



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.19389 of 2019

S.Arockia Bepin Prabhu

...Petitioner

-Vs-

1.State of Tamil Nadu

Represented by its Additional Chief Secretary to the Government
Rural Development and Panchayat Raj Department
Secretariat
Chennai -9

2.The Director of Rural Development and Panchayat Raj
Rural Development and Panchayat Raj Department
Panagal Building
Saidapet, Chennai 600 015

3.The District Collector
Tirunelveli District
Tirunelveli

4.The Block Development Officer
Ambasamudram Panchayat Union
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.Nga12/18904/2019, dated 05.07.2019 on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent Nos. 1 and 2 to consider the proposal sent by the respondent No.3 vide proceedings in Na.Ka.No.Nga12/30955/2018 dated 06.09.2018 and appoint the petitioner in the post of Panchayat Secretary in any of the village Panchayat within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Dhayalan
Government Advocate



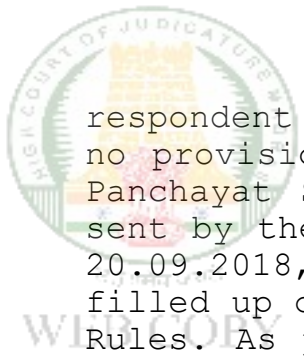
ORDER

This Writ Petition is filed to call for the records pertaining to the impugned order in Na.Ka.No.Nga12/18904/2019, dated 05.07.2019 on the file of the respondent no.3 and quash the same as illegal and consequently for a direction, directing the respondent nos. 1 and 2 to consider the proposal sent by the respondent no.3 vide proceedings in Na.Ka.No.Nga12/30955/2018 dated 06.09.2018 and appoint the petitioner in the post of Panchayat Secretary in any of the village Panchayat within the time period stipulated by this Court.

2.The petitioner was appointed as Sanitary Supervisor on 01.10.2003 on temporary basis. His service was regularized on 01.10.2005.The Government Order in G.O.Ms.No.39, dated 07.05.2013 , the petitioner was brought under special time scale of pay ie. 1300-3000-300(GP). According to the petitioner, he has completed higher education and also undergone computer training. Based on the said qualifications, on 31.07.2018, the fourth respondent sent a proposal to the third respondent seeking to appoint the petitioner as Panchayat Secretary in any one of the Village Panchayat. The third respondent forwarded the said proposal to the second respondent seeking clarification and relaxation from the first respondent for appointment of the petitioner to the post of Panchayat Secretary. While the said proposal was pending with the first respondent, the third respondent, by impugned order dated 05.07.2019, rejected the request of the petitioner on the ground that the post of Panchayat Secretary can be filled up only by way of direct recruitment and the petitioner is over aged for the post.

3.The learned counsel for the petitioner contended that the impugned order of the third respondent is arbitrary, illegal and against the doctrine of promissory estoppel. The third respondent ought to have waited for the decision of the first respondent, on the proposal sent by the third respondent. After sending the proposal by seeking clarification and relaxation and for the decision of the first respondent, the third respondent cannot reopen the merits of the petitioner's claim and rejected the same on different ground and prayed for allowing the Writ petition.

4.The respondents filed counter affidavit and denied all the averments made in the affidavit. Mr.S.Dhayalan, learned Government Advocate appearing for the respondents contended that the post of Panchayat Secretary can be filled up only by way of Direct Recruitment following the reservation roster system. The petition dated 07.01.2017 sent by the petitioner to the second respondent was considered on merits and by proceedings dated 07.03.2017, the second



respondent rejected the said petition on the ground that there are no provisions in the Government Rules to appoint the petitioner as Panchayat Secretary by way of promotion. In reply to the proposal sent by the third respondent, the second respondent by letter dated 20.09.2018, clarified that the post of Panchayat Secretary can be filled up only as per the interim order of the Court and also as per Rules. As per Rules, the Panchayat Secretary can be appointed only by way of Direct Recruitment. The third respondent after obtaining clarification from the second respondent, rejected the claim of the petitioner by impugned order and hence, the petitioner is not entitled for appointment by way of promotion to the post of Panchayat Secretary and prayed for dismissal of this Writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. From the materials on record, it is seen that the petitioner is working as Sanitary Supervisor. He is seeking appointment as Panchayat Secretary by way of promotion. The fourth respondent passed resolution, recommending the appointment of the petitioner as Panchayat Secretary and forwarded the said proposal to the third respondent. The third respondent did not accept the said proposal of the fourth respondent and has sought for clarification and relaxation on the proposal sent by the fourth respondent. According to the petitioner, the third respondent having sent the proposal to the second respondent for clarification and relaxation, ought to have waited for the decision of the second respondent. The said contention is contrary to the facts. The second respondent by letter dated 20.09.2018 clarified that the post of Panchayat Secretary will be filled up only based on the interim order of this Court as well as instruction of the Government. The respondents have extracted the portions of the said letter in the counter affidavit.

7. On receipt of the said clarification, the third respondent has sent a letter dated 16.11.2018 stating that he sought only clarification and in future, he will not seek such clarification. The said letter is also extracted in the counter affidavit. Further, the request of the petitioner, which was sent to the second respondent on 07.01.2017 to appoint him as Panchayat Secretary was rejected by the second respondent on 07.03.2017. This Court seized all the appointment of the Panchayat Secretary in W.P(MD).No.16884 of 2013 and action is being taken up to fill up the post of Panchayat Secretary as per the interim order of this Court passed in the above Writ petition and also as per Government Rules. As per Rules, there is no provision for promoting the person to the post of Panchayat Secretary, as the said post can be filled up only by way of Direct Recruitment.



8. For the above reasons, this Writ petition is dismissed. No costs.

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Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar (CS)

msa

To

1. The Additional Chief Secretary to the Government
State of Tamil Nadu
Rural Development and Panchayat Raj Department
Secretariat, Chennai -9

2. The Director of Rural Development and Panchayat Raj
Rural Development and Panchayat Raj Department
Panagal Building
Saidapet, Chennai 600 015

3. The District Collector
Tirunelveli District
Tirunelveli

4. The Block Development Officer
Ambasamudram Panchayat Union
Tirunelveli District

+1 CC to M/s.GP (SR-99023[F] dated 18/11/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-99349[F] dated 19/11/2019)

W.P. (MD) No.19389 of 2019

15.11.2019

JMN (17.12.2019) 4P : 7C