

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.02.2020
Delivered On : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA
WP.Nos.30270, 32491, 33995 and 33999 of 2019
and
WMP.Nos.30250, 33389, 34585 and 32861 of 2019

WP.No.30270 of 2019

Sellaperumal.P

...Petitioner

vs.

- 1.Union of India Rep. by
The Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.
- 2.The Under Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

3.Subhalakshmi.G

4.I.Prakash

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the common impugned order dated 11.10.2019 passed in OA.No.310/01005/2015 & batch on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioner : Mr.A.R.L.Sunderesan, Senior counsel
for Mr.Prakash Adipadam

For Respondents :Mr.R.Syed Mustafa, AGP (Pondicherry)
for R1 and R2
Mr.M.Gnanasekar for R4

WP.No.32491 of 2019

1.Union of India Rep. by
Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Puducherry.

2.Under Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Puducherry.

...Petitioners

vs.

1.The Registrar,
Central Administrative Tribunal,
Madras.

2.I.Prakash

3.P.Sellaperumal

4.G.Subhalakshmi

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to order dated 11.10.2019 in OA.No.310/1005 of 2015 passed by the first respondent and quash the same.

For Petitioners: Mr.R.Syed Mustafa, AGP (Pondicherry)

For Respondents: Mr.M.Gnanasekar for R2

Mr.A.R.L.Sunderesan, Senior counsel
for Mr.Prakash Adipadam for R3

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WP.No.33995 of 2019

Sellaperumal.P

...Petitioner

vs.

1.Union of India,
Represented by
The Chief Secretary to Government,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

2.The Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

3.The Under Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

4. Arun.R

5.Subhalakshmi.G

6.Ohm Sakthivinothini.J

7.Murugaperuman

8.Chemmalar.S ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the common impugned order dated 11.10.2019 passed in OA.No.310/00664/2015 & batch on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioner : Mr.A.R.L.Sunderesan, Senior counsel
for Mr.Prakash Adipadam

For Respondents : Mr.R.Syed Mustafa, AGP (Pondicherry)
for R1 to R3

Mr.K.Mohammed Hussian for R4

Mr.B.Balavijayan for R5

WP.No.33999 of 2019

Sellaperumal.P ...Petitioner

1.Union of India,
Represented by
The Chief Secretary to Government,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

vs.

2.The Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

3.The Under Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

4.Subhalakshmi.G

5.S.Lokkeshvaran

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the common impugned order dated 11.10.2019 passed in OA.No.310/00673/2015 & batch on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Petitioner : Mr.A.R.L.Sunderesan, Senior counsel
for Mr.Prakash Adipadam

For Respondents : Mr.R.Syed Mustafa, AGP (Pondicherry)
for R1 to R3
Mr.B.Balavijayan for R5

C O M M O N O R D E R

(Order of the Court was made by R.HEMALATHA, J.)

The Writ Petitions are filed challenging the orders dated 11.10.2019 passed by Central Administrative Tribunal in OA.No.310/1005 of 2015, OA.No.310/ 00664/2015 and OA.No.310/00673/2015 and batch. Since issue raised in these Writ Petitions is common, all these writs were heard together and disposed of by this Common Judgment.

2. For the sake of convenience, WP.No.30270 of 2019 is treated as the leading case and the facts pleaded and documents produced therein are referred to in this Judgment.

3. The writ petitioner Sellaperumal.P completed his 5 year integrated law course from Dr.Ambedkar Government Law College, Puducherry in 2009 and got himself enrolled on 01.04.2009 as an

advocate with his enrolment no.324/2009. After he got selected as lower Division clerk in Government of Puducherry, he surrendered his enrolment to the Bar Council of Tamil Nadu and Puducherry on 27.04.2013 as per Rule 5 (1) of Bar Council of India Rules, 1975 and joined as Lower Division Clerk on 29.04.2013.

4. Subsequently, within one year of his joining as Lower Division Clerk, on 27.02.2014, the Government of Puducherry invited applications for 10 posts of Legal Assistants which were to be filled up by Direct Recruitment as well as deputation on a 50:50 basis. The notification was bearing no.12022/Est/LD/2013 dated 27.02.2014. Having applied through proper channel, he was selected for direct recruitment with 55 marks in the written exam and was second in the list of selected candidates for direct recruitment. Though he belonged to the Most Backward Community Category, he was selected under the unreserved category.

5. One S.Lokeshwaran who was unsuccessful in getting selected with 48.75 marks approached the Chief Secretary of Government of Puducherry objecting to the selection of the petitioner in writing. His objection was that the petitioner was not a practicing advocate at the time of selection. The objection was overruled by the Chief Secretary stating that the petitioner was fully qualified as he had 2 years of Bar experience as an advocate which was the requirement as per the notification inviting application for the said post. The petitioner was issued the appointment order and he joined as Legal Assistant after resigning his Lower Division Clerk post.

