



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD).No.20765 of 2015

K.Porkai Pandi

... Petitioner

-Vs-

1.The Divisional Engineer,
Highways Department, Buildings and Maintenance,
Madurai-625 002.

2.K.Rajkumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records passed by the first respondent herein in Se.Mu.Aanai No.129/2015/Aa2, dated 24.04.2015 and the consequential proceedings of the first respondent in Ku.No.11/2015/Aa2, dated 28.07.2015 and quash the same and consequentially direct the first respondent herein to consider the case of the petitioner for appointment by transfer of service as Office Assistant.

For Petitioner : M/s.M.Padmavathy

For R1 : Mr.S.Dhayalan
Government Advocate

ORDER

The order impugned dated 28.07.2015 declining the claim of the writ petitioner to consider his name for appointment to the post of Office Assistant by way of transfer of service, is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the name of the second respondent, who joined along with the petitioner, was considered and posted as Office Assistant by way of transfer of service. However, the case of the petitioner was not even considered. Thus, the petitioner is constrained to move the present writ petition.

3.Admittedly, both the writ petitioner as well as the second respondent joined as Salai Paniyalar on the same date. They underwent training and joined the service under the control of the first respondent. The services of the writ petitioner as well as the second respondent were regularised. The learned counsel for the petitioner states that the date of regularisation of the petitioner falls earlier to the date of regularisation of the second respondent.



4.This Court is of the considered opinion that the date of appointment is the criteria to be followed as the claim is to appoint the writ petitioner to the post of Office Assistant by way of transfer of service.

5.The learned Government Advocate appearing on behalf of the first respondent relying on the counter affidavit submitted that as per Rule 35 (a) (aa) of the Tamil Nadu State and Subordinate Services Rules, if more than one person is appointed on the same date, then, their date of birth is to be taken into account for the purpose of deciding the seniority. Accordingly, the petitioner as well as the second respondent joined on the same date and the date of birth of the second respondent is 04.12.1968 and the date of birth of the petitioner is 04.06.1973. Therefore, the second respondent is elder to the petitioner and accordingly, the name of the second respondent was considered and he was appointed as Office Assistant by way of transfer of service. The second respondent's name is placed in Serial No.55 in the seniority list and the petitioner's name is found in Serial No.100 in the seniority list. This being the factum, the petitioner is not entitled to claim appointment by way of transfer of service to the post of Office Assistant on par with the second respondent, who is elder based on the date of birth and his name is placed in Serial No.55 in the seniority list above the name of the petitioner.

6.Under these circumstances, the petitioner is not entitled for any relief as such sought for in the writ petition and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Sji

To

The Divisional Engineer,
Highways Department, Buildings and Maintenance,
Madurai-625 002.

+1 CC to M/s.GP (SR-25547[F] dated 15/12/2020)

W.P. (MD) .No.20765 of 2015
14.12.2020

NR (22/12/2020) 2P : 3C

<https://hcservices.ecourts.gov.in/hcservices/>