



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P (MD)No.14917 of 2013

and

W.P (MD)No.13612 of 2014

and

W.M.P(MD)Nos.1 of 2013 and 1 & 2 of 2014

A.Krishnaperumal

... Petitioner (In both WPs)

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Commissioner,
Municipal Administration and
Water Supply Department,
Chepauk,
Chennai.

3.The Rajapalayam Municipality,
Rep. by its Commissioner,
Rajapalayam,
Virudhunagar District.

... Respondents (In both WPs)

Prayer in W.P(MD)No.14917 of 2013: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to absorb the petitioner as Revenue Assistant/Junior Assistant in the third respondent's Municipality.

Prayer in W.P(MD)No.13612 of 2014: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.A1/4275/2014, dated 22.07.2014 in so far as directing the petitioner to hand over charges and the order dated 20.07.2007 in Na.Ka.No.C1/5269/06 in so far as reverting the petitioner to the post of Office Assistant,



quash the same and absorb the petitioner as Revenue Assistant with all attendant monitory benefits.

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For Petitioner : Mr.M.Saravanan
for R.Subramanian (In both Wps)

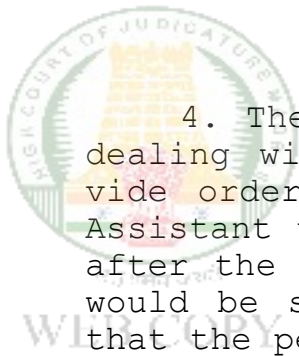
For Respondents : Mr.J.K.Jeyaselan
Government Advocate (Civil Side)
for R1 & R2. (In both WPs)
Mr.N.Dilip Kumar
for R3. (In both WPs)

C O M M O N O R D E R

Today both the W.P(MD)Nos.14917 of 2013 and 13612 of 2014 are taken up for hearing. The petitioner joined the third respondent Municipality service on 23.05.1993. Based on various Government Orders, the petitioner was absorbed as Junior Assistant along with several daily wage workers. The third respondent on 25.05.2007 cancelled the order of absorption. Since there were agitation by the employees, by those who come under the cancellation order, the third respondent has passed an order, dated 20.07.2007. In that order, the petitioner was absorbed as Office Assistant and not as a Junior Assistant. Aggrieved over the reversion order, the petitioner has filed these writ petitions.

2. The petitioner also claims that even though Office Assistant post was granted to him, he was assigned the work of Revenue Assistant and directed to collect various taxes from the public in Ward Nos.15, 16 and 26 and from 23.12.2009, the petitioner was discharging the duties of the Revenue Assistant but receiving the salary of the Office Assistant pay. The petitioner has submitted representations to absorb him as Revenue Assistant or Junior Assistant since the petitioner is having the requisite qualification. The third respondent has given an assurance and based on the assurance, the petitioner has filed W.P(MD)No.14917 of 2013, directing the respondents to absorb as a Revenue Assistant/Junior Assistant. This Court ordered notice in this writ petition.

3. In the meanwhile, one Mr.P.Muthuramalingam. who was granted Cleaner post, has filed W.P(MD)Nos.6509 of 2008 and 7542 of 2009, thereby challenging the order, dated 20.07.2007 and proceedings, dated 29.07.2009. This Court vide common order, dated 03.06.2014 quashed the said order, dated 20.07.2007 and directed the fourth respondent to reinstate Mr.P.Muthuramalingam as Revenue Assistant with all service benefits. Since it is a common order, dated 20.07.2007, the petitioner is placing reliance on the order passed in W.P(MD)No.6509 of 2008.



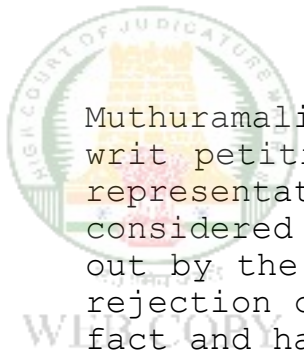
4. The third respondent has filed a common counter elaborately dealing with the entire issue. The third respondent has submitted vide order, dated 20.07.2007 reverting the petitioner from Junior Assistant to Office Assistant was put to challenge in the year 2014 after the lapse of seven years. The principles of delay and laches would be staring at the petitioner. The respondent also submitted that the petitioner has accepted the order, dated 20.07.2007 without any whisper and was discharging his duties. The petitioner submitted a representation on 29.01.2008 and 11.04.2008 and the same was considered and rejected vide order 20.05.2008 and the petitioner has not challenged the same. By suppressing this fact, the petitioner has filed the present writ petition, therefore the petitioner has not come with clean hands.

5. When the said Muthuramalingam has put to challenge and obtain an order, the petitioner has come forward to challenge the appointment order, dated 20.07.2007 after the lapse of seven years. The petitioner is comparing with the said Muthuramalingam but the said Muthuramalingam has joined the post under protest. But, the petitioner has not submitted any protest letter at all.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the first and second respondent and the learned standing counsel for the third respondent.

7. The petitioner was reverted vide order, dated 20.07.2007. From that date onwards, the petitioner without murmur, was discharging his duties. After a lapse of six years, the petitioner has submitted a representation praying to regularise him as a Revenue Assistant and in that letter also, the petitioner has not objected to the appointment as Office Assistant. Again the petitioner has submitted another representation, dated 21.08.2013, and in that also the petitioner had prayed only to regularise him as a Revenue Assistant. In the W.P.(MD)No.14917 of 2013 also, the petitioner seeks to absorb him in the Revenue Assistant post. In none of the three affidavits/representations, the petitioner has not submitted any protest. It is only after the said Muthuramalingam's Writ Petition was allowed, the petitioner has filed the W.P(MD) No.13612 of 2014 with the plea of protest which is clearly an afterthought and the same cannot be entertained.

8. Any person claiming any job under the Government service or the Municipal service cannot have any right to choose a post. Therefore, the petitioner cannot be allowed to demand Junior Assistant post and refuse to do the Office Assistant post. It is also seen that the feeder category for the post of Junior Assistant is the Revenue Assistant Grade-II and Office Assistant. Therefore, the petitioner cannot claim the promotional post and demand absorption in the promotional post. The petitioner relied on an order passed in W.P(MD)No.6509 of 2008 filed by the said Muthuramalingam. It is seen that the said Muthuramalingam has filed the Writ Petition as early as on 2009 itself. In that Writ Petition, it has been clearly stated the said Muthuramalingam has joined the post as Cleaner under protest. Therefore, the said relief was



Muthuramalingam, since the petitioner has not chosen to file the writ petition at the earliest. Moreover the petitioner submitted a representation, dated 29.01.2008 and 11.04.2008 and the same was considered and rejected vide order 20.05.2008. As rightly pointed out by the respondents, the petitioner ought to have challenged the rejection order, dated 11.04.2008. The petitioner has suppressed the fact and has not come with clean hands.

9. For these reasons, both the Writ Petitions are dismissed. However, if there are any vacancies available in the post of Junior Assistant or Revenue Assistant, the petitioner's name may be considered for promotion. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

btr/gbg

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Secretary,
The Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Secretariat, Chennai-600 009.

2.The Commissioner,
Municipal Administration and
Water Supply Department,
Chepauk, Chennai.

3.The Commissioner,
The Rajapalayam Municipality
Rajapalayam,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-34946[F] dated 18/11/2021)

W.P(MD)No.14917 of 2013

and

W.P(MD)No.13612 of 2014

17.11.2021