



WEB COPY

W.P.(MD) No.15205 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.15205 of 2021

and

W.M.P. (MD) .Nos.12136 and 12137 of 2021

K.Palanivel

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by it's Principal
Secretary to the Government,
Department of Municipal Administration and Water Supply,
Secretariate,
Chennai - 9.

2.The Director of Town Panchayats,
O/o. The Director of Town Panchayat,
M.R.C. Nagar, Raja Annamalaipuram,
Chennai - 28.

3.The District Collector,
Theni District,
Theni.

4.The Assistant Director of Town Panchayat,
Theni District,
Theni.

5.The Executive Officer,
Kamayagoundanpatti Town Panchayat,
Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issue of **Writ of Certiorarified Mandamus**, to call for the records pertaining to the impugned order in Na.Ka.No.7336/2021/A3 dated 13.07.2021 on the file of the Respondent No.2 and quash the same as illegal to the extent of absorbing contract employees on regular vacancies and consequently directing the Respondents to promote the Petitioner as a Driver with the Respondent No.5 Town Panchayat with all consequential benefits within the time stipulated by this Court.



For Petitioner : Mr.T.Thirumurugan
For R1 - R4 : Mr.S.Shanmugavel,
Standing Counsel for Sate
for R1 to R4
For R5 : Mr.A.Baskaran,
Standing Counsel
for R5

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O R D E R

The petitioner has filed this writ petition for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.7336/2021/A3 dated 13.07.2021 on the file of the second respondent and quash the same as illegal to the extent of absorbing contract employees on regular vacancies and consequently, direct the respondents to promote the petitioner as driver in the 5th-respondent Town Panchayat with all attendant benefits.

2.It is the case of the petitioner that he was appointed in the fifth respondent Town Panchayat as a Public Health Sanitary Worker on 17.12.1998 and that he has been working as such for the past 22 years. It is the further case of the petitioner that he possesses driving license for heavy duty vehicles and as such, he was eligible for being appointed as a driver. The petitioner has given representation to the respondents to appoint him in the post of driver. The fifth respondent, vide reply dated 29.04.2020, stated that the petitioner's request would be considered when the vacancy arise. Thereafter, the petitioner filed a writ petition before this court in WP (MD) No.6662 of 2020 and this court, vide order dated 12.06.2020, directed the fifth respondent to consider the petitioner's representation dated 18.03.2020 on or before 31.07.2020.

3.In the meanwhile, the second respondent has issued the impugned order dated 13.07.2021, creating vacancies for the post of drivers all over the State and called for proposals from all the Assistant Directors of Town Panchayats. It is mentioned in the impugned order that those working as drivers on contract basis for the past ten years would be absorbed and details in that regard were called for. According to the petitioner, persons like him would be affected if there is direct absorption of drivers employed on contract basis. The petitioner has cited G.O.Ms.No.37 dated 01.02.2011 which stipulates that persons who are eligible to be appointed to the post of driver from the category of public health, water and maintenance of street light could be appointed as drivers by promotion by the concerned executive officers. The present notification is against the spirit of the above Government Order. Hence, the petitioner has filed the present writ petition seeking the prayer as mentioned above.



4.The learned counsel for the petitioner submitted that the petitioner has been working as public health sanitary worker for the past 22 years and he has never been given any promotion throughout his entire service. The petitioner is a qualified heavy vehicle driver and he is fully eligible for promotion as a driver. The impugned intra communication proceedings of the second-respondent, seeking for particulars for considering the absorption of drivers working on contract basis for ten years, would deprive opportunities of persons like the petitioner and therefore, the said intra-communication is challenged in the present Writ Petition.

5.Even though opportunity was granted to the respondent, no counter affidavit has been filed by the respondent.

6.The petitioner has filed the present Writ Petition on the ground that the petitioner's right will be deprived if the aforesaid contract basis employees are absorbed in the newly created posts of drivers in the local panchayats/municipalities. It is seen that by way of the intra-communication proceedings, the second-respondent has called for details of those employees working as drivers on contract basis for the past ten years, for consideration to be absorbed as drivers. The Writ Petition has been filed on the apprehension that the intra-communication calling for details of the drivers who are working on contract basis for the past ten years by the second respondent through the intra-communication would deprive the petitioner's opportunity. Therefore, on the aforesaid ground, this Court is not inclined to entertain this Writ Petition. It is for the petitioner to approach the authority concerned namely the Second respondent to seek his grievance by making appropriate application or representation.

7.In view of the above, at this stage, this Writ Petition is liable to be dismissed and accordingly the same is dismissed with the above liberty. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mnr

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

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The State of Tamil Nadu,
Secretary to the Government,
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2.The Director of Town Panchayats,
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+1 CC to M/s.SPL. GP (SR-29100, SR-29332)

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SR(CO)

RS (28.10.2021) 4P 7C