



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.11279 of 2017

and

W.M.P(MD)Nos.8661 and 8662 of 2017

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M.Mahalingam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Rural Development and Panchayat Raj Department (E1)
Secretariat,
Chennai-9.
- 2.The Director of Rural Development and Panchayat Raj
Panagal Building,
Saidapet,
Chennai-15.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Anna Salai,
Chennai-600 002.
- 4.The District Collector,
Tiruchirappalli District,
tiruchirappalli.
- 5.The Conservator of Forest,
O/o. The Conservator of Forest,
Trichy Circle,
J.K.Nagar,
Trichirapalli.
- 6.The Block Development Officer,
Thuraiyur Panchayat Union,
Thuraiyur,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his letter No.5912/PSD-B4/2010 dated 24.02.2016 communicated to the petitioner only on 30.05.2016 and quash the same as illegal and consequently, to direct the respondents to regularize the service of the petitioner as Typist.



For Petitioner : Mr.Md.Imran
for M/s.Ajmal Associates
For R1 to R6 : Mr.M.Lingadurai
Government Advocate

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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent in letter No.5912/PSD-B4/2010 dated 24.02.2016 and consequently, to direct the respondents to regularize the service of the petitioner as Typist.

2.Heard Mr.Md.Imran, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned counsel appearing for the respondents.

3.The petitioner was originally appointed as typist on 20.11.2007 under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. It is admitted that in order to regularize the service of the petitioner and similarly placed persons, the third respondent conducted a special qualifying examination. The petitioner appeared in the special qualifying examination and also passed the same. Thereafter, by order of the fifth respondent dated 30.11.2010, the petitioner was appointed as typist. He was directed to join duty within a week. However, the petitioner did not join duty but stated in the affidavit that the petitioner was not relieved from the post in which he was working earlier.

4.It is also the case of the petitioner that due to his father's death and family circumstances, the petitioner could not join duty. Therefore, he submitted a representation dated 28.03.2012 requesting the fourth respondent to extend the time to join in the post. The representation of the petitioner was forwarded to the third respondent with recommendation. However the request of the petitioner was rejected by the impugned order only on the ground that the petitioner's name was removed from the selection list, as the petitioner did not join within the period specified. Challenging the order dated 24.02.2016, the above writ petition is filed.

5.The learned counsel appearing for the petitioner submitted that Rule 4 of the Tamil Nadu State and Subordinate Service Rules (hereinafter referred to 'the Rule' for short), enables the respondents to consider the extension of time.



6.Rule 4(e) of the Tamil Nadu State and Subordinate Services Rules, reads as follows:

.....

(e) If an approved candidates selected by the Tamil Nadu Public Service Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt the orders directing him to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he shall forfeit his right for appointment to the post and his name shall be removed from the approved list.

Provided that in very special circumstances the appointing authority may extend the time-limit referred to in this sub-rule up to six months for valid reasons.

[Provide further that in very special circumstances and in relaxation of the above proviso, if any candidate is allowed to join duty beyond the time-limit of six months, his seniority in that post shall be fixed below the junior most candidate appointed to that post in that service on the date of joining duty of the former.]

7.As per the Rule, the appointing authority has the discretion to extend the time limit referred to in Rule 4(e) of the Rules up to six months or beyond six months for valid reasons. Though the petitioner has stated specific reasons for the delay, the respondents have not considered in terms of the power given to the appointing authority. Strangely the representation of the petitioner to extend the time was rejected on the ground that the petitioner did not report duty and his name was deleted from the selection list. Since the petitioner did not join duty within three months from the date of appointment order, the third respondent seems to think that he cannot consider the representation of the petitioner in terms of the proviso to Rule 4(e) of the Rule. This is inappropriate.

8.The learned counsel appearing for the petitioner submitted that the petitioner was terminated from service, pursuant to the impugned order. Hence, the learned counsel further requested that this Court may direct the respondents to reinstate the petitioner in service, in the place he was holding prior to the impugned order. The learned counsel submitted that the petitioner has challenged the order of termination in a separate writ petition. The earlier writ petition was filed for issuance of a writ of mandamus forbearing the fourth respondent from taking any action to terminate the petitioner from service. It is also admitted that earlier writ petition was dismissed. Against the dismissal of the earlier writ petition, the petitioner has preferred writ appeal before this Court and the writ appeal was also dismissed as infructuous. It is admitted that the petitioner was terminated from service. The petitioner ought to have sought for appropriate amendment or insisted the other writ



petition in W.P(MD)No.11493 of 2017 to be heard after the disposal of this writ petition.

9. In such circumstances, this Court is inclined to dispose the writ petition in the following lines:

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"The impugned order passed by the third respondent dated 24.02.2016 is quashed and the writ petition is partly allowed. The third respondent is directed to consider and dispose of the representation of the petitioner, for extension of time to report duty taking into consideration the power under Rule 4(e) of the Tamil Nadu State and Subordinate Services Rules and pass appropriate orders on merits and in accordance with law, after hearing the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. Depends upon the order that may be passed in exercise of his discretion to extend the time limit in terms of Rule 4(e) of the Rules, further direction may be issued by the third respondent regarding appointment of the petitioner in service. In case, the petitioner is given appointment, he will be treated as a fresh entrant and he is entitled to get service benefits as applicable to the post in which he is appointed from the date of order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 State of Tamil Nadu,
Rep by its Principal Secretary,
Rural Development and Panchayat Raj Department (E1)
Secretariat,
Chennai-9.



2.The Director of Rural Development and Panchayat Raj
Panagal Building,
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5.The Conservator of Forest,
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Trichy Circle,
J.K.Nagar,
Trichirapalli.

6.The Block Development Officer,
Thuraiyur Panchayat Union,
Thuraiyur,
Trichy District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-30428[F] dated
28/09/2021)

+1 CC to M/s.SPL.GP (SR-30503[F] dated 28/09/2021)

W.P. (MD) .No.11279 of 2017

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NSN (CO)

RS/UV (02.11.2021) 5P 9C