



W.P.No.1124 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.1124 of 2018
and W.M.P.Nos.1394, 1395 & 14019 of 2018

V.Palaniappan

.... Petitioner

-Vs-

- 1.Government of Tamil Nadu
rep.by the Deputy Secretary to Government
Personnel and Administrative Reforms
Department, Secretariat, Chennai 600 009.
- 2.The Principal Secretary / Transport Commissioner
Transport Department, Government of Tamil Nadu
Chepauk, Chennai – 600 005.
- 3.The Regional Transport Officer
Coimbatore (North), 19, Thudiyalur-Saravanampatti
Road, 377, Vellakinar Road, Vellakinar Village
Coimbatore North, Coimbatore – 641 034.
- 4.The Secretary to Government
Government of Tamil Nadu
Agricultural Marketing and Agri Business
Thiru Vi Ka Industrial Estate, CIPET-II Main Road
Guindy, Chennai – 600 032.
- 5.The Secretary
Erode Marketing Committee
Agriculture and Agriculture Business
Vidhya Nagar, Dhindal (Post)
Erode – 638 012.

.... Respondents



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records from the 5th respondent relating to the proceedings dt.18.09.2017 bearing reference No.Na.Ka. No.A1/01397/ 2017 and quash the same as illegal arbitrary without jurisdiction and to consequently direct the respondents to grant the benefit of pay scale meant for the post of Junior Assistant taking into account his service from 08.07.2003 grant pay revision service benefit including arrears without prejudice to the above in the alternative grant the benefit of pay scale meant for the post of Junior Assistant together the benefit of revision with arrears and other service benefits including promotion atleast from the date the same was given to the Junior Assistant who was engaged along with the petitioner as Junior Assistant and secured similar mark in the special competitive examination exam conducted on 17.02.2008.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.J.C.Durairaj
Additional Government Pleader
- for RR 1 to 4
Mr.V.Jayaprakash Narayan – for R5

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records from the 5th respondent relating to the proceedings dt.18.09.2017 bearing reference No.Na.Ka. No.A1/01397/ 2017 and quash the same as illegal arbitrary without jurisdiction and to consequently direct the respondents to grant the benefit of pay scale meant for the post of Junior



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Assistant taking into account his service from 08.07.2003 grant pay revision service benefit including arrears without prejudice to the above in the alternative grant the benefit of pay scale meant for the post of Junior Assistant together the benefit of revision with arrears and other service benefits including promotion atleast from the date the same was given to the Junior Assistant who was engaged along with the petitioner as Junior Assistant and secured similar mark in the special competitive examination exam conducted on 17.02.2008.

2. That the petitioner was appointed as Junior Assistant in the Transport Department on 08.07.2003 on contract basis. Like him, so many other persons also had been appointed or engaged on contract basis in various departments.

3. Subsequently, in the year 2006 the Government thought it fit to regularize their services. However, since they have not been appointed on regular basis and only on contract basis, the Government issued a Government Order ie., G.O.Ms.No.155, Personnel and Administrative Reforms Department dated 19.09.2006 under which orders have been issued for selection of those temporarily appointed Junior Assistants by getting qualified in a special competitive examination conducted in this regard by the Tamil Nadu Public Service Commission (In short 'TNPSC').



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4. Pursuant to the said government order, the TNPSC conducted a special competitive examination of Group-IV for the year 2007 on 17.02.2008. The petitioner also participated in the said examination along with similarly placed persons for whom the said examination was conducted pursuant to the said government order.

5. Though the said examination was conducted some time in the year 2008, no further action was forthcoming from the Government, as there was no communication either from TNPSC or the Government and in the meanwhile, the Government issued G.O.Ms.No.170 dated 18.12.2009 directing the appointing authorities concerned to appoint retired Government Servants / personnel retired from quasi government organizations, temporarily on contract basis under Rule 11 of the General Rules for Tamil Nadu State and Subordinate Services against the sanctioned posts in the Government Departments subject to the condition that there should be emergent need for such appointments and there should be reason to believe that work will get affected due to dearth of employees in the Departments.

