



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO.14354 OF 2014

M.K.Murugesan

..

Petitioner

vs.

1. Executive Officer,
Mallasamudram Town Panchayat,
Namakkal Distrit.

2. Assistant Director,
Town Panchayat,
Salem Division.

3. The District Collector,
Namakkal.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to regularize the service of the petitioner as Driver on and from 2007 as provided under G.O.37 dated 01.02.2011 with all consequential and attendant benefits.

For Petitioner : M/s.V.Raghavachari

For Respondents : Mr.V.Jayaprakashnarayanan for R1

Mr.P.Anandkumar,
Government Advocate for R2 and R3

O R D E R

The prayer in the writ petition is for a mandamus directing the respondents to regularize the service of the petitioner as Driver on and from 2007 as provided under G.O.(Ms)No.37, Municipal Administration and Water Supply (TP-2) Department dated 01.02.2011 with all consequential and attendant benefits.



2. The case of the petitioner is that his mother Kandayee, who worked as Sanitary Worker, died on 27.08.2004, while she was in service. The petitioner was given appointment on compassionate ground in the same post on 13.07.2007. On 17.07.2007, the respondents herein had called upon the petitioner to work as driver of heavy vehicles and therefore, he continued to work as Driver in the respondents Panchayat and based on his work as Driver, the petitioner made a representation to the respondents seeking regularization of his services as Driver from the date of his initial appointment on 13.07.2007, in the light of G.O.(Ms)No.37, Municipal Administration and Water Supply (TP-2) Department dated 01.02.2011 and since the representation of the petitioner was not considered, he has filed the present writ petition.

3. The respondents 2 and 3 have filed a detailed counter affidavit, denying the averments made in the writ petition by stating that the petitioner had been directed to temporarily drive the Tractor in addition to his regular, routine work of sanitation by the first respondent and the Government had issued G.O.Ms.No.37, Municipal Administration & Water Supply (TP-2) Department dated 01.02.2011, amending G.O.Ms.No.205, Rural Development Department, dated 23.03.1989 and G.O.Ms.No.23 dated 03.03.1998 so as to include the category of "Recruitment by Promotion" in the method of appointments to the post of Driver under the Tamil Nadu Town Panchayat Rules and to make promotions from among the combined seniority list of all feeder category posts. It is further stated in the counter affidavit that the petitioner's demand cannot be considered since there is no approved sanctioned post of Driver in Mallasamudram Town Panchayat and the petitioner had been directed to drive Tractor only temporarily in addition to his regular sanitary work and he is getting pay and all other benefits for the post of sanitary work, in which post he had been originally appointed and therefore, prays for dismissal of this writ petition.

4. Heard the submissions of the learned counsel for the parties and also perused the materials placed on record.

5. It is an admitted fact that the petitioner was originally appointed as Sanitary Worker by the first respondent on compassionate ground on the demise of his mother Tmt.Kandayee, who worked as Sanitary Worker in the first respondent Town Panchayat. The claim of the petitioner is that though he was appointed only as Sanitary Worker, he was asked to perform his duties as Driver and therefore, he is entitled for regularization in the post of Driver. However, his claim cannot be considered in the light of the stand taken by the respondents 2 and 3 in the counter affidavit that there is no approved sanctioned post of Driver in Mallasamudram Town Panchayat and



the appointment of the petitioner as Sanitary Worker, is a sanctioned post and no material has been placed before this Court that the petitioner was appointed as Driver in the sanctioned post. The Hon'ble Apex Court in a catena of decisions in State of Karnataka and Others v. Umadevi & Others [AIR 2006 SC 1806], Union of India & Others v. A.S.Pillai & Others [2010 (13) SCC 448], State of Rajasthan & Others v. Daya Lal a& Others [AIR 2011 SC 1193], reiterated the proposition that an employee cannot claim regularization in a non-sanctioned post.

6. In the light of the admitted fact and the settled legal position, the claim of the petitioner cannot be considered. The writ petition lacks merit and accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jvm

To

1. Executive Officer,
Mallasamudram Town Panchayat,
Namakkal Distrit.
2. Assistant Director,
Town Panchayat,
Salem Division.
3. The District Collector,
Namakkal.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.1369
+1cc to the Government Pleader, S.R.No.2044

W.P.No.14354 of 2014

VSN II (CO)
PM/25/01/2022