

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.4314 of 2019

(Through Video Conferencing)

S.S.Muralidharan ... Appellant

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Rural Development
and Panchayat Raj,
Fort St. Gorge,
Chennai - 600 009.

2.The Commissioner,
Department of Rural Development
and Panchayat Raj,
Saidapet, Chennai - 600 015. ... Respondents

Writ Appeal filed under Clause 15 of the of Letters Patent,
to set aside the order dated 17.06.2019 made in W.P.No.16785 of
2019 by the learned Single Judge.

W.P.No.16785 of 2019

Petition filed under article 226 of the
constitution of India praying for issuance of a writ of mandamus
to direct the first respondent to promote the petitioner to the
post of Assistant equal to that of government servant with
effect from April 1997 with all consequential promotions
according to seniority thereafter with all benefits of increment
in salary and attendant benefits till the date of such
promotions.

For Appellant : Mr.K.Chandrasekaran

For Respondents: Mr.S.R.Rajagopalan, A.A.G.

assisted by Mrs.A.Srijayanthi, Spl. G.P.

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN, J.)

This Writ Appeal is directed against impugned order dated 17.06.2019 passed by the learned Single Judge in W.P.No.16785 of 2019. By the impugned order, the learned Single Judge has dismissed the above writ petition filed by the appellant herein on the ground that the relief claimed in the writ petition at this point of time cannot be adjudicated by the court.

2. The learned Single Judge has dismissed the above writ petition with the observation that the said writ petition was hopelessly time-barred and that the affidavit filed in support of the above writ petition also did not contain any worthwhile averment or reasons for the court to intervene at this distance point of time.

3. The appellant had filed the above writ petition for a mandamus to direct the 1st respondent to promote the appellant to the post of Assistant equal to that of Government Servant with effect from April 1997 with all consequential promotions according to the seniority and thereafter to grant all attendant benefits such as increment in salary upto the date of the promotion.

4. The facts are not in dispute. The appellant was appointed on a temporary basis as a Mechanic under the Integrated Rural Energy Programme under the Tamil Nadu Energy Development Agency at the Alandur Panchayat. However, the service of the appellant was terminated by the District Collector, Thiruchirappalli vide proceedings dated 02.11.1993 bearing reference No.RC.14756/93/R4 on the ground that the appointment of the appellant as a mechanic with the Integrated Rural Energy Programme under the Tamil Nadu Energy Development Agency at the Alandur Panchayat was found to be irregular.

5. However, in interest of the project, the then Chairman & Managing Director of the Tamil Nadu Energy Development Agency recommended the appointment of the appellant on temporary basis from 11.05.1994 to 07.08.1994 vide proceedings Na.Ka.No.2008/94/A9. Later, few persons like the appellant were appointed as a Mechanic on a regular basis in Tamil Nadu Energy Development Agency vide proceedings dated 31.03.1995 bearing reference Proc.No.4717/Accts/94. However, the said decision was reportedly kept in abeyance vide letter dated 27.06.1995 bearing reference Lr.No.4717/ Accts/94.

6. Meanwhile, the appellant continued to work as mechanic. Meanwhile, there were proposals to appoint some of the mechanics

including the appellant into the Government Service as regular Record Clerks. While these proposals were under consideration, the appellant filed the above writ petition which came to be dismissed by the learned Single Judge.

7. Challenging the impugned order passed by the learned Single Judge, the present Writ Appeal has been filed. It is submitted as early as 31.03.1995 option was exercised by the appellant including seven other mechanics for being absorbed in the Tamil Nadu Energy Development Agency (TEDA) and it is pursuant to the same the appellant continued to work as a mechanic. It is submitted that all through, the appellant had been following with the respondents for absorption. However, the respondents did not have any positive steps.

8. We have considered the arguments advanced on behalf of the appellant and the respondents. It is the case of the appellant that some of the mechanics have already been absorbed by the 1st respondent as record clerks and therefore the appellant also can be appointed.

