



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.12.2021
Pronounced on	23.12.2021

Coram:

The Honourable Mr.Justice M.DURAI SWAMY
and
The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

W.A.No.2193 of 2021
and
C.M.P.No.13874 of 2021

T.Mariappan

Versus

...Appellant

1. The Secretary,
Municipal Administration,
Department of Drinking Water Supply,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.
2. The Commissioner,
Municipal Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
Presently shifted to:
11th Floor, Urban Administrative Building,
Opp. to CIBA Building, No.75, Santhome High Road,
MRC Nagar, Raja
Annamalai Puram,
Chennai - 600 028.
3. The Commissioner,
Pollachi Municipality,
Pollachi,
Coimbatore District - 642 001.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order of the learned Judge made in
exercise of the Special Jurisdiction in W.P.No.8999 of 2019
dated 28.03.2019



Prayer in W.P.No.8999 of 2019:-Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus Calling for the records relevant to the order in Na.Ka.No.C1 /3631 /2006 dated 13/05/2008 passed by the 3rd respondent and quash the same as illegal, unreasonable arbitrary against the rule of Law and Natural Justice and there by direct the respondents to appoint the petitioner as Junior Assistant in the respondents Pollachi Municipality at par with outsiders and prior to the juniors and pay back all the service and monetary benefits to the petitioner.

For Appellant : Mr.Om Prakash, Senior Counsel
for Mr.S.Vijayaganesh

For Respondent - 3 : Mr.P.Srinivas

J U D G E M E N T

J.SATHYA NARAYANA PRASAD, J.

The present Writ Appeal is directed against the order passed by the learned Single Judge in W.P.No.8999 of 2019 dated 28.03.2019, in and by which, the learned Single Judge has dismissed the said writ petition.

2. Heard Mr.Om Prakash, learned Senior Counsel for the appellant and Mr.P.Srinivas, learned Counsel appearing for the third respondent.

3. The brief facts of the case are as follows:

The appellant was working as a Toll Collector at Public Toilets in Pollachi Municipality on daily wage basis. He belongs to Scheduled Caste community and his educational qualification is +2 pass. On 19.12.1996, the 3rd respondent/Pollachi Municipality has terminated him from service as Toll Collector without assigning any reason though he has completed 240 days of work in the Calendar year in the previous three years. Aggrieved over the same, the appellant has raised a dispute in I.D.No.274 of 1998 on the file of the Labour Court, Coimbatore, praying to reinstate him into service. On 10.12.2002, the Labour Court, Coimbatore has passed an award, to reinstate the appellant with continuity of service without back wages, since he has worked 240 days continuously in a year and the respondents have not adopted the proper procedure for his termination. In the year 2003, the third respondent filed a writ petition in W.P.No.18190 of 2003 before this Court



challenging the aforesaid award passed by the Labour Court in I.D.No.274 of 1998 dated 10.12.2002. While the said writ petition is pending, the respondents started to regularize the service of other daily wagers gradually but excluded the appellant. The Government of Tamil Nadu vide G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, ordered all the Municipalities to regularize the services of all the daily wagers, who were working in the Municipalities with Time Scale Pay.

4. The first respondent has issued the proceedings in G.O. (Ms) No.125, Municipal Administration and Drinking Water Supply (MC3) Department dated 27.05.1999, wherein, particularly, in Clause 3(i), it was stated that the persons who were working as Toll Collectors at Public Toilets, collecting tolls, for maintaining the same and the persons who were working as Toll Collectors in the Markets on daily basis were exempted and not eligible for regularization of service. As per this G.O, the persons whoever were appointed on daily basis must be appointed in the entry level post, only as per their educational qualification, wherever vacancies existed.

5. The appellant has filed a writ petition in W.P.No.16463 of 2006 before this Court, praying to reinstate him into service and regularize his service on regular basis as a Toll Collector at Public Toilets in Pollachi Municipality and the same was allowed by this Court vide order dated 31.05.2006, directing the third respondent to consider the appellant's representation dated 12.05.2006, for reinstating him into service on regular basis as per the above Government Order. Challenging the aforesaid order of this Court dated 31.05.2006, the third respondent has preferred a writ appeal in W.A.No.155 of 2007 before the Division Bench of this Court. On 23.01.2008, when the said writ appeal was taken up along with W.P.No.18190 of 2003, the Division Bench of this Court, vide judgment dated 23.01.2008, allowed the said writ appeal with a direction to the respondents to reinstate the appellant into regular service as per the rules in conformity with Articles 14 & 16 of the Constitution of India as he has performed 480 days of work in two calendar years, in the previous years. Further, the appellant was given ex-gratia amount and festival advance as admitted by rules, but he has been terminated without any reason or prior notice. The operative portion of the judgement passed by this Court in W.A.No.155 of 2007 reads as follows:

"13. In the circumstances, we set aside the impugned order, dated 31.05.2006 passed by the learned Single Judge and remit the case to the appellant Municipality with a direction to consider the case of respondents 1 and 2/writ petitioners and other



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similarly situated daily wage employees for their regular appointment as and when the authorities fill up any post for which they are eligible, in accordance with law. In such case, if any one or other daily wage employee is found to have crossed the age limit, the authority will relax the age limit and may give preference to them over outsiders, if they are equally situated."

