



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

**WP (MD) No. 4127 of 2017 &
WMP (MD) No. 3286 of 2017**

S.Chinnadurai

... Petitioner

Vs.

1.The Assistant Director of Survey and Land Records
cum Personal Assistant to District Collector,
Virudhunagar District, Virudhunagar.

2.The Revenue Inspector,
Aruppukkottai Division,
Aruppukkottai,
Virudhunagar District.

... Respondents

Prayer: 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 first respondent in Na.Ka.A2/857/2010 dated 28.02.2017 and quash the same and consequently direct the first respondent to reinstate the petitioner in service with all benefits.

For Petitioner

: Mr.T.Lajapathi Roy

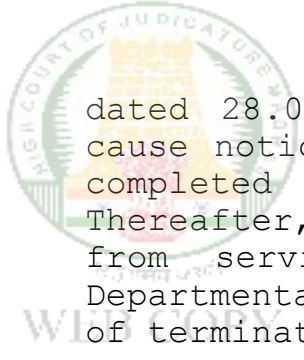
For Respondents

: Mr.R.Suresh Kumar,
Government Advocate

ORDER

The writ petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent in Na.Ka.A2/857/2010 dated 28.02.2017 and consequently direct the first respondent to reinstate the petitioner in service with all benefits

2. The petitioner was appointed as Surveyor on compassionate ground based on his representation immediately following the death of his father, who also worked as a Surveyor. It is not in dispute that the petitioner belongs to Scheduled Caste Community. The petitioner was appointed in the post of Surveyor, subject to certain conditions, that he has to complete Departmental test and training as prescribed. The petitioner's service was regularized by the Secretary to Government, Revenue Department vide G.O.(2D)No.692,



dated 28.08.2014. While so, the first respondent issued a show cause notice calling upon the petitioner to explain why he has not completed the Departmental test within the prescribed time. Thereafter, by the impugned order, the petitioner was terminated from service on the ground that he had not completed the Departmental test within the time prescribed. Challenging the order of termination, the above writ petition is filed.

3. Though the learned counsel for the petitioner has raised several grounds, he confined his arguments by relying upon the Judgment of the Hon'ble Supreme Court in the case of *Brijesh Vipin Chandra Shah vs. State of Gujarat and others* reported in 2013 (2) SC 7. The submission of the learned counsel for the petitioner is that a person who is appointed on compassionate ground cannot be terminated from service for not completing the Departmental test, as the petitioner may be asked to hold any Class-IV post and entitled to continue in service from the date of initial appointment. The Hon'ble Supreme Court in the case of *Brijesh Vipin Chandra Shah vs. State of Gujarat and others* (cited supra), has held as follows.

"8. We are of the considered opinion that the stand taken by the respondents is unnecessarily harsh. It must be remembered that the appellant was initially appointed on compassionate grounds as his father had died while he was in service. Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. It is unfortunate that the appellant was unable to pass the in-service examination so as to enable him to continue on a Class III post. But that ought not to result in depriving him of service altogether.

9. In view of the above, we allow this appeal and direct the respondents to appoint the appellant on a Class IV post. The appointment of the appellant on a Class IV post shall be from the date he was initially appointed on Class III post. His seniority shall be reckoned from the date of initial appointment. However, the appellant shall not be entitled to any back-wages since he has not worked, on any of the posts, after the date of termination of his services."

4. The above Judgment was followed by the Hon'ble Division Bench of this Court in WA.No.17 of 2016 dated 17.04.2017, wherein it is observed that a person appointed on compassionate ground should not be deprived of his job and direction was issued to extend the continuity of the person appointed on compassionate ground from the



date of initial appointment. Once again, the Judgment in the case of *Brijesh Vipin Chandra Shah vs. State of Gujarat* (cited supra) was followed by a learned Single Judge of this Court by order dated 19.12.2018 in WP(MD)No.8681 of 2016, wherein the learned Single Judge allowed a writ petition with similar prayer. From the above Judgments it is seen that it is well settled that a person appointed on compassionate ground cannot be deprived of his employment simply because he has not completed the Departmental examination or has not undergone training. Even if a person is unable to complete the Departmental test, his service cannot be terminated and the Authorities should accommodate the petitioner in Class-IV Post. However the petitioner is not entitled to backwages for the period when he was terminated from service.

5. In the light of the above three Judgments relied upon by the learned counsel for the petitioner, this Court is inclined to allow the writ petition.

6. Accordingly, this writ petition is allowed and the impugned order passed by the first respondent in Na.Ka.A2/857/2010 on 28.02.2017 is set aside. The first respondent is directed to appoint the petitioner in the post of Office Assistant or Field Assistant, within a period of six weeks from the date of receipt of a copy of this order. Even if no vacancy is available under Class-IV post, the first respondent is directed to create a supernumerary post to accommodate the petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mbi

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 Assistant Director of Survey and Land Records
cum Personal Assistant to District Collector,
Virudhunagar District,
Virudhunagar.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Revenue Inspector,
Aruppukkottai Division,
Aruppukkottai,
Virudhunagar District.

WEB COPY

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-33714[F] dated
08/11/2021)

+1 CC to M/s.SPL.GP (SR-33662[F] dated 08/11/2021)

WP (MD) No.4127 of 2017

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MGJ(30.11.2021) 4P 5C