9. Mr.S.R.Rajagopalan, the learned Additional Advocate General appearing on behalf of the respondents submitted that the writ petition filed by the appellant was not only hopelessly time-barred but also lacked merits. He submitted that the appellant cannot as a matter of fact claim any right for appointment to the Government Service and no backdoor entry into government service can be made contrary to well-settled principles of law decided by the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs. Uma Devi and 3 Others, reported in (2006) 4 SCC 1.

10. The appellant's services were terminated by the then District Collector on 02.11.1993. However, in the interest of the project, the then Special Commissioner, Chairman and Managing Director of the Tamil Nadu Energy Development Agency (TEDA) vide his proceeding dated 21.04.1994 reversed the decision terminating the appellant from temporary services. Thereafter, The Assistant Project Officer of the Integrated Rural Energy Programme once again appointed the appellant on temporary basis on 11.05.1994. He has thereafter absorbed in 1995.

11. Meanwhile, about 8 of the mechanics working under the Integrated Rural Energy Programme were absorbed by the Tamil Nadu Energy Development Agency and were thereafter placed under probation for a period of 2 years within a continuous period of three years of duty. It is a case of the appellant that had he also opted for being absorbed by the said Agency, he would have become a Government Servant by now.

12. Meanwhile, the 1st respondent vide communication dated 12.05.2011 bearing reference Letter No.6452/CGS-2/2009-17 dated 12.10.2010 informed the office of the 2nd respondent that suitable instruction will be issued to the District Authorities concerned to pay salary and allowances due to persons like appellant who were working in the Panchayat Union From Panchayat Union General Funds until final decision was taken regarding their absorption as Record Clerks.

13. The office of the 2nd respondent also sent reminders to the office of the Collectors in various Districts to take necessary action to absorb persons like the appellant as Record Clerks. Meanwhile, the District Collector vide notification dated 21.07.2014 bearing reference Na.Ka.No.3475/2014/PA2 informed that the proposal for appointing mechanics employed in Perambalur District Rural Development and Rural Unit Office etc. who were scheduled to be absorbed as Record Clerks was under consideration and that appropriate documents should be filed with all documents of IREP mechanics together with their which teaches to review and take proper decision.

14. Thus, it appears that 1st respondent is not averse to the idea of appointing persons like the appellant as record clerks and that a proposal is still under consideration. Since the appellant has worked for almost 30 years in the Government Projects and since persons similar to the appellant may also have been absorbed by the 1st respondent in Government Service as Record Clerks, in our view, there is no justification why such appointment/absorption to Government Services should not be made to the appellant also.

15. Though elaborate submissions were made on behalf of the appellant and respondents, it emerged that some of the appellant's contemporaries and similarly placed persons may have been given appointment by the Government.

16. We agree with the submission of the learned Additional Advocate General that appellant cannot as a matter of fact, claim any right for being absorbed into Government services contrary to the law settled by the Hon'ble Supreme Court. At the same time, it is noticed that the appellant started working with the Integrated Rural Energy Programme of TEDA as a mechanic on temporary basis. His services were terminated by the then District Collector on 02.11.1993.

17. Therefore, to meet the ends of justice, we deem it fit that under these circumstances, it would be just and proper to direct the appellant to submit a fresh representation before the 1st respondent within a period of two weeks from the date of

receipt of a copy of this Judgment for considering his case for being appointed as Record Clerk similar to others. In case the 1st respondent has indeed appointed/absorbed any other persons similar to the appellant in the past, the 1st respondent shall pass appropriate order within a period of four weeks from the date of receipt of the aforesaid representation of the appellant, by appointing/absorbing the appellant with similar benefits extended to others.

18. Accordingly, this Writ Appeal stands disposed with the above observations. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:-

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Rural Development and Panchayat Raj,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Department of Rural Development and Panchayat Raj,
Saidapet, Chennai - 600 015.

+1 cc to M/s.K.Chandrasekaran, Advocate Sr.No. 29431

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W.A.No.4314 of 2019

VSNI (CO)
RMP (20/10/2020)

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