

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04-11-2020

Judgment Delivered on : 23-12-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 2676 of 2019

(Heard through Video Conferencing)

R. Arumugam ... Appellant /Petitioner

Versus

1. The Government of Tamil Nadu
represented by the Secretary to Government
Rural Development and Panchayat Raj Department
St. George Fort
Chennai - 600 009
2. The Director
Directorate of Rural Development and Panchayat Raj
Panagal Building
Saidapet, Chennai - 600 015
3. The District Collector
Coimbatore District
Coimbatore
4. The Commissioner
Panchayat Union
Sarkar Samakulam Panchayat Union
Coimbatore District .. Respondents/Respondents

Writ Appeal filed under Clause 15 of The Letters Patent against the common Order dated 12.03.2019 passed by the learned Single Judge in WP No. 17460 of 2018 on the file of this Court.

WP.No.17460 of 2018:Writ of Mandamus Directing the 3rd respondent to accept the reasons set forth by the petitioner to transfer him from the post of Night Watchman post to the post of office Assistant any one of the Panchayat Unions in Coimbatore District.

For Appellant : Mr.A.S.Palanisamy
For Respondents : Mrs.A.Srijayanthi
Special Government Pleader

JUDGMENT

R. SUBBIAH, J

This intra-court appeal is filed by the appellant, aggrieved by the order dated 12.03.2019 passed by the learned Single Judge, dismissing WP No. 17460 of 2018 filed by him.

2. The appellant was appointed as Night Watchman on 30.05.1985 by the fourth respondent. On such appointment, he was posted in the Sarkar Samakulam Panchayat Union. He also joined duty on the same date. Thereafter, he was discharging his duties without giving any room for any complaint. On completion of ten years of service on 30.05.1995, the third respondent, in his proceedings dated 05.11.1998, regularised the service of the appellant in the cadre of Night Watchman. Subsequently, by another proceedings dated 18.12.2000 of the fourth respondent, the appellant was allowed to draw time scale of pay in the post held by him. Thus, it is stated that the appellant had put in 33 years of unblemished service as Night Watchman. During the course of his employment as Night Watchman, the appellant submitted a representation to the third respondent seeking to appoint him to the post of Office Assistant by transfer of service. In his representation, the appellant has stated that, in the panel for promotion among Night Watchman drawn by the respondents for the year 2018, his name is found in Serial No.1. The appellant also stated in his representation that the post of Watchman/Night Watchman falls under Class IV, Category 11, while the post of Office Assistant falls on Category 5, Class III of the Tamil Nadu Basic Service Rules. According to the appellant, the post of Night Watchman and Office Assistant carries the same scale of pay and therefore, he can be transferred to the post of Office Assistant. However, such a representation made by the appellant had not been considered by the respondents and therefore, he has filed Writ Petition No. 17460 of 2018 for issuing a Mandamus to direct the third respondent to accept the reasons set forth by the appellant to transfer him from the post of Night Watchman to the post of Office Assistant in any one of the Panchayat Unions in Coimbatore District.

3. Opposing the relief sought for in the Writ Petition, the third respondent, on his behalf and on behalf of the other respondents, had filed a counter affidavit. It is stated in the counter affidavit that the appellant studied upto V standard and discontinued while studying VI Standard. While the appellant was working as a Night Watchman, he has submitted an application on 29.07.2013 to the third respondent on the grievance day, requesting him to appoint him to the post of Office Assistant by transfer of service. On a scrutiny of the representation of the appellant, it came to light that he studied only V Standard, whereas, the qualification prescribed for holding the post of Office Assistant is VIII Standard or E.S.L.C. from a recognised School. Further, only those who possess the prescribed qualification and who has completed one year of service in the Class IV category alone, shall be eligible for appointment on transfer of service. As the appellant did not possess the requisite qualification for holding the post of Office Assistant, his request was not considered. Merely because the post of Night Watchman and Office Assistant carries the equal scale of pay, it will not ipso-facto entitle the appellant to seek for appointment by transfer of service. The appellant cannot, as a matter of right, seek for appointment to a post without possessing the requisite qualification. The respondents therefore prayed for dismissal of the Writ Petition filed by the appellant herein.

4. The learned Single Judge, on considering the rival submissions, held that appointing the appellant by transfer of service to the post of Office Assistant, is the prerogative of the administrators and the Court cannot issue a Mandamus to the official respondents to appoint him. It was further held that the choice of place or post is not available to a public servant and they are liable to work wherever they are posted in the interest of public administration. Accordingly, the learned Single Judge refused to issue a Mandamus as prayed for by the appellant and dismissed the Writ Petition. Aggrieved by the same, the present Writ Appeal is filed by the Writ Petitioner.