6. Only in that circumstances, several other persons like the petitioner had approached this Court and the petitioner also, along with two other similarly placed persons filed a Writ Petition in W.P.No.7895 of 2010, where they sought



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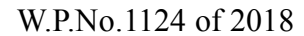
for writ of Mandamus seeking direction to the respondents 1 to 3 therein ie., Government of Tamil Nadu represented by Secretary to Government, Commissioner, Transport Department as well as TNPSC to give the petitioners therein posting orders as Junior Assistants since they have got through the special competitive examination pursuant to G.O.Ms.No.155 dated 19.09.2006.

7. During the pendency of the writ petition, the Government subsequently seems to have come forward to offer postings to the selected candidates through the special competitive examination. However, by citing the reason of pendency of writ petitions such postings were not given.

8. Though three petitioners including the present petitioner had moved the said writ petition, the first two petitioners therein withdrew their writ petitions and the writ petition came to be decided finally by this Court on 08.11.2016, where, considering all these aspects, this Court passed the following order.

“20. In the result, the writ petition is ordered in the following terms:

(a) The third respondent is directed to give selection pursuant to the said Special Competitive Examination to the petitioner according to his ranking and marks within a period of



(b) On receipt of such order of selection issued by the third respondent, the concerned department shall issue a posting order to the petitioner within two weeks, thereafter.

(d) On such receipt of representation from the petitioner, the authority concerned, namely, the employer, to whom such representation is made by the petitioner shall consider the same taking into account the policy decision taken by the Government which is reflected in G.O.Ms.No.155 dated 19.09.2006 and the long service, the petitioner had put in as Junior Assistant in the second respondent department from 08.7.2003 without any break in service and pass a reasoned order either to confirm the benefit as claimed by the petitioner or any other benefits for which the petitioner is entitled to according to the assessment of the authority concerned and that shall be done within a period of eight weeks on receipt of such representation from the petitioner. Consequently, connected miscellaneous petitions are closed. No costs."



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9. Pursuant to the said order, a request has been made by the petitioner to give him posting. Accordingly, they allotted the department, instead of Transport Department, where he had been temporarily working from 2003, for want of vacancy, to the Agriculture Department and was allotted to the fifth respondent.

10. In this context, even though the appointment had been given only in the year 2017, pursuant to the order passed by this Court, the regularization of the services of the petitioner was not made right from the date of his selection on 08.02.2012, the date on which he was selected by the TNPSC pursuant to the special competitive examination conducted by the TNPSC.

11. When this was requested or questioned by the petitioner by making a representation to the respondents, the same having been considered, was rejected by the fifth respondent through order dated 18.09.2017, wherein the fifth respondent has stated that, the petitioner had been in temporary appointment on contract basis from 2003 in the vacancy caused due to the en masse strike undertaken by the Government employees in the year 2003 and subsequently, though the petitioner had been selected by TNPSC in the special competitive examination, posting orders could not be given immediately for want of vacancy, where he had been working temporarily and subsequently he



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had filed a writ petition seeking benefit from 2003 and the said writ petition was pending. Pursuant to the order passed by the Writ Court, only on 08.11.2016 since the petitioner had made a request in the year 2017, as directed by this Court, based on such request, the petitioner was appointed by allotting him to the fifth respondent through the District Collector. Only from such appointment he was able to get all benefits including absorption on permanent basis and therefore the plea raised by the petitioner to treat him as permanent employee from the date of appointment is not feasible for compliance and accordingly citing the said reasons, the petitioner's plea was rejected through the order dated 18.09.2017 passed by the fifth respondent, which is impugned herein.

12. Heard Mr.N.G.R.Prasad, learned counsel appearing for the petitioner, who after having reiterated the aforesaid, would submit that insofar as the benefit accrued on the petitioner right from 2003 till he was regularly selected and appointed pursuant to the special competitive examination in the year 2012 as stated supra is concerned, it is the different subject matter altogether pending in some other litigations, where not only the petitioner, but several hundreds of similarly placed persons have been agitating the issue.

