

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.33435 of 2019

and

W.M.P.Nos.33897 & 33898 of 2019

R.Sulochana

...Petitioner

Vs

1. The Secretary to Government of
Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 9.
2. The Director of Town Panchayat,
Kuralagma Buildings,
Chennai - 108.
3. The Assistant Director of
Town Panchayat,
Salem Division, Salem - 1.
4. The Executive Officer,
Athanur Town Panchayat,
Namakkal District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the 1 to 4 respondents to bring the petitioner under regular time scale considering her long continuous uninterrupted service in the category of Sanitary Worker with all service and monetary benefits.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Spl. GP for R1 to R3

Mr.G.B.Ramesh
for R4

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O R D E R

This writ petition has been filed for issuing a writ of mandamus, directing the respondents to take into consideration the service put in by the petitioner as a Sanitary Worker and give weightage for the same during selection, that is now being conducted by the Town Panchayat.

2.The case of the petitioner is that the petitioner was engaged as a Sanitary Worker by the Panchayat and she was also brought under consolidated pay. The further case of the petitioner is that the services of the petitioner was utilised by the Self Help Groups under the notification issued by the Ministry of Environment, Forest and Climate Change, dated 08.04.2016. This notification itself prescribes for the duties and responsibilities of local authorities and village Panchayats to facilitate the formation of Self Help Groups. According to the petitioner, the Panchayat has now issued a notification calling for applications from eligible persons to be appointed to the post of Sanitary Worker. The petitioner has also applied for the said post and the petitioner seeks for giving weightage for the services already put in by the petitioner as a Sanitary Worker.

3.Mr.P.I.Thirumoorthy, learned counsel appearing on behalf of the petitioner submitted that the petitioner has put in more than 2 years of service and therefore, the petitioner is entitled to be brought under regular time scale in the post of Sanitary Worker, considering the long continuous, uninterrupted services put in by the petitioner. The learned counsel submitted that the Hon'ble Supreme Court and this Court has issued various directions to regularise the services of those persons, who have been engaged continuously for more than 10 years. The learned counsel submitted that the petitioner must be given priority by appointing her to the post of Sanitary Worker in the present selection that is carried out by the Panchayat.

4.Per contra, Mr.P.S.Shivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents 1 to 3 submitted that the petitioner does not have a legal right to claim for the relief of bringing the petitioner under the regular time scale in the post of Sanitary Worker. The learned counsel submitted that the petitioner is admittedly working for the Self Help Group, which has been constituted pursuant to the notification issued by the Central Government in the year 2016. Those services cannot be taken into consideration or given weightage by the Panchayat, while considering the selection of persons to the post of Sanitary Worker. The learned counsel submitted that unless and otherwise the petitioner has been working in a sanctioned post, no such right can be claimed. The

learned counsel further submitted that the petitioner has also applied and is participating in the selection process and the candidature is being considered by the respondents in accordance with the norms and no special preference can be given to the petitioner during selection.

5.This Court has carefully considered the submissions made on either side and also the materials available on record.

6.It is an admitted fact that the petitioner was earlier working in the Panchayat as a Sanitary Worker and subsequently, the services of the petitioner is engaged by the Self Help Group. The Panchayat has now issued a notification to fill up the post of Sanitary Worker and the petitioner has also participated in the selection. The petitioner wants the previous services to be given weightage at the time of selection. In order to derive this right, the petitioner relies upon the continuous, uninterrupted services put in by the petitioner for more than 2 years.

7.A writ of mandamus can be issued by this Court only where this Court finds that there is a legal right for the petitioner and there is a corresponding legal duty for the respondents. In the absence of the same, this Court cannot issue such a writ. The services put in by the petitioner does not give her the legal right to be given any preference or to add any weightage at the time of selection. The candidature of the petitioner can be considered on par with the other candidates, who are participating in the selection process for appointment to the post of Sanitary Worker. This Court cannot exercise its writ jurisdiction and directions for giving preference or weightage to the petitioner de hors what has already been prescribed in the notification. In other words, this Court cannot modify or add anything to the existing notification. Therefore, this Court is not in a position to grant the relief as sought for by the petitioner. It is seen from the affidavit that even as per the admitted case of the petitioner, she has put in only 2 years of service.

8.It is made clear that the filing of this writ petition by the petitioner cannot be put against the petitioner and the candidature of the petitioner must be independently considered by the Panchayat as proposed. The petitioner has only made an attempt to exercise her rights by approaching the Court and it is her fundamental right to seek for a judicial intervention. Such exercise of right can never be put against a candidate and a candidate cannot be put in a disadvantageous position for having approached the Court. The candidature of the petitioner has to be considered purely on merits and in accordance with the notification issued by the Panchayat.

9.In the result, this Court is not inclined to entertain this petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

hvk
To

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+1 CC to Mr.P.I.Thirumoorthy, advocate sr 103798

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SR(CO)
SP(27/01/2020)