



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.9420 of 2014

and

M.P.[MD]No.1 of 2014

P.Rajan

... Petitioner

Vs.

The District Educational Officer,
Thoothukudi District,
Thoothukudi.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to appoint the petitioner to the post of office Assistant or any of the categories in clause III of Tamil Nadu Basic Services, within the time stipulated by this Court.

For Petitioner : Mr.R.V.Rajkumar

For Respondent : Mrs.S.Srimathy

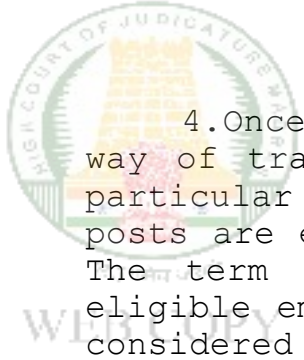
Special Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to appoint the petitioner to the post of Office Assistant or in any of the categories in Clause III of Tamil Nadu Basic Services, within the time stipulated by this Court.

2.The Writ petitioner states that he is working in the post of Sweeper as a regular employee. There is no direct avenue of promotion from the post of Sweeper to any higher post. However, the Rule contemplates that the qualifying persons working in the cadre of Sweeper can be appointed as Office Assistant by way of transfer appointment. As far as the post of Office Assistant is concerned, two methods of appointment are prescribed and the first one is direct recruitment and secondly the appointment is by way of transfer from Clause - IV services.

3.The concept of transfer of service can be adopted by pulling the candidates from various departments. All the eligible candidates working in the cadre of Group - IV services can be considered for appointment to the post of Office Assistant. Thus, the policy decision as well as the administrative decisions are to be taken at the time of filling up of the post of Office Assistant by the Competent Authorities.



4. Once the method of recruitment is stated as appointment by way of transfer of services, such a method cannot be confined to particular department alone. All candidates working in Sweeper posts are eligible for appointment to the post of Office Assistant. The term appointment by transfer of service connotes that the eligible employees working in the cadre of Group - IV cadre can be considered for appointment by way of transfer of service in a particular department. Therefore, the term does not confine the particular department or service. This being the interpretation broadly provided in respect of the concept of appointment by way of transfer of service, this Court is of the considered opinion that a policy decision is to be taken by the competent authorities.

5. Appointment or promotion can never be claimed as a matter of right. Appointments are to be made strictly in accordance with the recruitment rules in force. Equally, promotions are to be granted strictly in accordance with the Rules. Consideration for promotion is a fundamental right of an employee. Thus, whenever an administrative decision is taken to fill up the post of Office Assistant, by way of transfer of service, then the names of all the eligible persons who all are aspiring to get the post of Office Assistant are to be considered in accordance with the rules in force. This being the principle to be followed, the case of the writ petitioner also shall be considered whenever the process of appointment by way of transfer of service is undertaken by the competent authorities along with all other eligible candidates.

6. With these observations, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To
The District Educational Officer,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.R.V.RAJKUMAR, Advocate (SR-77279[F] dated 24/07/2019)

+1 CC to M/s.SPL GP (SR-77311[F] dated 24/07/2019)

W.P[MD]No.9420 of 2014
23.07.2019