13. However, insofar as the claim made by the petitioner to regularize his



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services from the date of selection ie., in the year 2012 as he has been continuously working all along from 2003 to 2017 till the present appointment had been made, of course pursuant to the order passed by this Court on 08.11.2016 is concerned, even that period since has not been regularized and it is denied by the respondents especially the fifth respondent through the impugned order, it is untenable and therefore, he seeks the indulgence of this Court against the said order impugned and for consequential reliefs.

14. Heard Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.V.Jayaprakash Narayan, learned counsel for the fifth respondent.

15. The learned counsel for the fifth respondent has relied upon the following averments made in the counter affidavit.

“ 5. As regards to the averments made in paragraph 10 and 11 of the affidavit, it is submitted that the writ petitioner made a representation on 22.02.2017 seeking pay fixation taking into account of his 14 years of service in the Transport Department and together with service and other benefits. In this regard, it is submitted that no such benefits including service or monetary benefits as requested by the writ petitioner have been given to any of the similarly placed persons (ie., more than 10,000 persons)



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who were appointed as Junior Assistants in Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service, through the Special Competitive Examination, 2007 conducted by the Tamil Nadu Public Service Commission in pursuance to the policy decision taken by the Government in G.O.(Ms) No.155, Personnel and Administrative Reforms (P) Department dated 19.09.2006 since, their temporary appointment were made on contract basis in consolidated pay under General Rule 11 of the Tamil Nadu State and Subordinate Service Rules, presently under Section 19 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which shall not confer any right of membership of the Tamil Nadu Ministerial Service as per the terms of contract exercised. Further it is submitted that, based on the merit order, rule of reservation and the availability of vacancies, the selected candidates in the said Special Competitive Examination, 2007 were appointed as Junior Assistant in Tamil Nadu Ministerial Service / Tamil Nadu Judicial Ministerial Service through Tamil Nadu Public Service Commission, in seven phases and their service were regularized from the date of their regular appointment through Tamil Nadu Public Service Commission, in seven phases and their service were regularized from the date of their regular appointment through Tamil Nadu Public Service Commission. Subsequently, the 5th respondent herein sent a letter No.A1/1397/2017 dated 18.09.2017 to the 4th respondent and request permission to reject the representation of the writ petitioner dated 22.02.2017 and in turn the 4th respondent also given instructions to the 5th respondent to reject the representation of the writ petitioner. Accordingly the 5th respondent has passed orders rejecting the representation of the



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writ petitioner dated 22.02.2017 since the appointment of the writ petitioner as Junior Assistants in Tamilnadu Ministerial Service on contract basis in consolidated pay under General Rule 11 of the Tamil Nadu State and Subordinate Service Rules, presently under Section 19 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 by executing a temporary appointment agreement in favour of the Government of Tamil Nadu on certain terms and conditions. Further it is submitted that one among the conditions was, the said appointment was purely temporary on contract basis and shall not confer any right of membership of the Tamil Nadu Ministerial Service in which appointment is made. Such appointments are purely temporary and it shall not confer any rights to claim any preferential treatment for regular appointment. Accordingly, the writ petitioner was appointed on contract basis in consolidated pay of Rs.4000 in the transport department and joined on 08.07.2003. Therefore it is submitted that the entire averments of the writ petitioner in this regard is unsustainable.”

16. Be relying upon the above averments, the learned counsel for the fifth respondent, who is the contesting respondent and who is the author of the impugned order has submitted that the plea raised by the petitioner to regularize his services with effect from 2003 ie., temporary engagement on contract basis is not feasible for compliance as it goes against the Rule. This has been clearly explained in para 4 of the counter affidavit.