6. Subsequently, the third respondent appointed the appellant as a Watchman in Engineering Department, Pollachi Municipality vide order in Na.Ka.No.C1/3631/06, dated 13.05.2008. On receipt of the appointment order, the appellant gave a representation and also placed his objection for having considered for the post of Watchman instead of considering for the post of Junior Assistant or Bill Collector at the initial appointment like many daily wage workers and others appointed, according to G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006 and fresh recruits, having +2 (HSC) educational qualification, who were initially appointed to Junior Assistant or Record Clerks, as prescribed in the Tamil Nadu Municipal Service Rules, 1970. The qualification for the post of Watchman is knowledge to read and write, whereas, for the post of Junior Assistant is +2 (HSC) pass.

7. In the affidavit filed in support of W.P.No.8999 of 2019, the appellant has stated that one Mr.P.Srinivasan was appointed as Junior Assistant, as per the order passed by this Court in W.P.No.13657 of 2011 and G.O.No.(P) No.262, dated 20.06.2018, issued by the Principal Secretary of Government of Tamil Nadu, Department of Municipality Administration and Drinking Water Supply. The relevant portion of the said order passed by this Court in W.P.No.13657 of 2011 is usefully extracted below:

"9. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The first respondent shall take into consideration the petitioner's representation dated 03.03.2010, and the recommendation sent by the second respondent, dated 15.11.2005 as well as the Government Order in G.O.Ms.No.93, Rural Development Department, dated 04.04.2001, and also the petitioner's specific averment that six other persons, who are similarly placed as that of the petitioner, have been appointed as Junior Assistant/Bill Collector and pass fresh orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."



8. In Clause 2 of the G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, it has been stated that in G.O.(Ms) No.125, Municipal Administration and Drinking Water Supply (MC3) Department dated 27.05.1999, orders have been issued permitting the Municipal Commissioners to appoint the NMRs, on daily wages working in the Corporation (except Chennai), Municipalities and erstwhile Town Panchayats from those who were working prior to 01.10.1996 in Municipal Corporations (except Chennai) and Municipalities and prior to 31.12.1996 in the erstwhile Town Panchayats in the entry level post after granting them consolidated pay for one year and then to bring them in the time scale. But those orders were kept in abeyance due to general ban orders for recruitment to entry level posts.

9. It is pertinent to extract the Clauses 4 & 5 of the G.O. (Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, hereinbelow:

"4. In the order 9th read above the ban orders for making entry level appointments have been lifted. Therefore, the Government have decided to accept the proposals of the Commissioner of Municipal Administration mentioned in para 3 above and to regularize the services of the 6058 employees on consolidated pay and NMRs on daily wages working in various Municipalities and other Municipal Corporations (except Chennai) and 674 employees on consolidated pay and NMRs on daily wages in Grade - III Municipalities (formerly upgraded Town Panchayat) by bringing them into regular time scale of pay, with immediate effect.

5. They, accordingly, direct the appointing authorities viz., Municipal Commissioners, Grade - III Municipal Commissioners and Commissioners of Municipal Corporations (Except Chennai) to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 01.10.1996 in respect of Municipalities and Municipal Corporations (except Chennai) and as on 31.12.1996 in respect of Grade - III Municipalities in the vacant posts and to regularize their services in the regular post, from the date of issue of this order, subject to the following conditions:

- (i) sanctioned posts should be available.
- (ii) persons should fulfill all educational and other qualifications ; and
- (iii) establishment (pay and pension) expenditure of the Urban Local Body should not exceed 49% of revenue after filling up of posts."



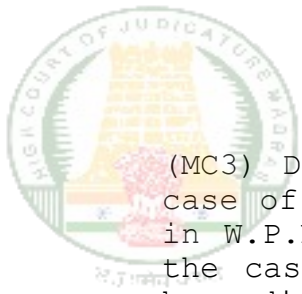
10. From a reading of the proceedings issued by the third respondent dated 26.05.2006, it is seen that 5 persons were regularized on the basis of their educational qualification. The educational qualification for the post of Junior Assistant is SSLC, whereas, the appellant herein has +2 (HSC) pass qualification, from the date of initial appointment as Toll Collector in Public Toilets at Pollachi Municipality.

