



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) Nos. 348 and 22839 of 2021

and WMP (MD) Nos. 16077, 19315, 19316 and 272 of 2021

P. Sriram Muniyasamy

... Petitioner in
both W.Ps.

Vs.

1. The Director

Backward Classes Welfare Department,
Ezhilagam, Chepauk, Chennai.

2. The District Backward classes and

Minorities Welfare Officer,
Tenkasi District.

... Respondents
in both W.Ps.

3. K. Mariselvam

... Respondent
in W.P. No. 22839/2021

PRAYER in W.P. (MD) No. 22839/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent pertain the order in proceedings No. Se. Mu. No. A5/3600/2016 dated 18.12.2020 and the consequential order passed by the 2nd respondent proceedings in Na. Ka. No. Gna1/4805/2020 dated 19.12.2020 and quash the same and consequently direct the respondents to permit the petitioner to discharge his duty as driver.

PRAYER in W.P. (MD) No. 348/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent proceedings in Na. Ka. No. gna1/4805/2020 dated 19.12.2020 and quash the same and consequently direct the respondents to permit the petitioner to discharge his duty as driver.

For Petitioner

: Mr. Aayiram K. Selvakumar
(in both W.Ps)

For Respondents

: Mr. A. K. Manikkam
Special Government Pleader
(in both W.Ps)
Mr. S. Govindan for R3



COMMON ORDER

The order of reversion passed by the respondents in proceedings dated 18.12.2020 and the consequential order passed by the second respondent in proceedings dated 19.12.2020 are under challenge in the present writ petition.

2. The petitioner was appointed in the post of cook on compassionate ground on 19.08.2011 due to the death of his father, while in service. The petitioner was subsequently promoted to the post of Watchman at Government hospital, Tenkasi in proceedings dated 11.09.2020. The order of promotion was subsequently cancelled without assigning any reason in proceedings dated 30.09.2020 and more specifically without affording any opportunity of hearing to the petitioner.

3. Thereafter, the petitioner found that the post of Driver was vacant in the office, which was newly created post. He submitted an application as he possesses the requisite qualification for the post of Driver. The application submitted by the petitioner was processed and finally he was selected and appointed as Driver by the second respondent by proceedings dated 18.11.2020. The petitioner joined as a Driver accordingly. While so, the second respondent passed an order of reversion stating that the petitioner did not possess the requisite qualification for appointment and his appointment was made without following the procedures and rules in force.

4. The writ petition filed in W.P.No.348/2021 challenging the order of the second respondent and during the pendency of the writ petition, the first respondent passed an order and the order already passed by the first respondent was served to the writ petitioner. Therefore, the writ petitioner was constrained to move W.P.No.22839/2021.

5. The learned Special Government Pleader appearing on behalf of the respondents 1 and 2 made a submission that on verification, after appointment the authorities found that the petitioners is not fully qualified for the appointment to the post of Driver. Further procedures of appointment were not followed. Thus, the writ petition is to be rejected.

6. The learned counsel for the third respondent vehemently opposed by stating that the petitioner is not entitled to continue in the post of Driver as the procedure for recruitment has not been followed. The third respondent is senior to the petitioner and therefore, the third respondent ought to have been appointed in the post of Driver.



7. This Court is of the considered opinion that admittedly the writ petitioner was appointed to the post of Driver. He joined in the post and was working. While so, if the authorities found that the appointment was not made in accordance with the rules in force or otherwise, opportunity of hearing must be provided to the petitioner. Any order affecting the service rights or service conditions of an employee has to be passed only after providing an opportunity to defend his case. In the present case, there is no evidence to establish that the petitioner was provided with an opportunity before passing the order of reversion and therefore, the impugned orders are in violation of principles of natural justice.

8. However, this Court do not wish to make any observation regarding the merits of the case, which are all to be assessed independently with reference to the service rules in force, more specifically, for appointment to the post of Driver.

9. In view of the facts and circumstances, the impugned order passed by the first respondent in proceedings in No.Se.Mu.No.A5/3600/2016 dated 18.12.2020 and the consequential order passed by the second respondent in proceedings Na.Ka.No.Gnal/4805/2020 dated 19.12.2020 are quashed and the matter is remanded back. Accordingly, the respondents 1 and 2 are directed to reconsider the entire issue by affording an opportunity to the writ petitioner and thereafter take a decision on merits and in accordance with law. The petitioner is also at liberty to submit his explanation or objections, if any by availing the opportunity to be provided by the respondents.

10. The writ petition is allowed. No costs. Consequently connected Miscellaneous Petitions closed.

W.P. (MD) No. 348/2021

The prayer that has been sought for in the Writ Petition has become infructuous. Accordingly, the writ petition is disposed of as infructuous. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

RR



To

1. The Director
Backward Classes Welfare Department,
Ezhilagam, Chepauk, Chennai.

2. The District Backward classes and
Minorities Welfare Officer,
Tenkasi District.

+1 CC to M/s.SPL.GP (SR-17166,SR-17209[F] dated 07/04/2022)

W.P. (MD) Nos. 348 and 22839 of 2021

06.04.2022

RD(20.04.2022) 4P 4C