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17. Learned counsel would also submit that, in respect of the plea raised by the petitioner to regularize his services with effect from 08.02.2012, the date on which was regularly selected by the TNPSC through the special competitive examination, though number of persons subsequently selected had been considered and granted postings in various departments based on the vacancy which was available at that time, the petitioner could not be posted because he already approached this Court in a writ petition, where he sought for a plea to consider his regular appointment with effect from 2007 which was pending consideration and that was disposed of only on 08.11.2016, where some direction has been given, pursuant to which only since the petitioner has given a representation to consider him, his representation being considered in 2017 he was allotted to the fifth respondent through the District Collector. Hence, the rejection order now passed through the impugned order rejecting the plea of the petitioner is in consonance with the Rule as well as his appointment subsequently made in the year 2017. Therefore, the impugned order is to be sustained and the writ petition is liable to be rejected, he contended.

18. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.



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19. Whether the petitioner would be entitled to seek for permanency from 2003, where, the petitioner like others, had been engaged by the State Government due to some contingency, is not a matter to be decided here, as has been rightly pointed out by the learned counsel for the petitioner and that issue is still pending in some other litigations, where not only the petitioner, but several similarly placed persons have been agitating that issue.

20. However, insofar as the plea raised by the petitioner to regularize his services in the fifth respondent at least from 08.02.2012 the date on which he was selected by the TNPSC through the special competitive examination is concerned, once the petitioner was selected by TNPSC, posting order should have been given by allotting either in the same department or by allotting in any other department depending upon the vacancy. Therefore, the non-giving of the posting order to the petitioner immediately after selection citing the reason that the petitioner had moved this Court by filing a writ petition is not a sustainable reason.

21. Moreover, the petitioners and others were triggered to file the first round of litigation, as it is made clear that even after completing the special competitive examination the persons like the petitioner having been selected, were not given posting orders and in this context, the Government issued a



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further government order giving a direction to the various government departments to appoint retired persons from Government undertakings as a stop gap arrangement. That action on the respondents alone was questioned by the petitioner and others in number of writ petitions and petitioner is one among them who also moved a writ petition along with two others and pendency of the writ petition no way precluded the respondents from appointing the petitioner in the selected post.

22. Therefore, the said reason cited by the respondents as has been averred in the counter affidavit which was supported by the learned counsel for the fifth respondent is totally bereft of any merits and hence it is liable to be rejected.

23. Once the petitioner became entitled to get permanent posting from 08.02.2012 and it is an admitted fact that the petitioner did not have any break in service and had been continuously working in the Transport Department right from 2003 till he was allotted to the Agriculture Department, the period at least from 08.02.2012 shall be taken as a continuous service for permanency and absorption and therefore the denial of such benefit to the petitioner from 08.02.2012 till 2017 cannot be accepted as a lawful action because the delay in giving posting could not be attributable to the petitioner, but only to the fifth



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respondent or the Head of the Department concerned.

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24. Therefore, this Court has no hesitation to hold that the petitioner has made a presentable and acceptable case against the impugned order dated 18.09.2017 and in the result, the impugned order could not be sustained in the legal scrutiny.

25. In that view of the matter, this writ petition is disposed of with the following order.

- The impugned order dated 18.09.2017 is set aside and the matter is remitted back to the respondents for reconsideration.
- There shall be a direction to the fourth and fifth respondents to regularize the services of the petitioner as Junior Assistant at the Agriculture Department with effect from 08.02.2012 by taking into account the continuous services rendered by the petitioner at least from 08.02.2012 and accordingly the service and pay benefits, if any difference of pay is still there payable to the petitioner, shall be calculated and be paid to the petitioner.
- It is made clear that with regard to the plea of the



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petitioner to give the benefits from 2003 to 2012 is concerned, that issue can be agitated by the petitioner in the manner known to law, for which if already any litigations are pending, wherein decision is yet to be made, both the parties can agitate the issue in the manner known to law.

- The aforesaid directions shall be undertaken by the respondents especially the fourth and fifth respondents within a period of eight weeks from the date of receipt of a copy of this order.

26. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
KST



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To

- 1.The Deputy Secretary to Government
Personnel and Administrative Reforms
Department, Secretariat, Chennai 600 009.
- 2.The Principal Secretary / Transport Commissioner
Transport Department, Government of Tamil Nadu
Chepauk, Chennai – 600 005.
- 3.The Regional Transport Officer
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