11. The learned Single Judge misunderstood that the appellant's grievance is for promotion but it is not so. The case of the appellant is that he wanted his original appointment itself as Junior Assistant since he possessed the required educational qualification i.e., +2 pass for the said post.

12. It is crystal clear and evident that there is some discrimination in the appointment of the appellant as Watchman by the third respondent for the reason that appointments were made to the post of Junior Assistant and Record Assistant to persons possessing SSLC pass and they were similarly absorbed from NMR, following the G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, but, the appellant, who was possessing +2 (HSC) Qualification as early as in the year 1993 itself, was not considered for appointment as a Junior Assistant.

13. In G.O.(Ms) No.125, Municipal Administration and Drinking Water Supply (MC3) Department dated 27.05.1999, it has been stated that the Toll Collectors working at Public Toilets are exempted from regularization of service. But in the subsequent G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, it has been clearly stated that those who were working prior to 01.10.1996 in Municipalities can be brought into regular time scale of pay, with immediate effect. The Municipal Commissioners, Grade - III Municipal Commissioners and Commissioners of Municipal Corporations (Except Chennai) were directed to appoint the employees on consolidated pay and NMRs on daily wages on their roll as on 01.10.1996 in respect of Municipalities and Municipal Corporations (except Chennai) in the vacant posts and to regularize their services in the regular post, from the date of issuance of that order, subject to the conditions that sanctioned posts should be available and persons should fulfill all educational and other qualifications.

14. In our view, G.O.(Ms).No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006, will prevail over the earlier G.O.(Ms) No.125, Municipal Administration and Drinking Water Supply (MC3) Department dated 27.05.1999. Hence, the G.O.(Ms).No.21 Municipal Administration and Water Supply



(MC3) Department dated 23.02.2006 is squarely applicable to the case of the appellant. Further, the order passed by this Court in W.P.No.13657 of 2011 dated 30.01.2014, is also applicable to the case of the appellant, since in the said order, this Court has directed the first respondent therein to consider the representation of the petitioner therein and the recommendation sent by the second respondent therein, dated 15.11.2005 as well as the Government Order in G.O.Ms.No.93, Rural Development Department, dated 04.04.2001 and also, the petitioner's specific averment that six other persons, who were similarly placed as that of the petitioner therein, have been appointed as Junior Assistant/Bill Collector and pass fresh orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of that order.

15. Actually, the educational qualification for the post of Junior Assistant is SSLC, whereas, the appellant has possessed +2 (HSC) qualification in the year 1993 itself. Subsequently, he has also passed the Account Test for SAS Part-I conducted by the Tamil Nadu Public Service Commission, in the month of May, 2014. Despite these educational qualifications, he was not considered for appointment as Junior Assistant by the third respondent. Therefore, the appointment order 13.05.2008 issued by the third respondent/Municipality, appointing the appellant as Watchman is in violation of Article 14 of the Constitution of India and it is also arbitrary, discriminatory and against the principles of natural justice.

16. It is pertinent to note that the third respondent, vide proceeding in Na.Ka.No.E1/1580/2006 dated 26.05.2006, appointed 11 NMRs temporarily on the basis of their educational qualification. It can be seen from various proceedings issued by the third respondent that the NMRs were appointed only on the basis of their educational qualification, but in the case of appellant, he was not appointed to the post of Junior Assistant though he had the necessary qualification for the said post at the relevant point of time. It is also seen that similarly placed persons were appointed as Junior Assistants, but, the same benefit was rejected to the appellant, which shows that it is a clear case of discrimination shown by the third respondent and there is no uniformity in the appointments. As far as the appellant is concerned, the third respondent did not follow the Government order scrupulously. An uniform procedure/method should have been adopted by the third respondent while appointing the persons who possessed +2 qualification as Junior Assistants.

17. In these circumstances, the order passed by the learned Single Judge is liable to be set aside. Accordingly, the order passed by the learned Single Judge in W.P.No.8999 of 2019 dated



28.03.2019, is set aside. In the result Writ Appeal is allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Secretary,
Municipal Administration,
Department of Drinking Water Supply,
Government of Tamilnadu,
Secretariat, Chennai - 600 009.
2. The Commissioner,
Municipal Administration,
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3. The Commissioner,
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Pollachi,
Coimbatore District - 642 001.

+1cc to the Government Pleader, S.R.No.69803

+1cc to Mr.P.Srinivas, Advocate, SR.No.413

[18/04/2022]

W.A.No.2193 of 2021

SMI[co]
NSK 04/01/2022