

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 22901 OF 2011

AND

M.P. NO. 1 OF 2011

N.Rajendran

.. Petitioner

- Vs -

1. The Secretary to Government
Revenue Department
Secretariat, Chennai - 9.

2. The District Collector
Coimbatore, Coimbatore - 18.

3. The Sub Collector
Pollachi.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the 2nd respondent vide proceedings No.N.K.73330/2004/A5 dated 22.9.11 and to quash the same and consequently direct the respondents to allow the petitioner to continue as Office Assistant in the Sub Collector's Office, Pollachi with all consequential and monetary and service benefits.

For Petitioner : Mr. S.Vijayakumar

For Respondents : Mr. J.Ramesh, AGP

ORDER

This writ petition has been filed for the issuance of a writ of certiorarified mandamus calling for the records relating to the proceedings No.N.K.73330/2004/A5 dated 22.9.11 passed by the 2nd respondent and to quash the same and consequently direct the respondents to allow the petitioner to continue as Office Assistant in the Sub Collector's Office, Pollachi with all consequential and monetary and service benefits.

2. The case of the petitioner is that he was appointed as Night Watchman in the Taluk Office, Pollachi, on 2.12.91 and

continued as Night Watchman till 19.2.92. The petitioner was, thereafter, reappointed as Night Watchman in the same office and was transferred to various places. Subsequently, the petitioner was promoted as Office Assistant on 13.10.92 and posted at Udumalpet and served as Office Assistant till 9.7.93. The petitioner was reverted as Night Watchman and was working as such till 12.3.95.

3. On 16.8.95, an order was passed by the 3rd respondent appointing the petitioner as Office Assistant in the Taluk Office, Pollachi and the said appointment was regular in nature for all purposes and the appointment was also against the existing vacancy. The petitioner continued to work as Office Assistant on regular basis for more than five years without any break. Consequent upon his appointment as Office Assistant, his pay as also been fixed in the appropriate pay scale as applicable to the cadre of Office Assistant.

4. While the matter stood thus, the 2nd respondent had issued proceedings dated 16.4.01 seeking explanation from the petitioner as to why he should not be removed from service, since the order of appointment as Office Assistant was irregular. According to the 2nd respondent, the appointment of the petitioner was contrary to the contents of G.O. Ms. No.666, Finance Department, dated 24.8.92 and, therefore, he was sought to be removed from service.

5. The petitioner was at a loss to understand as to how he could be removed from service when he was regularly appointed as Office Assistant as early as on 16.8.95 and worked for more than five years without any complaint. In the said circumstances, the petitioner approached the then Tamil Nadu Administrative Tribunal in O.A. No.3100/01 and the learned Tribunal admitted the Original Application on 30.4.01 and granted interim stay of the impugned proceedings of the 2nd respondent. In view of the interim orders granted by the Tribunal, the petitioner continued in service as Office Assistant in the office of the 3rd respondent. After the abolition of the Tamil Nadu Administrative Tribunal, the original application stood transferred to the file of this Court and was renumbered as W.P. No.4502/07 and taken on file. The said writ petition came up for hearing on 14.6.11 and this Court disposed of the said writ petition with the following observation :-

"After sufficient long period, this court is not inclined to go into the merits of the case at this state. It is for the petitioner to file appropriate explanation before the District Collector on the show cause notice and if any explanation is furnished within three weeks from

the date of receipt of this order, the District Collector, Coimbatore, shall pass an appropriate speaking order on the said explanation and communicate the same to the petitioners within a period of four weeks thereafter. Till the order is communicated, there shall be an order of status quo to be maintained. Both the writ petitions are disposed of accordingly. No costs."

6. In pursuance to the above direction, the petitioner submitted a representation on 14.7.11 and, thereafter, the petitioner was called for an enquiry. In the enquiry, the petitioner had impressed upon the authority that G.O. Ms. No.666 dated 24.8.92 was not applicable to him since the said Government Order was issued taking into consideration the cadre strength as it was available on the day when the said Government Order was issued. According to the petitioner, subsequently another G.O. Ms. No.64 dated 22.2.11 was issued enhancing the working strength of Office Assistants in the Revenue Department. The basis of the action taken against the petitioner was that the staff pattern then fixed by the earlier G.O. Ms. No.666 dated 24.8.92 and as per the staff pattern the appointment of the petitioner was in excess of the staff strength. According to the petitioner, the Department has misinterpreted the Government Order as if the staff, who had already been appointed and working for a number of years in the post had to be undone or redone without appreciating the fact that the Government Order, which was issued on 24.8.92 was only with reference to the existing staff pattern and not with reference to past appointments.

