



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.11.2021
Pronounced on : 22.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos.15783 and 21171 of 2015 and
M.P(MD) .Nos.1 to 3 of 2015 and 20370 of 2018 in
W.P(MD) No.15783 of 2015 and
M.P(MD) .No.1 of 2015 and WMP(MD) .No.11078 of 2019 in W.P(MD) .
No.21171 of 2015

M.Muthupandi :Petitioner in both W.Ps.

..VS..

1.The State of Tamil Nadu,
rep. By its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The Commissioner,
Kuruvikulam Panchayat Union,
Kuruvikulam,
Sankarankovil Taluk,
Tirunelveli District.

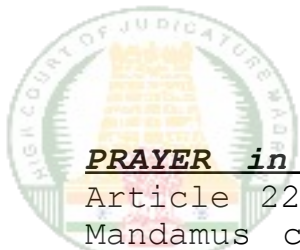
:Respondents in
W.P(MD) .Nos.15783 of 2015

1.The District Collector,
Tirunelveli District,Tirunelveli.

2.The Commissioner,
Kuruvikulam Panchayat Union,
Kuruvikulam,
Sankarankovil Taluk,Tirunelveli District.

3.C. Mohan

: Respondents in
W.P (MD) .No.21171 of 2015



PRAYER in W.P(MD).No.15783 of 2015: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari Mandamus calling for the records in connection with the impugned advertisement issued by the 4th respondent in Na.Ka.No.A1/326/2015, dated 02.06.2015 and quash the same insofar as the post of Jeep Driver is concerned as illegal and arbitrary and consequently direct the respondents 1 to 3 to consider the case of the petitioner for regularization in the post of Jeep Driver with effect from the date of his initial appointment i.e., from 20.11.2004 in the light of the proposal sent by the 4th respondent in his proceedings in A1/843/2014, dated 27.10.2014 and thereby grant all service and monetary benefits within the time limit that may be stipulated by this Court.

PRAYER in W.P(MD).No.21171 of 2015: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Mandamus directing the respondents 1 and 2 to allow the petitioner to continue as NMR Jeep Driver based on the petitioners representation dated 09.09.2015 and 01.10.2015.

For Petitioner

in both W.Ps.

: Mr. G. Thalaimutharasu

For R1 in

W.P(MD).No.21171 of 2015 and

R1 and R3 in

W.P(MD).No.15783 of 2015 : Mr. Veera Kathiravan,

Additional Advocate General

assisted by Mr. R. Ragavendran

Government Advocate (Civil side)

For R4 in W.P.No.15783/15 : Mr. S. Satheesh Kumar

C O M M O N O R D E R

W.P(MD).No.15783 of 2015 is filed to quash the impugned advertisement issued by the 4th respondent in Na.Ka.No.A1/326/2015, dated 02.06.2015 and consequently, direct the respondents 1 to 3 to consider the case of the petitioner for regularization in the post of Jeep Driver with effect from the date of his initial appointment i.e., from 20.11.2004 in the light of the proposal sent by the 4th respondent in his proceedings in A1/843/2014, dated 27.10.2014 and thereby grant all service and monetary benefits within the time stipulated by this Court.

W.P(MD).No.21171 of 2015 is filed for issuing a direction to the respondents 1 and 2 to allow the petitioner to continue as NMR Jeep Driver based on the petitioner's representations, dated 09.09.2015 and 01.10.2015.



2. The petitioner belonging to Schedule Caste was appointed on 20.11.2004 as "Jeep Driver" in the 4th respondent Panchayat Union vide the 4th respondent proceedings and has paid from the General Funds of the Union. The petitioner was appointed in the regular vacancy. The 2nd respondent vide Letter in Na. Ka. No. 27020 / 2014 / F.1, dated 24.06.2014 and a reminder on 01.12.2014 had called for list of persons who have discharged 10 years of service on daily wages. The 4th respondent has sent the proposal to the 3rd respondent vide proceedings in A1/843/2014, dated 27.12.2014, wherein petitioner's name is included in the list.

3. The petitioner made a request to the 3rd respondent to regularize the service. In the meanwhile, the 3rd respondent directed all the Union Commissioners to fill the vacancies in the post of Jeep Drivers, Office Assistant and Night Watchman. The post of Jeep Driver in Kuruvikulam was shown as vacant and has issued paper publication on 06.06.2015 calling for the eligible persons. The petitioner submitted a representation, dated 30.03.2015 thereby requested to regularize his service since he has put in 11 years of service. Without considering the petitioner's request the respondent had fixed the interview, dated 04.09.2015. Aggrieved over the same, the petitioner had filed the present writ petition challenging the paper publication and consequently directing the respondents to regularize the petitioner service by considering the proposal dated 27.10.2014.

4. This court had granted an interim stay thereby staying the paper publication. In spite of the stay order the respondents prevented the petitioner for performing the duty and hence the petitioner had filed another writ petition in W.P.(MD) No. 21171 of 2015 for issuance of Writ of Mandamus directing the respondents to allow the petitioner to continue as NMR Jeep Driver based on the representation, dated 09.09.2015 and 01.10.2015.

