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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS. 28857, 28972, 28976, 28979,
29993, 30012, 34048, 35516 & 35524 OF 2019
AND W.M.P.NOS.34646,36359, 36366 OF 2019

(THROUGH VIDEO CONFERENCING)

M.MURUGESAN S/O. R.MUNISAMY	... PETITIONER in WP No.28857 of 2019
D.ARUN PRATHAP	... PETITIONER in WP No.28972 of 2019
R.REVATHI	... PETITIONER in WP No.28976 of 2019
N.CHANDRAMANI	... PETITIONER in WP No.28979 of 2019
P.MYTHILI W/O.PALANISAMY	... PETITIONER in WP No.29993 of 2019
M.MAHALAKSHMI	... PETITIONER in WP No.30012 of 2019
N.KANAGARAJU	... PETITIONER in WP No.34048 of 2019
M.JANAKI	... PETITIONER in WP No.35516 of 2019
K.R.GUNASEKARAN	... PETITIONER in WP No.35524 of 2019

-vs-

- 1 THE COMMISSIONER
PERSONNEL AND ADMINISTRATIVE DEPARTMENT
SECRETARIAT CHENNAI-9
- 2 THE DIRECTOR OF SURVEY AND LAND RECORDS
SURVEY HOUSE CHEPAUK CHENNAI-5
- 3 THE ADDITIONAL DIRECTOR OF
SURVEY AND LAND RECORDS SURVEY HOUSE
CHEPAUK CHENNAI-5
- 4 THE REGIONAL DEPUTY DIRECTOR
OF SURVEY AND LAND RECORDS COIMBATORE.



5 THE DISTRICT REVENUE OFFICER
COIMBATORE.

6 THE ASSISTANT DIRECTOR OF SURVEY AND LAND RECORDS
COIMBATORE.

7 THE ASSISTANT DIRECTOR OF DISTRICT EMPLOYMENT OFFICE
COIMBATORE.

... RESPONDENTS in WP Nos.28557,29993 & 30012 of 2019

1 THE ADDITIONAL DIRECTOR OF SURVEY AND LAND RECORDS,
SURVEY HOUSE,
CHEPAUK CHENNAI 600 005.

2 THE REGIONAL DEPUTY DIRECTOR
OF SURVEY AND LAND RECORDS COIMBATORE.

3 THE ASSISTANT DIRECTOR
OF SURVEY AND LAND RECORDS COIMBATORE.

4 THE ASSISTANT DIRECTOR OF
DISTRICT EMPLOYMENT OFFICE,
COIMBATORE.

... RESPONDENTS in WP Nos.28972,28976,28979 & 34048 of 2019

1 THE SECRETARY
REVENUE DEPARTMENT FORT ST.GEORGE CHENNAI.

2 THE DIRECTOR
SURVEY AND LAND RECORDS, SURVEY HOUSE, CHEPAUK
CHENNAI 600 005.

3 THE ASSISTANT DIRECTOR
SURVEY AND LAND RECORDS
DISTRICT SURVEY OFFICER,
COLLECTOR OFFICE, COIMBATORE -18.

... RESPONDENTS in WP Nos.35516 and 35524 of 2019

Prayer : Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorarified
Mandamus,

i. Calling for the records of the 6th Respondent in respect
of the Proceedings in NA.KA.A1/7604/2017 dated 20.09.2019 order
as arbitrary, illegal and quash the same and direct the 6th
Respondent to reinstate and regularize the petitioner in service.
(in W.P.Nos.28857,29993 & 30012 of 2019)



ii. Calling for the records pertaining to the impugned order passed by the respondent No.3 herein terminating the service of the petitioner as Field Assistant in the Survey and Land Records Department in his reference No.Na.Ka.A1/7609/2017, 7652/2017 & 7610/2017 respectively dated 20/09/2019, quash the same and consequently direct the respondents Nos.1 to 3 to continue the petitioner in service as filed Assistant in the Survey and Land Records Department from which service / post the petitioner was terminated by the impugned order.(in W.P.Nos.28972,28976 & 28979 of 2019)

iii. Calling for the records in Na.Ka.A1/7612/2017, dated 20.09.2019, on the file of the 3rd respondent and quash the same as illegal, incompetent, without jurisdiction and further direct the respondents to reinstate the petitioner with all consquential service and monetary benefits.(in W.P.No.34048 of 2019)

iv. Calling the entire records pertaining to Na.Ka.A1/7647/2017 dated 20/09/2019 on the file of 3rd respondent and quash the same and direct the respondents to restore the appointment of the petitioner at before the impugned order.(in WP No.35516 of 2019)

v. Calling the entire records pertaining to Na.Ka.A1/7613/2017 dated 20/09/2019 on the file of 3rd respondent and quash the same and direct the respondents to restore the appointment of the petitioner at before the impugned order.(in WP No.35524 of 2019)

