

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.26404 of 2004

N.Tamilselvi

..Petitioner

Vs.

1.State of Tamil Nadu
rep.by its Secretary to Government
Public Works Department,
Fort St. George, Secretariat,
Chennai - 600 009

2.The Principal Chief Engineer
(Water Resources Organisation)
and Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.

3.The Chief Engineer
Water Resources Organisation,
Public Works Department,
Pollachi Region,
Pollachi - 3.

4.The Superintending Engineer,
Water Resources Organisation,
Public Works Department,
Bhavani Basin Circle,
Coimbatore.

5.The Executive Engineer,
Public Works Department
Lower Bhavani Basin Division,
Erode.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent herein pertaining to the impugned letter issued in Lr.No.31800/B1/2000-7 dated 07.10.2003 and the records of the 4th respondent herein pertaining to the impugned proceedings in No.A6/158/03, dated 30.12.2003 and quash the same.

For Petitioner : Mr.Naveen Kumar Murthi
For Respondent : Ms.R.Janaki,
Additional Govt. Pleader

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari calling for the records of the 1st respondent herein pertaining to the impugned letter issued in Lr.No.31800/B1/2000-7 dated 07.10.2003 and the records of the 4th respondent herein pertaining to the impugned proceedings in No.A6/158/03, dated 30.12.2003 and quash the same.

Brief facts of the case :

2(a) According to the petitioner, her husband was working as Jeep Driver in the Bhavani Sagar division of the Public Works Department and he died on 16.05.1983. After the death of her husband, the petitioner applied for compassionate appointment with the 5th respondent. At the time of applying for compassionate appointment, the petitioner had clearly stated that she appeared for SSLC (10th Standard) privately and she had not passed the same. The 5th respondent appointed the petitioner temporarily as record clerk on 19.03.1991, on compassionate ground. She was assigned to the office of the Design Circle of Public Works Department at Chennai at posted to work in the Soil Mechanical & Research Division of Public Works Department, Chennai and she joined duty on 25.03.1991. Subsequently, after a period of two years, she was transferred to Coimbatore Nilgiris Circle by the 2nd respondent on 25.11.1994 and posted to lower Bhavani Project Basin Division at Erode Division against the existing vacancy by the 4th respondent.

2 (b) As per Special Rules for Class XXII of the Tamil Nadu General Subordinate Services, the qualification prescribed for appointment of Record Clerk through Direct Recruitment is - (i) a person should not have completed 35 years of age in the case of candidates belonging to Schedule Caste & Schedule Tribes and 30 years of age in the case of others. (ii) must possess a SSLC qualification. The petitioner has not suppressed her educational qualification and had not made any false representation at the time of applying on compassionate ground. While so, the 4th respondent, without any notice to the petitioner, by impugned proceedings dated 30.12.2003, reverted her to the post of Office Assistant and ordered for recovery of excess amount paid to her. Against the said impugned order, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner is working as Record Clerk from

25.03.1991 continuously and the reversion of the petitioner to the post of Office Assistant is invalid. The petitioner has not made any false statement with regard to her educational qualification. Only by considering all the materials furnished by the petitioner, she was appointed as Record Clerk on compassionate ground and contended that she is working from 25.03.1991 for 12 years at the time of passing of impugned order and now 28 years as Record Clerk. Before issuing notice to the petitioner, no opportunity was given to her to put forth her case. In support of his contention, the learned counsel relied on the judgment reported in 2013 (9) SCR 593 [Kusheswar Nath Pandey v. State of Bihar & Others] wherein it has been held as follows -

10. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years thereafter, the Authorities of the Bihar Government woke up and according to them, the time bound promotion was wrongly given and then the relevant rules are being relied upon and that too after the appellant had passed the required examination.