5. The 1st respondent had filed a detailed counter wherein it has been stated that the 1st respondent had accorded permission vide letter, dated 05.12.2013 to fill up the post of Jeep Drivers following the procedures prescribed by the government. The 1st respondent vide letter, dated 16.10.2014 had called for proposal in respect of Jeep Drivers working temporarily on daily wages who have completed 10 years of service without break. The petitioner has been engaged as Jeep Driver without any appointment order on daily wages and engaged as Jeep Driver as and when required. The petitioner had not completed 10 years, but the 2nd respondent had submitted a proposal, dated 17.10.2014 and the 1st respondent vide letter, dated 04.12.2014 called for records to verify the correctness of the particulars. On verification it was found the petitioner has not completed 10 years continuous service. In the meantime, the other Panchayat Union Commissioners, Thirunelveli has sent "NIL" report and in turn the 1st respondent has sent a "NIL" report.



6. The respondents further states that petitioner was engaged on daily wages and so the petitioner is not eligible to be appointed as Jeep Driver. Therefore the "NIL" report was submitted and hence, the process of direct recruitment was initiated. As per roster the post is allotted to the SC(A) and the respondents had called for list of SC(A) candidates from Thirunelveli and Tuticorin Employment Exchange. Thereafter, paper publication was issued. Then call letters were issued to the 28 persons (10 persons sponsored by employment exchange and 18 persons submitted applications). In such situation there was an interim stay of the paper publication. The process of recruitment cannot be stopped and so the writ petition itself is not maintainable.

7. Heard Mr. G. Thalamutharasu, learned counsel appearing for the petitioner and Mr. Veera Kathiravan, learned Additional Advocate General, assisted by Mr.R. Ragavendran, learned Government Advocate (Civil Side) appearing for the respondents 1 to 3 and Mr. S. Satheesh Kumar, learned counsel appearing for 4th respondent.

8. This court after hearing the arguments and after perusing the affidavit, counter affidavit and typed set of papers filed by the petitioner and the respondents passes the following order.

9. It is seen that the petitioner was engaged as Jeep Driver in the 3rd respondent Panchayat Union and the respondents have not denied the said fact. But the respondent claims that the petitioner was engaged under daily wages and utilized the service as and when necessary, no appointment order was issued. The respondents being a responsible government authorities cannot take such a plea, since placing an employee under daily wages / consolidated pay / NMR is within the domain of the respondents and petitioner has not say in such issues. Moreover inspite of so many government orders and other instructions there are recruitment without following the prescribed rules. After allowing the recruited persons to continue to service for few years, the officials are quoting so many government orders denying to regularize the service. This Court cannot allow such appointments to happen endlessly and also cannot close the eyes after seeing the plight of such appointees.

10. The respondents are taking a plea that the government has issued G.O. Ms. No. 267 Rural Development (E7) Department dated 22.12.1999 wherein it is stated that in future no appointments should be made under contingencies, consolidated pay or on daily wages in Panchayat Union and therefore, the petitioner cannot be reappointed. Even though there is a strict instruction to stop this kind of recruitment under G.O. 267 which was passed as early as 1999, but the 3rd respondent has appointed the petitioner in the year 2004. Therefore, this court is directing the appropriate officer to take action against the erring officer, who had appointed the



11. The respondents submitted that the petitioner has not completed 10 years of service in order to consider for regularization. But the petitioner has produced records to show that his service was utilized nearly for 10 years and it is the claim of the petitioner that his service was utilized daily, as well as during elections etc., and infact the petitioner had overworked. It is seen that the District Collector has forwarded the petitioner's name along with two more persons, stating that the petitioner is working in 3rd respondent Panchayat Union vide Letter dated 06.02.2013. It is also seen from the records that the Block Development Officer has forwarded the petitioner's name stating that he is working as daily wages in the Panchayat Union vide letter, dated 27.10.2014. The petitioner was issued identity card by the "Government of Tamil Nadu, Department of Rural Development". The Commissioner of the Panchayat Union has issued experience certificate, dated 15.06.2015 which indicates that the petitioner is working from 2005 onwards until 2015. The above stated documents would prove that the petitioner is working in the Panchayat Union for nearly 10 years. Therefore, this Court holds that the petitioner is eligible to be considered for regularization.

12. The respondents submitted that the petitioner shall participate in the recruitment process and but the petitioner had chosen not to apply. For this plea the petitioner submitted that the respondents had called for names from the Schedule Caste (Aruthathiyar) community, but the petitioner belong to Schedule Caste and therefore, the petitioner could not apply and expressed his difficulty to participate in the recruitment process.

13. For the discussions and reasons stated above, this Court passes the following order:

- The impugned advertisement passed in Na. Ka. No. A1 / 326 / 2015, dated 02.06.2015 is quashed.
- This Court holds that the petitioner has served for more than 10 years and is eligible to regular the service.
- The respondents are directed to regularize the petitioner's service and pay the consequential service and monetary benefits.
- The petitioner shall be entitled to 50% monetary benefits for the period when he was out of service.
- The respondents shall grant regularization within four weeks from the date of receipt of a copy of the order.



- The appropriate authority shall take action against the erring officer who had appointed the petitioner without following the recruitment rules.

14. With the above directions, both the writ petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

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MGJ(02.12.2021) 6P 4C