7. Even otherwise, as far as the staff pattern in Coimbatore District is concerned, report was submitted that there was no excess appointment in the cadre of Office Assistant. However, without taking note of the above aspects in favour of the petitioner, the impugned order came to be issued by the 2nd respondent on 22.9.11, reverting the petitioner from the post of Office Assistant to the post of Night Watchman. In the impugned order, the earlier original application, which was transferred to the file of this Court and renumbered as W.P. No.4502/07 was referred to stating that the learned Judge of this Court has directed the 2nd respondent to consider the explanation furnished by the petitioner herein and pass orders. The above order is the subject matter of challenge in the present writ petition.

8. Mr.Vijayakumar, learned counsel appearing for the petitioner submits that the impugned action of the 2nd respondent cannot be countenanced both in law and on facts, as stated above, since the Government Order, which was the basis of the

impugned action, i.e., G.O. Ms. No.666, Finance Department dated 24.8.92 cannot be applied retrospectively to past appointments and, therefore, on this ground alone the action of the 2nd respondent is liable to be interfered with. Moreover, even factually it was established in Coimbatore District that there was no surplus employee in the cadre of Office Assistant and in such event, the said Government Order cannot be invoked in the case of the petitioner. In any event, the Government itself has issued G.O. Ms. No.64 dated 22.2.11 enhancing the cadre strength of the Office Assistants and, therefore, the question of reverting the existing Office Assistants would not arise at all. Moreover, the impugned action of the 2nd respondent is also contrary to the order passed by this Court in W.P. No.44019/06 dated 19.11.10. Learned counsel drew the attention of this Court to para 11 to 13 of the said order, which is extracted hereunder for reference :-

"11. Paragraph 3 of the said G.O. makes the position clear. However, the said Government was mis-interpreted by the respondents. The authorities have interpreted the order in such a way that even the appointments of existing Office Assistants were cancelled. That was not the intention of the Government Order. It was a direction given to the Department for their adherence in future.

12. When the appointment of the petitioner was regularised way back on 12.10.1994, and that too, with effect from 17.01.1991, the second respondent was not justified in cancelling the appointment. I do see considerable force in the submissions made by the learned counsel on behalf of the petitioner.

13. It was not the case of the second respondent that the appointment of the petitioner was an irregular appointment. They rely only on the Government Order in G.O. Ms. No.666, Finance (Ze-BAG) Department dated 24.08.1992 in support of their stand. Therefore, I am of the view that the second respondent was not correct in reverting the petitioner from the post of Office Assistant to the post of Gardner. Accordingly, the order impugned in this writ petition is set aside."

9. According to the learned counsel for the petitioner, a learned Judge of this Court, in the aforementioned writ petition, has allowed the prayer of the petitioner therein, who was identically placed and set aside the impugned action, which was also initiated on the basis of G.O. Ms. No.666, Finance Department dated 24.8.92. Therefore, it is submitted in all

fours that the petitioner is entitled to the relief as prayed for.

10. Per contra, learned Addl. Government Pleader appearing for the respondents submit that the initial appointment of the petitioner as Office Assistant was in violation of G.O. Ms. No.666 dated 24.8.92 and, hence, the authorities were instructed to take action in order to comply with the direction. Therefore, the appointment, which was not in consonance with the said Government Order, was reviewed and one such review was undertaken in respect of the petitioner's appointment and, hence, after issuing show cause notice, the petitioner was reverted to the post of Night Watchman, to which post he was originally appointed. The continuance of the petitioner in the post of Office Assistant was due to the interim orders passed by the then Tamil Nadu Administrative Tribunal and in any case, learned Judge of this Court, who has dealt with the transferred original application, which was renumbered as W.P. No.4502/07, has merely directed the petitioner to furnish explanation to the 2nd respondent and the 2nd respondent was directed to consider the representation/explanation. Therefore, his explanation was considered and the same was not satisfactory and, hence, the order of reversion was passed, which cannot be called into question by the petitioner.

11. Heard the learned counsel appearing for the petitioner and the learned Addl. Government Pleader appearing for the respondents and perused the materials available in the typed set of documents.