For Petitioner :

Mr.R.Jayaprakash for

Mr.Guruprasad in W.P.28857 of 2019

Mr.P.K.Rajagopal in W.P.Nos.28972,28976 & 28979 of 2019

Mr.M.Subash in W.P.Nos.29993 & 30012 of 2019

Mr.Muruganantham in W.P.No.34048 of 2019

Mr.R.Jayaprakash

for Mr.E.R.Guru Balachandran in W.P.Nos.35516 & 35524 of 2014

For Respondents :

Mr.L.S.M.Hasan Fizal,

Government Advocate. (in all Wps.)

C O M M O N O R D E R

The petitioners were appointed as Field Assistants with the Assistant Director of Survey and Land Records, Coimbatore District . They were sponsored by the Employment Exchange



Office. Pursuant to a complaint by one Perumal that while making appointment to the post of Field Assistant in time scale of pay in Coimbatore District, there was material irregularity committed by the 3rd respondent and action should be taken against the concerned officer. Show cause notices were issued to the petitioners by the third respondent dated 10.03.2015 to the petitioners on the ground that the appointment orders were issued without properly following the Horizontal rule of reservation as per G.O.Ms.No.142, Personnel and Administrative Reforms (K) Department, dated 14.10.2009 read with G.O.Ms.No.55 Personnel and Administrative Reforms (K) Department dated 08.04.2010 .

2. The 3rd respondent thus called upon the petitioners to submit their explanation to the show cause notices some of the petitioners had given their explanation to the 3rd respondent dated 19.03.2015, while few challenged the said show cause notice dated 10.03.2015, in a batch of writ petitions in W.P.Nos.10457 to 10464, 10466 to 10471 of 2015. An interim order was granted on 10.04.2015. Later these writ petitions were dismissed as not maintainable on 04.08.2017 on the ground that already show cause notices had been issued and therefore those writ petitions were liable to be dismissed in view of alternate remedy.

3. Pursuant to the aforesaid order, the 3rd respondent has passed the impugned order dated 20.09.2019 whereby all the 32 persons who were selected as Field Assistants and were sponsored by the Employment Exchange Office has been held to have been without following the Rules of reservation and were dismissed from service. The 3rd respondent has thus passed the impugned orders dated 20.09.2019 terminating the petitioners from services with effect from 20.09.2019.

4. Aggrieved by the said impugned order dated 20.09.2019, the petitioners have filed the present writ petitions.

5. The learned counsel for the petitioners drew attention to the counter affidavit filed by the respondents wherein they have admitted that in the appointment which is the subject matter of the present writ petitions, the requirements of G.O.Ms.No.142 Personnel and Administrative Reforms (K) Department, dated 14.10.2009 was complied but the appointment of the petitioners were irregular for want of compliance of conditions of G.O.Ms.No.55, Personnel and Administrative Reforms (K) Department dated 08.04.2010 .



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6. In this connection, a reference was made to few paragraphs from the counter affidavit filed by the respondents in W.P.No.28972 of 2019 which are similar in all other writ petitions also. In paragraph nos.5,6,10 and 11 of the counter affidavit, it has been stated as follows:-

" 5. It is submitted that while calling for the lists of persons for appointment to the post of Field Assistants from Employment Exchange in the first phase, 200 points roster, as ordered in G.O.Ms.No.142, Personnel and Administrative Reforms(K) Department dated 14.10.2009 was followed. At the same time, the rotation and turn set out for women noted in Schedule IV of the G.O.Ms.No.55, Personnel and Administrative Reforms (K) Department dated 08.04.2010 was not followed since the nature of the job of Field Assistants involves filed activities. When the process of appointments made in time scale of pay post of Field Assistant was re-examined, it was found that the guidelines issued in the G.O.Ms.No.142, Personnel and Administrative Reforms (K) Department dated 14.10.2009 were not followed scrupulously. The positions that should have been allotted to Destitute Widows and women were not done so. In view of the reasons stated above, all the appointments had to be cancelled. The third respondent decided to terminate the petitioner from services and therefore issued show cause notice in Na.Ka.A8/1959/2015, dated 10.03.2015 to the petitioner stating that the rule of reservation and roster have not been followed while making appointments in Field Assistants category in Coimbatore District and the appointment is irregular and hence it has been decided to terminate the petitioner from services and therefore to submit the explanation within 30 days from the date of receipt of memo dated 10.03.2015 and if the explanation was not submitted within time, it will be construed that the individual has nothing to explain and orders will be issued as per the rules.

