

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Review Application No.183 of 2019
in W.P. No.13736 of 2017 and
W.M.P. Nos.26403 & 26404 of 2019

1.The Government of Tamil Nadu,
rep. by its Secretary,
Municipal Administration &
Water Supply (TP) Department,
Fort St. George,
Chennai-600 009.

2.The Director of Town Panchayats,
Kuralagam Building,
Chennai-600 108.

3.The Assistant Director of Town Panchayats,
Nagercoil Region,
Kanyakumari District.

4.The Executive Officer,
Marungoor Town Panchayat,
Marungoor Post,
Agastheeswaram Taluk,
Kanyakumari District-629 402.

.. Applicants

-vs-

S.Chenthil

.. Respondent

Prayer: Review Application filed under Order XLVII Rule 1 of C.P.C. 1908 to review the order dated 05.06.2017 made in W.P. No.13736 of 2017 passed by this Court and set aside the same.

For applicants 1 to 3 : Mrs.Narmadha Sampath,
Additional Advocate General
assisted by Mrs.P.Rajalakshmi,
Additional Government Pleader

For fourth applicant : Mr.V.Jayaprakash Narayanan
Government Pleader

For Respondent : Mr.P.Ebenezer Paul

ORDER

The review application has been filed taking strength from an observation made by the Hon'ble Division Bench in W.A. No.366 of 2019 dated 04.04.2019 that in case the appellants are of the view that there is no proposal pending, the appropriate course is to file a review petition and not an appeal.

2. Heard Mrs.Narmadha Sampath, learned Additional Advocate General, assisted by Mrs.P.Rajalakshmi, learned Additional Government Pleader, appearing for the applicants 1 to 3, Mr.V.Jayaprakash Narayanan, learned Government Pleader(i/c), for the fourth application and Mr.P.Ebenezer Paul, learned counsel for the respondent/writ petitioner.

3. For the sake of convenience, the parties shall be referred hereinafter as per their status in the writ petition.

The writ petitioner had obtained driving license to drive the Light and Heavy Motor Vehicle on 12.08.1999 and subsequently, he had also registered his name in the employment exchange on 12.06.2009. Therefore, considering his qualification and eligibility, he was appointed as Driver in the fourth respondent Town Panchayat on 29.08.2008. Whiles, the fourth respondent Town Panchayat, having an area of 10 sq.kilometre, 15 wards comprising of 14 remote villages as per 2001 census, purchased TATA Ace vehicle to remove solid waste/garbage in and around the said Town Panchayat. The said vehicle was purchased from the funds provided in the 12th Finance Committee. Thereafter, when the applications for the post of Driver were called for, the petitioner, having been applied for the said post, was selected and appointed on contract basis with a monthly salary of Rs.3500/- on the basis of Resolution No.14/2008, dated 29.08.2008.

4. Whiles, in the year 2011, after considering several representations made by the contract employees and also taking note of the request made by the second respondent/Director of Town Panchayats, Chennai, the Government passed an order in G.O.Ms.No.37, Municipal Administration and Water Supply

(T.P.) Department, dated 01.02.2011, stating that for tractor driver, qualification as prescribed in G.O.Ms.No.205, Rural Development Department, dated 23.09.1989, should be followed, as per which, person appointed as driver should possess pass in 8th standard with driving license of heavy motor vehicle and 5 years of experience in driving and out of which, 3 years of experience must be in heavy motor vehicle. It was further directed that the Government as well as the Director permitted to purchase Tractors to clear solid waste/garbage collected in Town Panchayat area and if no driver is available, proposals from the Town Panchayat be called for and the Director of Town Panchayat is permitted to create one driver post for one vehicle with time scale of pay subject to the conditions;

(a) *that such of those persons serving as driver without post who were engaged after being sponsored by the employment exchange, they are to be given time scale of pay from the date of creation of driver posts; and*

(b) *that such of those persons engaged without sponsorship of employment exchange, however registered their name in employment exchange. are to be given time scale of pay from the date of creation of driver post.*

5. In the case on hand, since the petitioner is falling under the second category, the fourth respondent/the Executive Officer of Marungoor Town Panchayat, based on a communication dated 11.11.2013 sent by the Assistant

