

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-12-2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15866 OF 2019

M.Balachandran

...

Petitioner

-vs-

1.The Special Commissioner/
Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 005.

2.The District Collector,
Coimbatore District,
Coimbatore - 641 018.

3.The Revenue Divisional Officer,
Coimbatore North Division,
Coimbatore.

4.R.Kumarasamy

5.C.Sivakumar

6.N.Anandhakumar

7.D.Selvaraj

Respondents

(Respondents 4 to 7 are impleaded
by order, dated 11.12.2019, passed
in W.M.P.No.33564 of 2019)

सत्यमेव जयते

Prayer:Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to call for the records relating to the impugned order, dated 30.07.2019, made in Na.Ka.No.1307/2019/A1 passed by the third respondent, quash the same and consequently direct the respondents to consider the petitioner's physical disability and also the locomotor disability of his wife, by giving preference to him to serve in the nearby villages, in the future counselling for general transfers to be conducted, as per G.O.Ms.No.515, dated 25.08.2008, and the Circular, dated 22.07.2009, issued by the Government, by considering his representations, dated 28.08.2018, 31.08.2018 and 29.05.2019.

For Petitioner : Mr.N.Manoharan
For Respondents 1 to 3 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader.

For Respondents 4 to 7 : Mr.S.Sivasubramani

ORDER

This Writ Petition has been filed, challenging the impugned order passed by the third respondent, dated 30.07.2019, and for a consequential direction to consider the physical disability of the petitioner and give preference by posting him in a nearby village in future counselling for general transfers.

2. The case of the petitioner is that he was appointed as Village Administrative Officer in Perambalur District in the year 2012. Thereafter, he was transferred to Coimbatore in the year 2014 and he was posted at Ganapathi Village, Coimbatore North Taluk, which is considered to be an 'A' Village, on 01.09.2016. The petitioner submitted a representation to the third respondent to give him preference during the counselling conducted for general transfers by posting him in a nearby village, on the ground that he suffers from physical disability and his wife also suffers from a disability, namely, locomotor disability.

3. Petitioner was transferred to Anuparpalayam 'A' Village at Coimbatore during the year 2017. He also joined duty and he kept submitting representations to the respondents and requesting them to accommodate him in a nearby 'B' Village. In the meantime, there was a proposal to conduct a General Counselling for transfers in the last week of June, 2019. Therefore, he approached this Court by filing the present Writ Petition, seeking for the relief stated supra.

4. When this Writ Petition was pending, an order came to be passed by the third respondent on 30.07.2019. This order also has been made the subject matter of challenge in this Writ Petition and an amendment petition was filed, which was allowed by this Court on 07.11.2019.

5. Petitioner has challenged the above order of the third respondent, dated 30.07.2019, on the ground that it is opposed to the Government Order in G.OMs.No.515, dated 25.08.2008, and the Government letter, dated 22.07.2009. According to the petitioner, the third respondent has taken a stand that no preference will be given to physically challenged persons and the petitioner has been placed at

Serial No.38 in the Seniority List, whereas, he was at the top of the Seniority List when he was appointed in the year 2014 at Coimbatore.

6. Learned counsel for the petitioner has submitted that the stand taken by the third respondent in this case is totally opposed to G.O.Ms.No.515, dated 25.08.2008, and the Government letter, dated 22.07.2009. According to him, the petitioner was initially working at Ganapathi, which was an 'A' Village, and, thereafter, he was transferred to a far-off place at Anuparpalayam, which is nearly 50 kms. away from the previous location. The learned counsel further submitted that the whole purport of G.O.Ms.No.515, dated 25.08.2008, is only to ensure that persons with disabilities are given preference and accommodated in nearby villages, so that they will not face hardship of travelling to far-off villages with their disability. He would also submit that respondents are expected to give a purposive meaning to the language used in the Government Order and the third respondent cannot be allowed to consider the said G.O. as if it gives him a discretion in extending the preference to persons suffering from disability. He would further argue, that through the impugned order, the petitioner has been placed at Serial No.38 in the Seniority List, which also goes against the interest of the petitioner since he was at the top of the Seniority List in the year 2014 when he joined at Myleripalayam Village in Coimbatore District. Therefore, the learned counsel submitted that the impugned order requires interference and the respondents must be directed to give preference to the petitioner in future counselling.

