

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P NO.2649 OF 2020

AND

W.M.P NO.3086 OF 2020

A.Poongavanam

Petitioner

vs.

1. The Assistant Director of Town Panchayats,
Cuddalore Disvision,
Cuddalore.

2. Gingee Special Grade Town Panchayat,
Rep. by its Executive Officer,
Gingee Town Panchayat,
Gingee.

Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to appoint the petitioner as sweeper under the S.C. Category in terms of the advertisement made in Na.Ka.No.2806/2019/Peru.2 dated 05.11.2019 published in the Tamil newspaper "Dinakaran" Puducherry edition dated 08.11.2019 issued by the 1st respondent with all attended benefits.

For Petitioner : Mr.R.Dhanaram

For Respondents: Mr.P.V.Selvakumar
Additional Government Pleader

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O R D E R

This writ petition has been filed challenging the advertisement that has been given by the Town Panchayat, inviting applications for selection to the post of Sweeper.

2.The case of the petitioner is that she was appointed as a Sweeper in the 2nd respondent Panchayat in the year 1984. She was dismissed from service in the 1994 and therefore, the petitioner raised an Industrial Dispute. The Labour Court, by an award

dated 04.07.2001, made in I.D. No.79 of 1997, directed the 2nd respondent to reinstate the petitioner with back wages. This order became a subject matter of challenge before this Court in W.P.No.15840 of 2013. This Court disposed of the writ petition by an order dated 10.04.2013. The relevant portions in the order are extracted hereunder:

6.Though it is the case of the petitioner that as the first respondent has bot worked 240 days continuously, she is not entitled to claim benefit under the I.D.Act, the petitioner has not even produced the Muster roll or any other relevant documents before the Labour Court not before this Court to proved the same. Further, the first respondent also filed petition before the Labour Court for production of records. Inspite of the same, the petitioner has not produced any documents before the Court. Therefore, adverse inference has to be drawn against the petitioner.

7.Under such circumstances, it is clear that the first respondent worker under the petitioner continuously and the same was rightly considered by the Labour Court. Therefore, I do not find any irregularity or illegality in the impugned Award passed by the second respondent.

8.It is now represented that the second respondent ought to have attained superannuation by this time. Therefore, the petitioner is directed to settle the amount to the second respondent in accordance with law. It is also represented that while granting interim stay on 28.05.2003, this Court directed the petitioner to deposits entire back wages as awarded by the Labour Court in I.D.No.79 of 1998 within a period of eight weeks from that date and the same was complied with. Therefore, the petitioner is at liberty to withdraw the same.

3.After the orders were passed by this Court in the year 2013, the petitioner had kept quiet for nearly six years and she happened to notice a paper advertisement issued by the 1st respondent calling for applications to fill up the post of Sweeper in the 2nd respondent Panchayat. The petitioner woke up and gave a representation to the 2nd respondent during November 2019. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

4.The learned counsel for the petitioner submitted that the petitioner is only aged about 49 years and it was an apparent mistake, wherein, a representation was made to the Court while disposing of the earlier writ petition as if the petitioner has already attained superannuation. The learned counsel submitted that the petitioner does not intend to stall the selection process initiated by the respondents and the petitioner only wants the 2nd respondent to consider engaging the petitioner as a Sweeper based on her representation. According to the learned counsel for the petitioner there are still vacancies in the post of Sweeper.

5.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the petitioner has kept quiet for the last six years and the order passed by this Court in W.P.No.15840 of 2013 has already become final and therefore, the petitioner has lost her right to claim for appointment to the post of Sweeper. The learned counsel further submitted that, if at all the petitioner is aggrieved by the earlier order passed by this Court, the petitioner should have filed at least a review petition and got the last paragraph of the order clarified, failing which, the petitioner, now cannot raise the issue which has already become final.

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

7.As rightly contended by the learned Government Advocate, the petitioner ought to have filed a review petition if she was really aggrieved by the findings given by this Court at Paragraph No.8 of the order. This Court proceeded to give a direction on the representation made before the Court as if the petitioner has already reached the age of superannuation. It is seen from records that, there was some mistake in the representation that was made before this Court since the petitioner is only 49 years old even at the time when the present writ petition was filed and obviously the petitioner could not have reached the age of superannuation when the earlier writ petition was disposed of in the year 2013. The only difficulty that is faced by this Court is that, time has elapsed in this case and it is almost six years since the earlier order was passed by this Court. The petitioner has not even made any representation till November 2019 and for the first time, she has made a representation only in November 2019. It is very clear that the petitioner does not have any right to stall the selection process that has been initiated by the respondents. At the best, the petitioner can only make a request to the 2nd respondent to consider engaging her as a Sweeper in the Panchayat Union. It will be left open to the 2nd respondent to take a decision on that and this Court cannot compel the 2nd

respondent to engage the petitioner as a Sweeper.

8.In view of the above discussion, this Court does not find any merits in the present writ petition and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Assistant Director of Town Panchayats,
Cuddalore Disvision,
Cuddalore.
2. The Executive Officer,
Gingee Special Grade Town Panchayat,
Gingee Town Panchayat, Gingee.

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.8859
+1cc to Government Pleader, S.R.No.10442

W.P No.2649 of 2020
and W.M.P No.3086 of 2020

LN(CO)
CS/11/03/2020

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