6. Subsequently, one I.Prakash in OA.No.1005/2015, one S.Lokeshwaran in OA.No.673/2015, one T.Danasegari in OA.No.651/2015 and one Chemmalar in OA.No.664/2015 approached Central Administrative Tribunal, Madras Bench on the same grounds as done earlier by S. Lokeshwaran. OA.No.651/2015 was dismissed as there was no cause of action against the respondents. In the other Original Applications, the Central Administrative Tribunal, Madras Bench after hearing the arguments and perusing the relevant documents adduced by the both sides concluded that "it can be seen that the appointment of R3 (petitioner) as Legal Assistant is against the Recruitment Rules and Notification issued" "In the result, the selection and appointment of Mr.P.Sellaperumal as Legal Assistant is set aside." The petitioner had already put in 4 years of service as Legal Assistant. Hence, the writ petitions by the petitioner challenging the order dated 11.10.2019 of the Central Administrative Tribunal.

7. Mr.A.R.L.Sunderesan, learned Senior counsel assisted by Mr.M.Vaikunth appearing for the petitioner would contend that the Central Administrative Tribunal's order was arbitrary and without any legal basis. According to him, the Central Administrative Tribunal has tried to read between lines in what was an unambiguous statement. The notification was clear in mentioning the requirement in terms of experience for the post of Legal Assistant as it had specified 2 years as legal practitioner. But the Central Administrative Tribunal had gone for a different interpretation by citing the meaning of a legal practitioner as per the online Oxford Dictionary. He further contended that it need not be that the candidate must be practicing law at the time of applying for the post of Legal Assistant.

8. Per contra, Mr.M.Gnanasekar, learned counsel for I.Prakash, one of the respondents in WP.No.32491 of 2019 and 30270 of 2019 would contend that the petitioner had got his practice suspended much before this application for the post of Legal Assistant and that even if he is considered for the post of Legal Assistant, he ought to have been selected under the quota for 'on deputation' and not in this category for 'direct recruitment'.

9. On the contrary, Mr.R.Syed Mustafa, learned Additional Government Pleader appearing for the Union of India would contend that the writ petitioner Sellaperumal.P has preferred his application only under the direct recruitment category since he did not possess the requisite work experience to be eligible on deputation category. He therefore contended that strictly the selection was made as per the recruitment rules.

10. A Division Bench of the Hon'ble Calcutta High Court in the case of Bishnu Devi Shaw and others vs. the Federal Bank Ltd., and others reported in AIR 2014 Calcutta 90 has held that an advocate does not cease to be an advocate unless an order was specifically passed by the Bar Council to that effect. In para-27, the Court has held that

"An advocate can under no circumstances automatically cease to be an advocate unless specific order was passed by the Bar Council in accordance with the law removing and / or suspending the name of the said advocate from the role of concern Bar Council".

11. Rule 43 of the Bar Council of India Rules provides that an advocate, who has taken a full-time service or part-time service or engaged in business or any avocation inconsistent with his practising as an advocate, shall send a declaration to that effect to the respective State Bar Council within 90 days.

12. Under Rule 28.1 of Certificate and Place of Practice (Verification) Rules, 2015, if an advocate whose name has been included in the "list of non-practicing Advocates" published under rule 20.4, intends to resume law practice in the changed circumstances, may apply to the State Bar Council with a request that name may be taken out of such a list.

13. As per Rule 28.03 of the Rules, the State Bar Council shall refer such an application for resumption of practice to the Administrative Committee which may pass an appropriate order allowing or dismissing such application provided that such an application shall be allowed only if the Administrative Committee is satisfied that the intent of the applicant to resume law practice is bona fide.

14. Thus, it is clear that an advocate does not suspend membership. Advocate merely suspends practice and is required to file a declaration to that effect.

15. The advertisement in the instant case also does not stipulate that the candidate should have been in active practice as on the date of application. It merely stipulates "should be a qualified legal practitioner with 2 years experience at the Bar."

16. Now the question boils down to whether the petitioner was eligible to apply for Legal Assistant post and whether his practice in the Courts as an advocate from 2009 to 2013 can be construed as practice and whether suspension of his enrolment after he got a job as Lower Division Clerk in the Court of Puducherry made him ineligible for the post of Legal Assistant. The notification of Government of Puducherry vide G.O.Ms.No.28/91-LD dated 11.06.1991 mentions the recruitment rules for the post of Legal Assistant. In this it is clearly stated that the candidate

a) Should have 2 years experience in the legal department of a State / Union Territory.

