

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13760 of 2010
and
MP.No.1 of 2010

K.Ganesan

.. Petitioner

.Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Personnel & Administrative Reforms Department,
Secretariate, Chennai-600 009.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders in Na.Ka.No.29/07/A4 dated 06.07.2007 of the 2nd respondent and the consequential Pro.Na.Ka.No.1597/08/A4 dated 03.12.2009 of the 2nd respondent to quash the same and to issue consequential directions to the respondents to reinstate/reappoint the petitioner in service with the benefit of continuity of service as Junior Assistant.

For Petitioner : Mr.M.Muthappan

for M/s.R.Thamaraiselvan

For Respondents : Mr.A.Zakir Hussain

Government Advocate

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O R D E R

The instant writ petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the orders in Na.Ka.No.29/07/A4 dated 06.07.2007 of the 2nd respondent and the consequential Pro.Na.Ka.No.1597/08/A4 dated 03.12.2009 of the 2nd respondent to quash the same and to issue consequential

directions to the respondents to reinstate/reappoint the petitioner in service with the benefit of continuity of service as Junior Assistant.

2.The petitioner registered his name in the Employment Exchange. In July 2003, there was a strike by the employees of the Government of Tamil Nadu and Teachers. To overcome the crisis arising out of the strike, the Government issued G.O.Ms.No.85, P & AR (Per.G) Department, dated 01.07.2003 decided to create 500 temporary supernumerary posts of Junior Assistants in each District, under General Rule II of the Tamil Nadu State and Subordinate Service in the Tamil Nadu Ministerial Service, on a monthly pay of Rs.4000/-.

3.The petitioner having been sponsored by the Employment Exchange, Dharmapuri, was appointed as a Junior Assistant and he worked in the said post. After the withdrawal of the strike, the petitioner's service was terminated for want of vacancy. The petitioner states that he gave several representations to cancel the order of termination. Pursuant to the letter dated 21.12.2005, the District Collector, Dharmapuri in and by Pro.Na.Ka.No.55719/205/A4 dated 15.07.2006, reappointed the petitioner and he was serving as Junior Assistant. After the lapse of one year, Personal Assistant (General), to the District Collector, Dharmapuri by proceedings dated 06.07.2007 terminated his services as directed by the Secretary to Government, P & A.R. Dept., dated 26.06.2007. The petitioner therefore filed a representation for withdrawal of the order of termination, but there was no response. The petitioner filed W.P.No.22125 of 2008 for a direction to consider his representation dated 19.05.2008. This Court by an order dated 10.09.2008, directed the 2nd respondent to consider the representation of the petitioner and pass appropriate orders.

4.By the impugned order dated 03.12.2008, the representation of the petitioner has been rejected on the ground that there is no right vested with the petitioner to continue in the services. This order is challenged in the writ petition.

5.Heard the learned counsel for both sides.

6.Mr.M.Muthappan, learned counsel for the petitioner would contend that when supernumerary posts as provided under General Rule 11 of the Tamil Nadu State and Subordinate Service have been created. The learned counsel submits that the petitioner is entitled to continue in the post and that the said order cannot be withdrawn without assigning any reason.

7. General Rule 11 of the Tamil Nadu State and Subordinate Service Rules, states as under:

"11.Appointment by agreements: (1)
When in the opinion of State Government Special provisions inconsistent with any of these rules or of any other rules made under the proviso to article 309 of the Constitution of India or continuing by Article 313 of that Constitution (hereinafter referred to in this rule as the said rules) are required in respect of conditions of service, pay and allowances, pension, discipline and conduct with reference to any particular post, or any of them, it shall be open to the State Government to make an appointment to such post otherwise than in accordance with these rules or the said rules and to provide by agreement with the person so appointed for any of the matters in respect of which in the opinion of the State Government special provisions are required to be made and to the extent to which such provisions are made in the agreement, nothing in these rules or the said rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement:

Provided that in every agreement, made in exercise of the powers conferred by this rule it shall further be provided that in respect of any matter in respect of which no provision has been made in the agreement the provisions of these rules or of the said rules shall apply.

(2) A person appointed under sub-rule(1) shall not be regarded as a member of the service in which the post to which he is appointed is included and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that or any other service".

8. A perusal of the rules shows that the petitioner cannot claim any right over the post. He does not have any right to continue. The petitioner also cannot seeks appointment to any other post also.

Writ Petition is dismissed. No costs. Consequently,
connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP
To

1.The Secretary to Government,
Government of Tamil Nadu,
Personnel & Administrative Reforms Department,
Secretariate, Chennai-600 009.

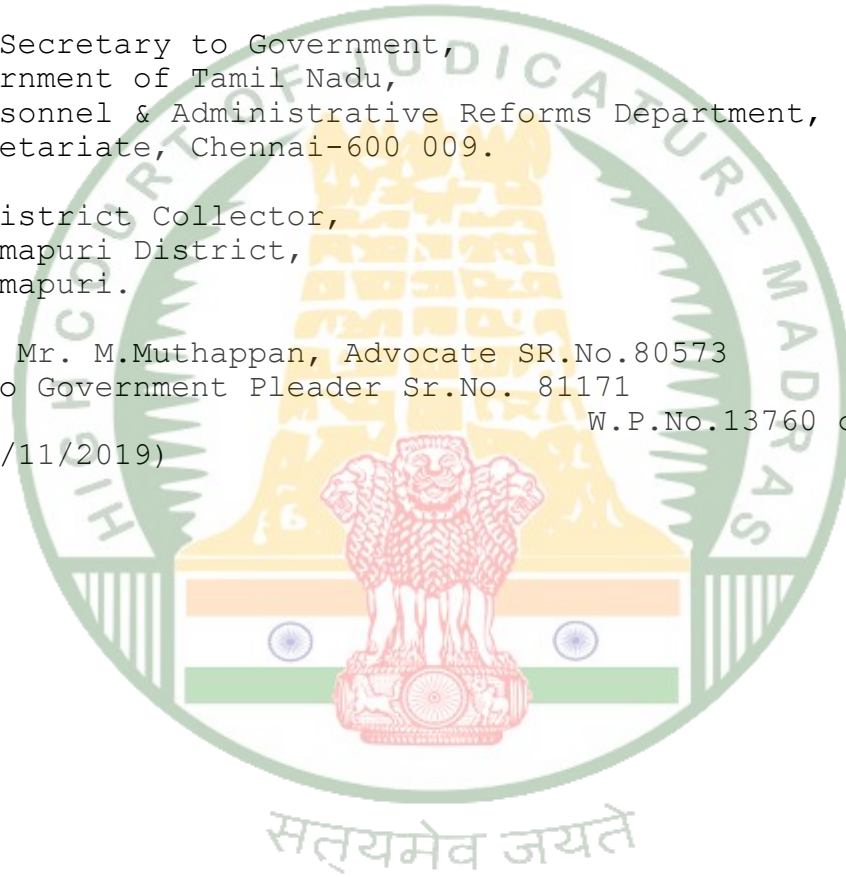
2.The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Mr. M.Muthappan, Advocate SR.No.80573

+1 cc to Government Pleader Sr.No. 81171

W.P.No.13760 of 2010

A.SK(14/11/2019)



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