Director of Town Panchayat/third respondent, passed a Resolution No.16, dated 06.01.2014, and submitted a proposal dated 08.02.2014 clearly stating that the fourth respondent Town Panchayat is required to have a mini lorry to remove solid waste/garbage and the said Resolution further stated that the petitioner has been continuously working as Driver on contract basis from 28.08.2008 onwards. Subsequently, without considering the said Resolution as well as proposal, the second respondent again called for further proposal vide his proceedings dated 22.12.2016 and thereafter, the fourth respondent had again submitted his proposal dated 28.12.2016 reiterating the same as stated in the earlier proposal dated 08.02.2014. However, since the respondents 2 and 3, without implementing the said G.O.Ms.No.37, Municipal Administration and Water Supply (T.P) Department, dated 01.02.2011, are attempting to engage the drivers through Self Help Group, the petitioner came to this Court taking a stand that his appointment, after a period of 9 years, cannot be disturbed, more particularly, when he was appointed based on a Resolution No.14/2008, dated 29.08.2008, by the fourth respondent Town Panchayat.

6. When the writ petition was heard on 05.06.2017, it was submitted by the learned counsel for the writ petitioner that the Government had already issued an order permitting the second respondent to create one post of Driver

for one vehicle in each Town Panchayat and therefore, the respondents 2 and 3 cannot keep quiet without implementing the Government Order. In reply, learned Special Government Pleader for the respondents sought time to consider the proposal submitted by the fourth respondent Town Panchayat dated 28.12.2016. As the proposal was sent way back on 28.12.2016, this Court, vide order dated 05.06.2017 passed in W.P.No.13736 of 2017, directed the respondents 2 and 3 to create one post of Driver and pass final order therein within a period of eight weeks. However, the respondents have filed an appeal in W.A.No.366 of 2019, whereby, the Hon'ble Division Bench of this Court, after taking note of the two proposals dated 08.02.2014 and 28.12.2016 sent by the fourth respondent Town Panchayat, while dismissing the writ appeal, observed that in case the Government is of the view that there is no proposal pending, the appropriate course is only to file a review petition and not an appeal. But, this Court, having seen that the proposals dated 08.02.2014 and 28.12.2016 of the fourth respondent Town Panchayat are still under consideration before the respondents 2 and 3, is unable to find any ground to review the earlier order passed by me.

7. One of the contentions of Mrs.Narmadha Sampath, learned Additional Advocate General, appearing for the State Government is that there

was no need for proposal for a permanent post of Driver. It is further argued that G.O.Ms.No.37, Municipal Administration and Water Supply (TPI) Department, dated 01.02.2011, made it clear that if the eligible Office Assistants with driving license are not available, the Executive Office may appoint Drivers directly from the non-provisional staff who are already working as NMRs on daily wage basis subject to the qualification prescribed in G.O.Ms.No.205, Rural Development Department, dated 23.03.1989, on seniority basis from the workers, such as Public Health Sanitary Workers, Pump Operator and Street Light Maintenance Workers. Whiles, the creation of post of Driver is not vested with the Panchayat.

8. It is no doubt true that the creation of post of Driver is not vested with the Panchayat. But, in the case on hand, the fourth respondent had already sent a proposal bearing No.212/2013, dated 08.02.2014, by clearly stating that the fourth respondent Town Panchayat is required to have mini lorry to remove solid waste/garbage and since the petitioner has been continuously working as Driver on contract basis from 2008 onwards, he can be accommodated in the said post and it was further requested to create one post of Driver for smooth functioning of fourth respondent Town Panchayat. Thus, I am of the view that when there was already two proposals dated 08.02.2014 and 28.12.2016 made by

the fourth respondent Town Panchayat, nothing wrong in giving a direction to consider the claim of the petitioner as he has been working in the fourth respondent Town Panchayat from 2008 onwards.

9. In fine, for the reasons stated above, this Court, finding no error on the face of record, is inclined to dismiss the Review Application. Accordingly, the Review Application is dismissed. No Costs.

24.09.2019

vga/rkm

To

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T.RAJA, J.

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