10. With regard to the averments made in Grounds (e) of the affidavit, it is submitted that as averred by the petitioner, though he has no role in the appointment made in time scale of pay



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post of Field Assistant and adapting the procedures and following the guidelines during appointment rests with the administration, any irregular appointment made in an organization cannot be allowed to continue as it would end up with chain of reactions. Hence, the third respondent examined the entire process of appointment and decided to cancel such irregular appointments.

11. With regard to the averments made in Grounds (f) of the affidavit, it is submitted that the 200 points roster, as ordered in G.O.Ms.No.142, Personnel and Administrative Reforms (K) Department dated 14.10.2009 was followed. At the same time, the rotation and turn set out for women noted in Schedule IV of the G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 was not followed since the nature of the job of Field Assistants involved filed activities. The positions that should have been allotted to Destitute Widows and women were not allotted. In view of the reasons stated above, the appointments in time scale of pay of post of Field Assistants, including that of the petitioner, made, through Employment Exchange, in Coimbatore District, had to be cancelled and hence actions were taken to cancel such appointments. It is submitted that as the Assistant Director of Survey and Land Records of a District is the appointing

authority for the post of Field Assistant, the third respondent issued show cause notice based on the directions of the first and second respondents as the appointments made in time scale of pay cost of Field Assistants were found to be irregular".

7. The learned counsel for the petitioners also referred to the following decisions of the Hon'ble Supreme Court :-

" a. Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others, (2007) 8 SCC 785,

b. Tridip Kumar Dingal and Others vs. State of West Bengal and Others, (2009)1 SCC 768



c. Public Service Commission, Uttaranchal vs. Mamta Bisht and Others, (2010) 12 SCC 204

d. The State of Bihar, through the Secretary to Govt. of Bihar in the Department of Energy, Sinchai Bhawan, Bailey Road, Patna and 4 Others vs. Indra Mohan, (2009) 2 PLTR 869

e. Roshan Lal and Others vs. International Airport Authority of India and Others, 1980 (Supp) SCC 449".

8. The learned Government Advocate appearing on behalf of the respondents submits that since there was a large scale irregularity in the appointment made by the 3rd respondent/6th respondent in violation of G.O.Ms.No.55 dated 08.04.2010, the appointment of the petitioners cannot be sustained.

9. He further submits that the petitioners were only appointed on the time scale of pay and therefore their services were not regularized and they were not entitled to continue in services as their appointment were irregular.

10. He further submits that these impugned orders passed by the third respondent/6th respondent is liable to be sustained and prayed for dismissal of all the writ petitions.

11. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Government Pleader for the respondents. I have also perused the impugned orders and reply affidavit filed by the petitioners.

12. The counter filed by the first respondent, indicates that the respondents have complied with requirements of vertical reservation in terms of G.O.Ms.No.142 dated 14.10.2009. It is also noticed that there were 62 vacancies in Coimbatore District and that out of 62 vacancies only 32 vacancies were filled up at that point of time. The counter filed for the 1st respondent also indicates that the appointment of Destitute Widows were not made since the nature of the job of Field Assistants involves field activities and that horizontal reservation was followed as per G.O.Ms.No.55 dated 08.04.2010 and therefore the appointments were cancelled. The cancellation of appointment of all the petitioners by the third respondent merely because there was an alleged irregularity by the Appointing Authority in not complying with the requirements of G.O.Ms.No.55 dated 08.04.2010 cannot be basis of cancelling the appointment of all the persons who otherwise eligible to be appointed.



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13. The manner in which, horizontal reservation has to be worked out has been explained by the Hon'ble Supreme Court in *Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others*, (2007) 8 SCC 785. In para 9 of the decision, the Court held as under:-

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class

under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385], *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481], *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no



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need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

a. If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

14. The Hon'ble Supreme court has also referred to the above decision in Public Service Commission, Uttaranchal vs. Mamta Bisht and Others, (2010) 12 SCC 204. The Hon'ble Supreme Court has illustrated as to how the horizontal reservation has to be worked. It is stated that horizontally reserved category persons, if can be adjusted against non-reserved seat, special reservations in favour of physically handicapped, women, etc, under Article 16(1) or 15(3) are horizontal reservations. In case of vertical reservation, reserved category candidates may compete for non-reserved posts and if they are appointed to non-



reserved posts on their own merit, their number will not be counted against reserved quota. But the aforesaid principle will not apply to horizontal (special) reservations.