OR

b) Shall be a Central Government servant who has had 2 years experience in legal affairs.

OR

c) Should be a qualified legal practitioner with 2 years experience at the Bar.

Item (c) perfectly matches and defines the eligibility of the petitioner. Had there been a rule that only "those who are qualified legal petitioner with 2 years experience at Bar immediately preceding the application for this post", it would

have disqualified the petitioner. But the rule is very clear and unambiguous which means even if the candidate had practiced for two years, five years before applying for the post, he would have qualified, if otherwise eligible.

17. In the instant case, the petitioner had scored a whopping 55% which made him stand out tall amongst the eligible candidates. Moreover, being meritorious he was selected in the unreserved category, though he was a Most Backward Community candidate. The Central Administrative Tribunal has miserably failed and misinterpreted the rules by nullifying his appointment. Moreover, the employer (respondent) was fully satisfied on the petitioner's candidature and selection. The respondent had also categorically rejected the objection made by one Lokeshwaran. The Central Administrative Tribunal with its dramatic verdict has deprived a meritorious candidate of his rightful eligibility for employment. Having served as Legal Assistant for 4 long years, the Central Administrative Tribunal has only delivered a fatal blow to him for no sound reason. It is seen that the said Lokeshwaran also was selected as Legal Assistant subsequently in 2016.

18. In the result, the Writ Petitions are allowed. The order of the Central Administrative Tribunal as regards the petitioner in OA.No.310/01005/2015, OA.No.310/673/2018 and OA.No.310/0664/2015 are quashed. The petitioner will continue as Legal Assistant. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government (Law),
Union of India,
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

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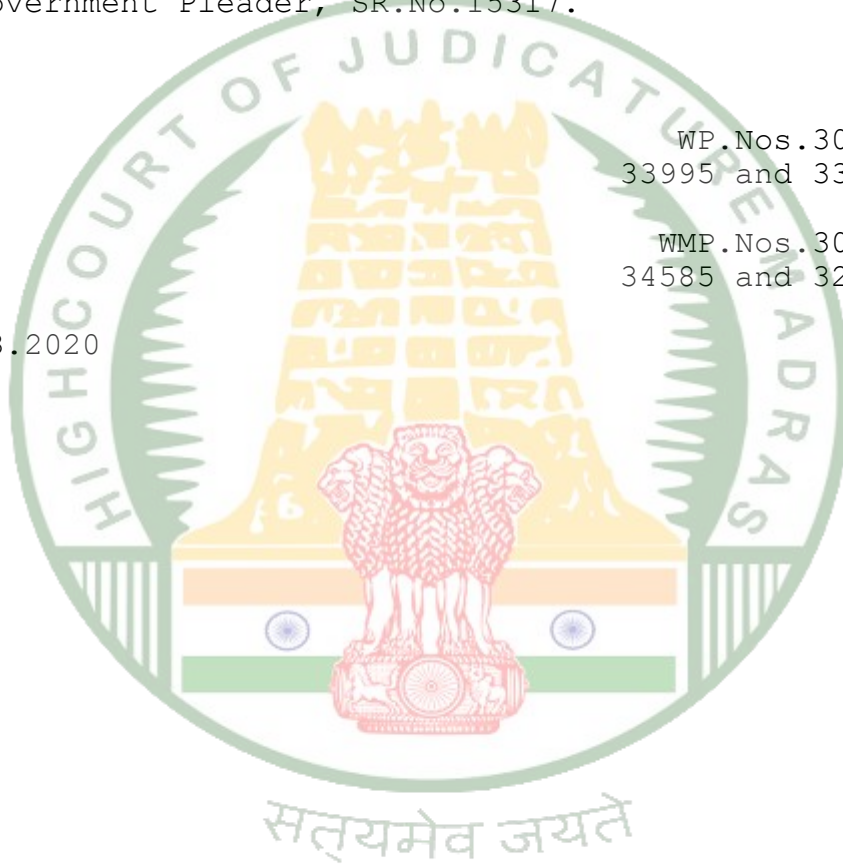
2.The Under Secretary to Government (Law),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue, Beach Road,
Puducherry - 605 001.

3.The Registrar,
Central Administrative Tribunal,
Madras.

+1cc to Mr.M.Vaikunth, Advocate, SR.No.15317.
+1cc to Government Pleader, SR.No.15317.

Order in
WP.Nos.30270, 32491,
33995 and 33999 of 2019
and
WMP.Nos.30250, 33389,
34585 and 32861 of 2019

GMR(CO)
CSR: 19.03.2020



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