11. In our view, this approach was totally unjustified. Learned Single Judge was right in the order that he has passed. There was no reason for the Division Bench to interfere. The appeal is therefore allowed. The judgment of the Division Bench is set aside. The writ petition filed by the appellant will stand decreed as granted by the Learned Single Judge. The parties will bear their own costs.

4. The respondents filed counter affidavit. Mr. R. Janaki, learned Additional Government Pleader contended that educational qualification for appointment of Record Clerk is SSLC pass. The petitioner, in her application for appointment on compassionate ground, has stated that she would complete SSLC in the near future. Based on such representation only, the petitioner was appointed as Record Clerk. However, the petitioner has not completed SSLC. The authority to relax the educational qualification is the first respondent. But, the first respondent has rejected the proposal sent by the respondents 3 & 4 for relaxation of educational qualification of the petitioner. The petitioner is not possessing requisite educational qualification for the post of Record Clerk and hence

no notice is necessary to be issued to the petitioner before reversion and order of recovery and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government pleader appearing for the respondents and perused the materials available on record.

6. It is an admitted fact that as per Special Rule for Class XXII of the Tamil Nadu General Subordinate Services, the educational qualification prescribed for appointment of Record Clerk through Direct Recruitment is a pass in SSLC. The petitioner has not passed SSLC even though she appeared for the examination. According to the petitioner, in the application for appointment itself, she has stated that she appeared for SSLC (10th Standard) privately and she had not passed the same which shows that she has not suppressed any material with regard to her educational qualification. The contention of the learned Additional Government Pleader is that at the time of application for appointment, the petitioner has stated that she would complete her SSLC in the near future and based on such representation, she was given appointment as Record Clerk. The learned Additional Government Pleader has not produced any document to substantiate the said contention. The learned Additional Government Pleader has also not produced the application submitted by the petitioner seeking appointment on compassionate ground. In view of the failure on the part of the Additional Government Pleader to produce any material evidence to substantiate her contention that the petitioner has stated in the application that she would complete her SSLC in the near future, the same cannot be accepted.

6. The learned counsel for the petitioner contended that the petitioner was seeking regularisation of her services after completion of two years and the respondents 2 to 4 sent proposal to the first respondent for relaxation of educational qualification of the petitioner. In the counter affidavit filed by the respondents, they have admitted that the respondents 2 & 3 recommended for relaxation of educational qualification of the petitioner to the first respondent. According to the learned Additional Government Pleader, the first respondent has rejected the said recommendation and did not relax the educational qualification of the petitioner being appointed as Record Clerk. The learned Additional Government Pleader has not produced any such order passed by the first respondent. The petitioner was working as Record Clerk from 25.03.1991 for 12 years at the time of passing of impugned order and now 28 years as Record Clerk. In view of the order of stay granted by this Court on 16.09.2004, the petitioner is continuing as Record Clerk. The petitioner having worked as Record Clerk for 12 years at the time of

passing of impugned order and 28 years till date, in view of the stay order of reversion, the ratio in the judgment of the Hon'ble Apex Court cited supra, relied on by the learned counsel for the petitioner is squarely applicable to the facts of the present case. In such circumstances, the impugned order is liable to be set aside and it is hereby set aside.

7. In the result, this writ petition stands allowed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

rgr

To

1. The Secretary to Government
State of Tamil Nadu
Public Works Department,
Fort St. George, Secretariat,
Chennai - 600 009

2. The Principal Chief Engineer
(Water Resources Organisation)
and Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.

3. The Chief Engineer
Water Resources Organisation,
Public Works Department,
Pollachi Region,
Pollachi - 3.

4. The Superintending Engineer,
Water Resources Organisation,
Public Works Department,
Bhavani Basin Circle,
Coimbatore.

5. The Executive Engineer,
Public Works Department
Lower Bhavani Basin Division,
Erode.

+1 CC to M/s. Varsha Advocate sr 57328.

+1 CC to Govt. Pleader sr 52289.

W.P.No.26404 of 2004

SP(15/07/2019)