15. Therefore, the 3rd respondent/6th respondent ought to have examined whether vertical reservation in terms of G.O.Ms.No.142 dated 14.10.2009 was fully complied in the first stage and thereafter horizontal reservation in terms of G.O.Ms.No.55 dated 08.04.2010.

16. In the reply affidavit filed by the petitioners in W.P.No.28972 of 2019 it is stated that out of 62 vacancies in Coimbatore District, only 7 Field Assistants are now working after the termination of 32 appointees and now 55 sanctioned posts are still vacant and the said vacancies ought to have been filled up by the third respondent/6th respondent in terms of the vertical reservation which is recognized by G.O.Ms.No.142 dated 14.10.2009.

17. The third respondent/6th respondent as an appointing authority should have ensured vacancies were also filled up by the women candidates in terms of Article 15(3) of the Constitution of India apart from the vertical and horizontal reservation while filling up the vacancies in terms of the requirements of G.O.Ms.No.55 dated 08.04.2010. Only when qualified women were not available for filling vacancies in terms of G.O.Ms.No.55 dated 08.04.2010, such post could have been filled up in terms of Section 26 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which reads as under:-

" Provided that men may be appointed, if suitable and qualified women are not available for such appointment. "

18. Among the petitioners only to such of those petitioners who were appointed contrary to G.O.Ms.No.55 dated 08.04.2010, a show cause notice may be issued as to why services of such temporary employee's service should not be terminated. They should be given an appropriate reply as to why the allegations/proposal in the show cause notice cannot be accepted and why they should be allowed to continue in services.

19. The respondents could have taken departmental action against the officers concerned, who had appointed some of the petitioners contrary to G.O.Ms.No.55 Personnel and



Administrative Reforms (S) Department dated 08.04.2010, if such appointments were made deliberately and were activated with any corrupt motive.

WEB COPY 20. Therefore, this Court is of the view that the impugned orders passed by the third respondent/6th respondent based on the complaint of one Perumal cannot be sustained.

21. While determining whether horizontal reservation was followed or not, the respondents may also take note of the case of the petitioners that the women employees A.Sandhanamari, (Destitute Widow) and P.Durgadevi were appointed as Field Assistants along with the petitioners namely as Destitute Widow and were later transferred to Tirunelveli.

22. In view of the above, these writ petitions are allowed with the following directions:-

- i) The respondents shall carry out an internal exercise by examining whether the vertical and horizontal reservations in terms of the respective G.Os.cited above under the provisions of law were observed and thereafter come to a conclusion as to which of the 32 persons who were appointed contrary to the vertical reservation in G.O.Ms.No.142 Personnel and Administrative Reforms (K) Department dated 14.10.2009 and horizontal reservation in G.O.Ms.No.55 dated 08.04.2010 .
- ii) Only to such of these persons among the petitioners a show cause notice may be issued as indicated above.
- iii) Such person may be given an adequate opportunity to defend thus in such proceedings and appropriate orders should be passed on merits in accordance with law considering the law.
- iv) In any case, such of those petitioners who were otherwise entitled to absorbed in regular services, their services shall be regularized with notional benefit in terms of



the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and Government orders in force.

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v) This exercise shall be completed within a period of twelve weeks. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Commissioner,
Personnel and Administrative Department,
Secretariat, Chennai - 9.
2. The Director of Survey & Land Records,
Survey House, Chepauk,
Chennai 600 005.
3. The Additional Director of Survey & Land Records,
Survey House Chepauk, Chennai 600 005.
4. The Regional Deputy Director of Survey & Land Records,
Coimbatore.
5. The District Revenue Officer,
Coimbatore.
6. The Assistant Director of Survey & Land Records,
Coimbatore.
7. The Assistant Director of District Employment Office,
Coimbatore.



8. The Secretary,
Revenue Department
Fort St.George, Chennai.

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+2ccs to Mr.E.R.Guru Balachandrar, Advocate, S.R.No.45068,45069
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.44821
+3ccs to Mr.P.K.Rajagopal, Advocate, S.R.No.44721 to 44723
+1cc to Mr.Muruganantham, Advocate, S.R.No.44737
+1cc to the Government Pleader, S.R.No.45212 to 45218

W.P.No.28857 of 2019 etc, batches

AJS (CO)
PM/05/10/2021