12. The admitted position in this case is that the petitioner was appointed as Office Assistant on 16.8.95 itself and had worked for more than five years before the show cause notice was issued on 16.4.01. The basis of the show cause notice was admittedly the G.O. Ms. No.666, Finance Department dated 24.8.92, wherein the Government Order had laid down the staff pattern to be followed by the Department. The Government Order, which was issued in the year 1992 was with reference to the staff pattern that was then available at the time of issuance of the Government Order and the same cannot be made applicable to the appointment of the petitioner, which was in the year 1995 and that the petitioner continued in service till 2001. Therefore, it is certainly not open to the 2nd respondent to invoke G.O. Ms. No.666 dated 24.8.92 for reverting the petitioner in the year 2011. In any case, admittedly, the Government has also issued subsequent G.O. Ms. No.64 dated 22.2.11 enhancing the staff strength of Office Assistants in the Revenue Department. The said issuance of the Government Order has also not been disputed. Moreover, as per the averments of the petitioner, as per the report submitted by Coimbatore

District, there was no surplus staff in the cadre of Office Assistant. This fact has also not been disputed. All the above would unequivocally go to show that the action by the 2nd respondent in seeking to revert the petitioner was contrary to the factual position and, therefore, the same cannot be upheld.

13. Further, the staff pattern, which was the basis of consideration in G.O. Ms. No.666 dated 24.8.92, ought to have been reviewed when action is being taken against the petitioner after a period of nine years, in the year 2011 and it is not open to the 2nd respondent to mechanically apply the Government Order and revert the petitioner, who was allowed to work as Office Assistant in the regular time scale for more than five years. In any event, the impugned order passed by the 2nd respondent does not disclose the application of mind, but merely disposed of the representation submitted by the petitioner without speaking about in detail as to how the appointment of the petitioner was outside the scope of G.O. Ms. No.666 dated 24.8.92.

14. When a person, who has acted in a particular cadre is sought to be reverted on the basis of surplusness, it is incumbent upon the authority, who takes action against such person, to spell out the details as to how his appointment was in surplus to the cadre strength in a particular district. In this case, in the absence of such a finding, the impugned action is liable to be interfered on the ground of complete non-application of mind.

15. This Court, in T.K.Subramanian - Vs - Secretary to Government (W.P. No.44019 of 2006 - Dated 19.11.2010), in identical circumstances, has allowed the claim of the petitioner therein by setting aside similar action by the authority stating that it was not the case of the authority that the appointment of the petitioner therein was irregular. In this case also, the same factual situation prevails for the simple reason that the authority, who passed the impugned order has not spelt out as to how the appointment of the petitioner was irregular with reference to the said Government Order or otherwise. In the absence of any such material, this Court is unable to appreciate the action taken by the 2nd respondent in issuing the impugned order, adverse to the interests of the petitioner. In any case, the order passed by the learned single Judge in T.K.Subramanian's case (supra) directly clinches the issue in favour of the petitioner.

16. Further, this Court is of the considered view that the view that the petitioner having been appointed as Office Assistant validly in the year 1995 and continued till 2011, for more than 15 years, cannot be sought to be reverted to the lower

post unless there are compelling and valid reasons for doing so. In this case, this Court does not see any such compelling or valid reasons, except reliance placed on G.O. Ms. No.666 dated 24.8.92. This Court is of the considered view that the basis of such action is unsustainable in law. This Court would like to reiterate that the Government Order passed in the year 1992 had taken into consideration the then existing staff pattern, but the petitioner was appointed by the respondent subsequent to the Government Order in the year 1995 with eyes wide open and was allowed to function as Office Assistant for more than five years, in which event he cannot be reverted to the lower post. At the risk of repetition, this Court reiterates that it is not the case of the 2nd respondent that the petitioner was a surplus appointee, since no such details were disclosed or mentioned anywhere, particularly in any of the communication or does it find a place in the impugned order.

17. For the reasons aforesaid, this Court is unable to appreciate the action by the 2nd respondent is reverting the petitioner. Accordingly, the impugned order passed by the 2nd respondent in proceedings No.N.K.73330/2004/A5 dated 22.9.11 is liable to be set aside and, accordingly, the same is set aside.

18. In the result, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

GLN
To

Sub Assistant Registrar

1. The Secretary to Government
Revenue Department
Secretariat, Chennai - 9.

2. The District Collector
Coimbatore, Coimbatore - 18.

3. The Sub Collector
Pollachi.

+1 cc to Mr. S.Vijayakumar, Advocate, S.R.No.32593
+1 cc to the Government Pleader, S.R.No.34038

W.P. NO.22901 OF 2011

RR(CO)
SSM(08/05/2019).