IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2019

CORAM

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

W.P.No.23804 of 2004
&
W.M.P.No.28854 of 2004

K.Pajanyvelou ..Petitioner

vs

1. The Director, Local Administration
   Department, Pondicherry.
2. The Commissioner,
   Oulgaret Municipality,
   Pondicherry.
3. M.Nedounsejian,
   Sanitary Worker,
   Oulgaret Municipality
   Pondicherry. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent with No.1-53/Estt(I)/OM/88 dated 24.05.2004 and to quash the same consequently to direct the 2nd respondent to transfer the petitioner to the post of watchman with effect from 24.05.2004.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.Stalin Abhimaniyu, GA

O R D E R

The appointment order issued in favour of the 3rd respondent appointing him as a watchman by way of transfer from the post of sanitary worker in proceeding dated 24.05.2004 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the petitioner is working as Sanitary Worker on regular basis and joined services of the 2nd respondent on 01.08.1991, as daily rated employee and his service were regularised with effect from 14.02.2002, through an order dated 11.03.2002. The petitioner

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has passed 8th standard and he is eligible for appointment to the post of watchman as per the Recruitment Rules in force.

3. The learned counsel for the petitioner further submitted that the Rules of Seniority has not been followed by the Authorities concerned. The eligible persons working in the cadre of sanitary worker are to be constrained for appointment to the post of watchman by way of transfer as per the Rules. The name of the writ petitioner is placed at Serial No. 120 in the seniority list and the 3rd respondent who is placed in Serial No. 154 was considered for appointment to the post of watchman and the case of the writ petitioner had been deferred.

4. It is contended that as per the Rules the post of watchman carry more responsibilities and duties than that of the sanitary worker. Thus, the post of watchman is to be construed as a promotional post for the purpose of considering the eligible person working in the cadre of sanitary workers.

5. In view of the Rules, in this regard the action of the respondent in appointing the 3rd respondent overlooking the name of the writ petitioner for appointment to the post of watchman is infirm and liable to be scrapped, the learned counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the writ petitioner by stating that the writ petitioner is not eligible. As per the Recruitment Rules for the post of sanitary worker, the classification of the post is Group-D(Non-Ministerial) and scale of pay is Rs.750-12-870-14-940. The method of recruitment is stated by way of direct recruitment. The Recruitment Rules for the post of watchman is also classified as Group-D(Non-Ministerial) and the scale of pay is stated as Rs.750-12-870-14-940. Thus, both the post of sanitary worker as well as the watchman carries out the same categorization and the same scale of pay.

6. It is further stated that both the posts are equivalent and the post of watchman carries the higher responsibilities of protecting the Government properties and the premises. Thus, the authorities competent consider the cases of persons, who are all fully eligible and their antecedents and integrity were also considered by the authorities competent.

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7. In this regard, the learned counsel for the respondent states that the writ petitioner had suffered punishments imposed on him which are all minor in nature and further he is having a habit of consuming alcohol. When the authorities competent noticed that the petitioner is a person having the habit of consuming alcohol, they thought fit that he may not be the fit person to be appointed for the post of watchman, which carries

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more responsibilities and the duties involved and also required that a person of proven integrity is to be selected for appointment to the post of watchman. The various documents produced by the respondent shows that certain allegations were raised against the writ petitioner and the writ petitioner also had given a letter of apology.

8. Considering the arguments as advanced by both the learned counsel for the petitioner as well as by the respondents, this Court is of an opinion that the post of sanitary worker as well as the watchman are classified as Group-D post and the scale of pay are equivalent. As far as the post of watchman is concerned, there is a provision to fill up the post of watchman by way of transfer from the post of sanitary worker possessing the prescribed qualification. Undoubtedly, the petitioner is also qualified for appointment to the post of watchman by way of transfer. However, such an appointment by way of transfer is to be that by ascertaining the merits and by considering the service records and the antecedents of the employees.

9. Undoubtedly, the post of watchman is a responsible post and they have to guard the properties and the premises which belongs to the Government property. Thus, the person having certain proven integrity and having clean records alone shall be considered for such post. When there are allegations against the petitioner and the learned counsel for the respondent also informed this Court that the Higher Level Officers found that the writ petitioner is having the habit of consuming alcohol, this Court is of an opinion that not considering the name of the writ petitioner cannot be said to be infirm. Then the post of sanitary worker as well as the watchman are categorised as group D post and carrying same scale of pay.

10. A transfer of service can never be claimed as a matter of right. When the scale of pay and the categorisation are one in the same, the transfer can never be claimed as a right and such a transfer is to be transfer only with reference to the merits, antecedents and other eligible criteria. This apart, this Court is of a considered opinion that the posts carry the equal scale of pay and the seniority of the petitioner is not affected and in the matter of transfer to the equivalent post, the seniority alone cannot be the criteria and the merits are also to be considered, as rightly shown by the respondents.

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11. With this view of the matter there is no infirmity in the order passed by the respondents. The grounds raised in the present writ petition are devoid of merits. Accordingly, the writ petition fails and the same stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ska/kkn
To,

1. The Director, Local Administration
   Department, Pondicherry.

2. The Commissioner,
   Oulgaret Municipality,
   Pondicherry.

+1cc to the Government Pleader sr.4297
+1cc to Mr.V.Ajayakumar, Advocate Sr.4111

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