7. Conversely, Mr.P.S.Sivashanmugasundarm, learned Special Government Pleader, appearing for the respondents, has submitted that Seniority List is prepared district-wise; when the petitioner joined in Coimbatore Division, his seniority was fixed at Serial No.40; the petitioner was earlier considered for transfer to Bilichy (East), which is a 'B' Village in Coimbatore North Taluk, but the petitioner refused to join duty at the said place and, therefore, he was posted at Anuparpalayam Village. The learned Special Government Pleader further submitted that the case of the petitioner, including his physical disability, was considered in detail by the third respondent and that the petitioner has now been placed in 38th place in the Division Level Seniority List. He would also submit, that in future counselling, the case of the petitioner will be considered in accordance with G.O.Ms.No.515, dated 25.08.2008.

8. An impleading petition has been filed in this case and the learned counsel appearing on behalf of the impleaded respondents has supported the submissions made by the learned Special Government Pleader.

9. This Court has carefully considered the submissions made by the learned counsel on either side and also the material available on record.

10. Concedingly, there are no serious disputes with regard to the facts of the case. Here, there are only two issues, which require consideration. The first issue is, with regard to the preference that has to be given to persons, who are physically challenged, as per G.O.Ms.No.515, dated 25.08.2008. This preference is given in the Government Order in order to ensure that persons suffering from disability do not suffer any further hardships by travelling to distant villages and also to make sure that congenial atmosphere is created to accommodate such persons. Though the Government Order used the word 'may', it should be read as 'shall', since it is a beneficial legislation, passed in favour of persons suffering from physical disability. Therefore, whenever persons suffering from disability come into the zone of consideration, preference will have to be given to such persons, by accommodating them in nearby villages, as contemplated in the Government Order. The third respondent cannot completely disregard the Government Order and treat it to be an option, that is given to the authorities. Therefore, this Court is in agreement with the submission made by the learned counsel for the petitioner in so far as giving preference to persons suffering from physical disability, while considering the posting during counselling, that is conducted for general transfers.

11. The second issue that arises for consideration is, with regard to placing the petitioner in 38th place in the Seniority List. The third respondent, in the impugned order, has stated, that at the time when the petitioner joined the service in the year 2014, the petitioner was in sixth place in the Seniority List. Thereafter, another Seniority List was prepared, by taking into consideration all the divisions which fell within Coimbatore District and it was found that the petitioner was in 43rd place in the Seniority List. Now, by virtue of the order impugned, the petitioner has been placed in 38th place in the Seniority List.

12. This Court is not in a position to interfere with the order impugned with regard to the Seniority, since, apart from the petitioner, there are many others, whose names find place in the Seniority List, and none of them is before this Court and, as such, passing any orders, interfering with the proceedings of the third respondent, will adversely affect the interests of those persons, whose names are found in the Seniority List. Therefore, this Court is not inclined to interfere with the order impugned, in so far as placing the petitioner at 38th place in the Seniority List.

13. In view of the above discussion, this Writ Petition is disposed of, with a direction to the third respondent to give preference to the petitioner in accordance with G.O.Ms.No.515, dated 25.08.2008, whenever the petitioner falls within the zone of consideration and when future counselling for general transfers takes place. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dixit
To

- 1.The Special Commissioner/
Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 005.
- 2.The District Collector,
Coimbatore District,
Coimbatore - 641 018.
- 3.The Revenue Divisional Officer,
Coimbatore North Division,
Coimbatore.

+1cc to Mr.N.Manoharan , Advocate SR.No. 103392
+1 cc to Government Pleader Sr.No. 103648

W.P.No.15866 OF 2019

ssv
A.SK(24/01/2020)

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