingly the said Nagarathinam was given promotion. Similarly, the petitioner is fully eligible to be promoted to the post of Record Clerk because she has completed S.S.L.C.

9. Following the same, this Court has no hesitation to set aside the order passed by the 2nd respondent in Na.Ka.No.961/96/C dated 23.04.1996 and the order of first respondent in declaring the petitioner's ineligibility to the post of Record Clerk in Na.Ka.No.16530/2008 A3 dated 30.12.2008 and the respondents are directed to give promotion to the petitioner as Record Clerk on par with her juniors included in the Seniority List issued by the then Town Panchayat Officer, Salem, vide his Proceedings in Na.Ka.No.72264/89/P3 dated 01.04.1991 and to disburse the monetary benefits. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this Order.

10. With the above direction, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Town Panchayats,
Kuralagam, Chennai-108.
2. The Assistant Director of Town Panchayats,
Salem Region, Salem.
3. The Executive Officer,
Town Panchayat Office,
Sendarapatti, Salem District.

+1cc to Mr.M.Ravi, Advocate, Sr.38677

+1cc to the Government Pleader Sr.38799

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