

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.32816 of 2019

and

WMP Nos.33245 & 33246 of 2019

K.Kailasam

... Petitioner

Vs.

1.The District Collector,
Dharmapuri District,
Dharmapuri.

2.The Assistant Director of Twon Panchayat,
Dharmapuri Zone,
Dharmapuri.

3.The Executive Officer,
Palacode Town Panchayat,
Dharmapuri District, Dharmapuri.

.... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus to call for the Notification issued by the 2nd respondent in its Na.Ka.No.3990-1/2019/TP3 dated 07.11.2019 insofar as filling up the post of Turn Cork Operator (Water Tank Operator) in Palacode Town Panchayat in Dharmapuri District and quash the same and consequently direct the respondents to appoint the petitioner herein the said post in accordance with the direction of this Court in W.P.No.17374 of 2007 dated 03.09.2009.

For Petitioner : Mr.V.Vijayashankar

For Respondents : Ms.M.Lalitha for R1 & R 2

Government Advocate

Mr.E.Balamurugan for R3

Special Government Pleader

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner was joined in service as NMR worker on daily wages under the 2nd respondent town panchayat in the year 1989. He was paid salary of Rs.1500/- per month and he was attending Water Supply Maintenance and other related works under the 2nd respondent town panchayat. G.O.Ms.No.125 dated 27.5.1999 was issued by the Government of Tamilnadu for regularising such temporary NMR employees appointed before 31.12.1996. Though he ought to have been regularized in terms of above G.O., the 2nd respondent ignored his case and instead regularised two juniors by name C.Palani and another K.Palani. In these circumstances, he was constrained to approach the Tamil Nadu Administrative Tribunal by filing O.A.No.2507 of 2003 for regularising his services. The said OA was transferred to this Court and renumbered as W.P.No.17374 of 2007. By an order dated 03.09.2009, this Court allowed the WP by finding that he was entitled to be regularised with effect from the date of his juniors with all benefits including arrears of salary. Since vacancies in Water Supply Maintenance was not available, his services were continued to be as Sanitary Worker. However, the respondents are continuing to treat him as a Sanitary Worker which not only reduces his status but also his total pay and emoluments. While that being so, in the year 2017, the respondent attempted to fill up the post of Water Supply Operator in Arur Town Panchayat by posting one Mr.Palani and the petitioner moved this Court by filing W.P.No.11603 of 2017. On 04.05.2017, order of status quo was passed, and the respondents cleverly manipulate the records to make it appear as if the said Palani had joined a couple of days before the order of this Court. Thus, his appointment as Water Supply Operator in the Arur town panchayat was frustrated in this manner. Now the 2nd respondent has called for filling up the posts of Water Tank Operator for the Palcode town panchayat, for which, the 3rd respondent is the Appointing Authority. Palacode town panchayat comes within the Dharmapuri District and the 2nd respondent has called for filling up the post by his notification dated 07.11.2019, and the last date for application is 22.11.2019. In these circumstances, left with no other option, the petitioner is constrained to approach this Court by way of filing this writ petition.

3.The learned counsel for the petitioner submitted that the petitioner ought to be regularised and given as Water

Tank Operator on par with his juniors. The learned counsel further submitted that he was given Sanitary Work only because the post of Water Tank Operator was not readily available. The learned counsel submitted that now a post has become available in Palacode Town Panchayat, Dharmapuri District, for which, he is ready and willing to join, the respondents are bound to honour their commitment and appoint the petitioner herein to the said post, then only, the order of this Court in W.P.No.11603 of 2017 will be fully complied with. The learned counsel further submitted that the post of Turn Cock Operator/Tank Operator carries higher pay than that of Sanitary Worker and the status is also higher. The learned counsel submitted that without affording any opportunity to the petitioner, the 2nd respondent has passed an impugned notification dt.07.11.2019, and the same is illegal and hence prays for appropriate orders.

4.The learned counsel appearing for the 2nd respondent does not dispute the submissions made by the learned counsel for the petitioner. He further submitted that the 2nd respondent will consider the representation of the petitioner and thereafter, they may be permitted to pass an order within the time stipulated by this Court.

5.On a perusal of records, the petitioner is working as Sanitary Worker in - Arur and earlier occasion initially, the petitioner was appointed as NMR worker and he paid consolidated salary of Rs.450/- per month and thereafter he was paid Rs.1500/- per month. G.O.Ms.No.125 dated 27.05.1999, was issued for regularising the NMR employees before 31.12.1996. Though, the petitioner ought to have been regularised, however, he was not regularised. The respondent regularised the juniors viz; C.Palani and K.Palai and his services were terminated. Aggrieved by the termination, he filed an OA.No.2507 of 2003, for regularising the services and later the said O.A. was renumbered as W.P.No.17374 of 2007. This Court by an order dated 03.09.2009, allowed the writ petition and observed the petitioner entitled to be regularisation with effect from the date and temporarily working in the Arur Town Panchayat, whereas the petitioner is working in Arur Town Panchayat, if any vacancy in Arur Panchayat, the petitioner is entitled to claim. Further, it appears the petitioner also made a representation on 07.11.2016, to the Executive Officer, Arur, Dharmapuri District, and he is entitled to consider the representation not to challenge notification issued by the 2nd respondent to fill up the post for the above said vacancy in 3rd respondent Town Panchayat. Hence, the relief sought for cannot be considered and the same is rejected, however, liberty is granted to the petitioner to make representation to the 2nd respondent. If

any representation is received, the 2nd respondent has to pass appropriate orders.

The Writ Petition is disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The District Collector,
Dharmapuri District,
Dharmapuri.
- 2.The Assistant Director of Twon Panchayat,
Dharmapuri Zone,
Dharmapuri.
- 3.The Executive Officer,
Palacode Town Panchayat,
Dharmapuri District, Dharmapuri.

+1 cc to M/s.V.Vijayshankar,Advocate Sr.No. 98092

+1 cc to The Government Pleader Sr.No. 98024

AKM/28.01.2020/4P-6C /

W.P.No.32816 of 2019

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