5. The learned counsel for the appellant/writ petitioner vehemently contended that the learned Single Judge did not consider the fact that the appellant is working as Night Watchman for over 33 years without any further promotion. Further, similarly placed person like the appellant, by name Krishnasamy, was given the benefit of transfer of service to the post of Office Assistant on 01.12.1984, but the same yardstick had not been followed in the case of the appellant. In this context, the learned counsel appearing for the appellant/writ petitioner, invited the attention of this Court to the proceedings dated 20.11.2015 of the Director of Rural

Development and Municipal Administration, to contend that when a similarly placed person like the appellant was appointed by transfer of service, the respondents are not justified in refusing to extend the same benefits in favour of the appellant.

6. Per contra, the learned Special Government Pleader appearing for the respondents contended that the appellant, cannot, as a matter of right, seek for appointing him to the post of Office Assistant by transfer of service. Unless the appellant is eligible for such appointment, the respondents cannot consider his claim. As far as Mr.Krishnasamy is concerned, it is true that he was appointed to the post of Office Assistant by transfer of service, even though he had passed only VI Standard. The above said Krishnasamy was appointed on the basis of a Resolution passed by the President of Panchayat, which is contrary to the Tamil Nadu Basic Service Rules, 1971. It is also submitted that such appointment of Mr.Krishnasamy was not noticed by the Department, until he reached the age of retirement. Therefore, as a special case, the said Krishnasamy was permitted to retire and it cannot be cited as a precedent by the appellant. The learned Special Government Pleader also brought to the notice of a decision of a Division Bench of this Court in the case of R.Palanisamy and others Vs. The Registrar General, High Court of Madras and others, reported in 2020 (6) MLJ 673, which was also confirmed by the Supreme Court on appeal in Special Leave Petition (C) No.6439 of 2020, dated 24.07.2020 and this Court had held that as per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 the minimum general educational qualification prescribed for the posts falling under Tamil Nadu Basic Service Rule is a pass in S.S.L.C. Therefore, it is contended that the appellant is not entitled for being appointed to the post of Office Assistant by transfer of service when he did not possess the requisite qualification. The learned Single Judge, on appreciation of the factual aspects, had rightly held that transfer of service can never be claimed as a matter of legal right and dismissed the writ petition. The learned Special Government Pleader therefore prayed for confirmation of the order passed by the learned single Judge and to dismiss the writ appeal.

7. We have heard the learned counsel for both sides and perused the materials placed on record. It is an admitted fact that the appellant had passed V standard and he discontinued his studies while studying VI Standard. The appellant, however, seeks for appointment to the post of Office Assistant by transfer of service. At the first blush, for such appointment, the minimum general educational qualification prescribed under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is a pass in S.S.L.C., which the appellant did not possess. Further, the appellant cannot insist, compel or seek for a

direction to the respondents to appoint him to a post by transfer of service. For appointment to the post, it is not only mandatory that an incumbent fulfils all eligibility criteria, but regard must also be had to availability of post, either notified or sanctioned post, employment exchange seniority, administrative exigency in case of appointment by transfer of service etc., Therefore, the appellant cannot seek for a Mandamus to be issued to the respondents to appoint him to the post of Office Assistant by transfer of service. Such a right to seek for appointment to a post is not a vested right on the part of the appellant and consequently, the respondents cannot be directed to consider the claim of the appellant for appointment by transfer of service.

8. The learned counsel for the appellant vehemently contended that one Krishnasamy was appointed to the post of Office Assistant by transfer of service, but when similar claim was made by the appellant, he was selectively discriminated. We are not inclined to accept this submission for more than one reason. The said Krishnasamy's appointment was admittedly irregular, inasmuch as he was appointed on 01.04.1981 to the post by transfer of service by virtue of a Resolution passed by the then President of Panchayat. Such irregular appointment came to be noticed shortly before his retirement. However, taking into account such long service rendered by him from 1981 to 2013, the official respondents have decided to treat as a special case and permitted the said Krishnasamy to retire from service, notwithstanding the fact that his appointment is irregular. Therefore, such an order passed in favour of Mr. Krishnasamy cannot be cited by the appellant as a precedent. When an irregularity is noticed, it cannot be allowed to continue or perpetuated by citing it as a precedent by others. Further, the said Krishnasamy came to be appointed by transfer of service on 01.04.1981 and such appointment cannot be relied on by the appellant for consideration of his claim in the year 2018. The learned Single Judge, on a consideration of the aforesaid facts, has rightly refused to issue a Mandamus at the instance of the appellant. We see no infirmity in such an order passed by the learned Single Judge.

9. In the result, the Writ Appeal fails and it is dismissed.
No costs.

sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Government of Tamil Nadu
represented by the Secretary to Government
Rural Development and Panchayat Raj Department
St. George Fort
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2. The Director
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Panagal Building
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3. The District Collector
Coimbatore District
Coimbatore

4. The Commissioner
Panchayat Union
Sarkar Samakulam Panchayat Union
Coimbatore District

+2 ccs to Mr.A.S.Palanisamy Advocate sr42844

+1 cc to M/s.Government Pleader High court Madras
sr 43042

Writ Appeal No.2676 of 2019

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